

IN THE COURT OF BAKHT ZADA,
ADDITIONAL DISTRICT JUDGE-I, ORAKZAI (AT BABER MELA)

CIVIL MISC-APPEAL NO. : 13/14 OF 2024
DATE OF ORIGINAL INSTITUTION : 13.10.2024
DATE OF TRANSFER IN : 20.11.2024
DATE OF DECISION : 20.11.2024

1. MUHAMMAD NAWAZ S/O SAID NABI
RESIDENTS OF CASTE MANI KHLE, TAPA SABZI KHEL,
KUREZ STARSAM, DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

1. MST. WAWA DIN SULTAN W/O ALI AYAZ
2. DANISH ALI S/O ALI AYAZ
3. RABIA BIBI D/O ALI AYAZ
ALL RESIDENTS OF CASTE MANI KHEL TAPA SABZI
KHEL, STAR SAM PERA, DISTRICT ORAKZAI

..... (RESPONDENTS)

Present : Sana Ullah Khan Advocate for appellant.
: Abid Ali Advocate for respondents.

JUDGEMENT
20.11.2024

Impugned herein is the judgement/order dated 03.09.2024 of learned Civil Judge-II, Tehsil Kalaya, District Orakzai vide which he has struck of the right of evidence of the defendants. The appellant has prayed for setting aside order dated 03.09.2024 and fine of Rs. 5000/- imposed upon him by the learned trial court.

(2). The appellant has alleged that respondents no. 1 to 3 (plaintiffs) filed suit for possession through partition against appellant (defendant no. 1) and respondents no. 4 to 5 (defendants no. 2 to 3) and after service of process the defendants attending the court and submitted written statement. Later on, the plaintiffs recorded and closed their evidence. That defendant no. 1 was directed to produce evidence, but his right of evidence was struck of by the learned trial court. It is alleged that the order of the learned trial court is wrong against law and fact and liable to be set aside, because the appellant

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has produced his entire evidence before the court, but due to non-availability of some documents the evidence was not recorded by the court and despite the same his right of evidence was struck off. That the learned trial court has not provided full opportunity for producing evidence to appellant (defendant no. 1) which is against the norms of justice. That every case is to be decided on its merits and technicalities should be avoided as reported in various judgements of the superior courts.

- (3). The respondents were summoned who appeared through special attorney, Rijad Ali and counsel Abid Ali Advocate.

Arguments heard and available record perused.

- (4). The perusal of record shows that, that vide order sheet no. 52, dated 17.08.2024 statement of DW-1 was partially recorded and the case was adjourned due to non-availability of original documents, but on the subsequent date the plaintiff evidence was not available and resultantly the evidence of defendant was struck off under order XVII rule 3 CPC. Although, before recording partial statement of DW-1, several adjournments were sought by the defendants for production of evidence, but after recording of partial statement by defendants, no opportunity for recording statements of the defendants, who were present in the court on the date of hearing, was given. It is settled proposition that at the time of taking an action under order XVII Rule 3 CPC. of closing evidence, the party concerned, has to be required to make at least his statement and to produce whatever evidence was available with them, but no such exercise was undertaken at the time of passing the impugned order which negatively reflects thereon. Furthermore, before passing the impugned order the learned trial

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court has not forced the defendants by imposing cost to produce evidence and in the impugned order the appellant is penalized not only by closing his evidence but also a cost of Rs. 5000/- was imposed. As it is part of the record, that evidence of the defendants is pending for the last about eleven (11) months in the instant case, but it is reported in the several judgments of the superior courts that cases are to be decided on its merits and technicalities should be avoided as precious rights of the parties are involved in the instant case, therefore, I hereby accept the instant appeal with cost of Rs. 10000/- which to be paid to the opposite party in the trial court. The appellant is further directed to conclude their evidence with in a span of two (2) months. The impugned order of learned Civil Judge-II Kalaya, dated 03.09.2024 is hereby set aside and the case is remanded back to the learned trial court with direction to decide the same in accordance with law.

- (5). Copy of this order be placed on the original file while file of this court be consigned to record room.

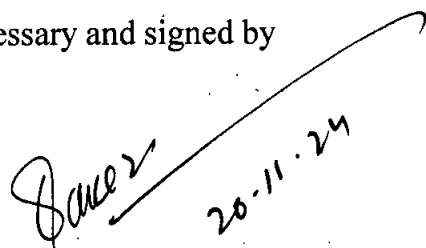
Announced:
20.11.2024

CERTIFICATE

Certified that this judgment consists of three (03) pages.

Each page has been read, corrected wherever necessary and signed by me.

Dated: 20.11.2024


(BAKHT ZADA)
Addl: District Judge-I, Orakzai
at Baber Mela