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IMRAN KHAN VS LAHOR KHAN ETC.  
CA NO. 5/13 of 2024

**IN THE COURT OF SYED OBAIDULLAH SHAH**  
**DISTRICT JUDGE, ORAKZAI (AT BABER MELA)**

CIVIL APPEAL NO. : 5/13 OF 2024  
DATE OF INSTITUTION : 06.09.2024  
DATE OF DECISION : 04.12.2024

IMRAN KHAN S/O SAMEEN GUL, R/O CASTE SHEIKHAN,  
TAPA SAMOZAI, MISHTI MELA, DISTRICT ORAKZAI

....(APPELLANT)

-VERSUS-

1. LAHOR KHAN S/O LAL BADSHAH,
2. AJMEEN S/O ATEEN BADSHAH,  
BOTH R/O CASTE SHEIKHAN, TAPA SAMOZAI, VILLAGE  
KANGANY, DISTRICT ORAKZAI
3. SHAMANOR S/O NAZIR JALAL, R/O PITAO MELA,  
ORAKZAI

.....(RESPONDENTS)

**Present:** Abdul Qayyum Khan Advocate for appellant  
: Mr. Abid Ali Advocate for respondents no. 1 and 2  
: Mr. Lal Habib Khan Advocate for respondent no. 3

**JUDGMENT**  
04.12.2024

Impugned herein is the order/judgment dated 21.08.2024 of learned Civil Judge-II, Tehsil Court Kalaya vide which the petition of 12 (2) CPC of the respondents has been accepted.

- (2). In a suit before the learned trial court, the appellant/plaintiff claimed that he along with his other family members are owners in possession of the suit property situated at Mishti Mela Bazar for 40 years while the respondents/defendants no. 1 and 2 having got no concern whatsoever with the suit property, are bent upon making construction over the same in shape of shops besides blocking a public thoroughfare leading to his shops. The respondents/respondents were summoned who appeared

  
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before the learned trial court and submitted their written reply denying the claim of the appellant/plaintiff.

- (3). The background of the case stems from a suit titled as "Imran Khan VS Shamanoor etc.", which was filed in the court of the then Assistant Political Agent (APA), Lower Orakzai on 29.02.2016 by the appellant/plaintiff for the resolution of dispute in question. In response to the suit, a jirga was constituted, vested with all the powers under Section 9 of the FCR, conferred upon a civil Court by CPC, 1908. The jirga unanimously ruled in favour of the appellant/plaintiff Imran Khan and the verdict of the jirga was accepted by the APA, Lower Orakzai vide judgment dated 24.11.2016 under the FCR, the prevailing law by that time. The said verdict was upheld by the learned Senior Civil Judge, Orakzai vide judgment dated 21.01.2021 which was found unexceptional by the predecessor of the undersigned being appellate court.

On 05.08.2023, the respondent Imran Khan and one other filed a petition under section 12 (2) of the CPC challenging the order of the learned APA, Orakzai before the Civil Judge, Orakzai, on the ground that he was not a party to the suit and the appellant/plaintiff is executing the decree against him. The learned Civil Judge-II, Tehsil Court Kalaya vide impugned order/judgment dated 21.08.2024 allowed the petition, thereby setting aside the order of the then APA,

  
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Orakzai. Appellant/plaintiff, considering himself aggrieved of the impugned order, filed the instant appeal.

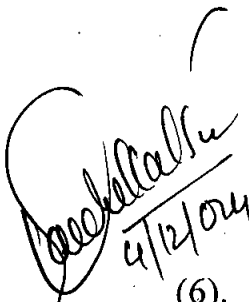
- (4). Arguments heard and record gone through.
- (5). Perusal of the case file reveals that the objection raised by the counsel for the appellant that the petition under Section 12 (2) of the Civil Procedure Code (CPC) does not lie within the jurisdiction of the Civil Judge, but should have been filed before the court of the Assistant Political Agent who passed the decree. As far as this objection is concerned, it is observed that the decree was passed by the learned APA, Orakzai on 24.11.2016 which, as per Section 9 of the FCR, 1901, is a decree of civil court. The government merged Federally Administered Tribal Areas (FATA) with Khyber Pakhtunkhwa (KP) in 2018 through 25th Constitutional Amendment whereafter the District Judiciary Orakzai were established and the appellant has filed two separate execution petitions before the court of Civil Judge, Orakzai under the provisions of CPC. If the petition under Section 12 (2) CPC indeed did not lie within the jurisdiction of the Civil Judge, there would have been no reason to file the execution petition before the same court. The fact that the execution petition was entertained and processed by the Civil Judge indicates that the jurisdiction of the Civil Judge was not only accepted but was proper and valid in this context. Moreover, the order of APA is considered is a decree as defined in clause 2 of

  
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Section 2 of the CPC, when it is so considered, it can equally be deemed to be a decree for the purpose of filing petition under Section 12 (2) CPC. This implies that the civil Court is the successor of that forum and is vested with the authority to adjudicate matters concerning the execution of the decree, including any related petitions under Section 12 (2) CPC.

It is acknowledged that there is no revenue record available in the district of Orakzai to ascertain the ownership and possession of the suit property. Consequently, the court bases its findings on the material present in the case file which shows that the father of the appellant/plaintiff, Sameen Gul s/o Said Badshah has been listed as a witness which confirms that he is alive and if the fathers of the parties involved are still alive, there is no legal basis for their sons or children to file a suit in their place. The law acknowledges that only the parties who have a direct interest or cause of action can initiate a petition or suit. Therefore, the children of the parties, unless legally empowered or granted rights to do so, would not have standing to file such a petition in the absence of their fathers. In light of these arguments, the jurisdiction of the Civil Judge to hear the petition under Section 12(2) CPC is affirmed, and the objection regarding the filing of the petition is without foundation.

In these circumstances, the learned trial court has rightly allowed the application of the respondents/defendants

  
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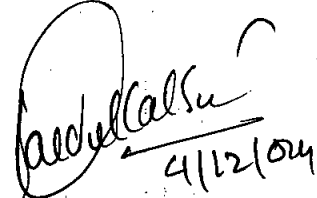
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filed under Section 12 (2) CPC and this Court has got no reason to arrive at a different conclusion moreso, in exercise of its extraordinary Constitutional jurisdiction. Accordingly, the appeal in hand resultantly stands dismissed being meritless with no order as to cost.

Judgment announced. File of this court be consigned to Record Room while record be returned. Copy of this judgment be sent to learned trial court for information.

Dated: 04.12.2024

  
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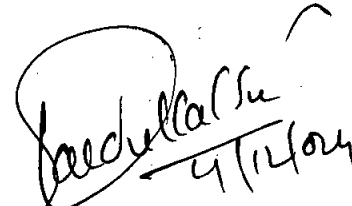
(SYED OBAIDULLAH SHAH)  
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**CERTIFICATE**

Certified that this judgment consists of five (05) pages.

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

Dated: 04.12.2024

  
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(SYED OBAIDULLAH SHAH)  
District Judge, Orakzai  
at Baber Mela

