

**IN THE COURT OF JAMAL SHAH MAHSOOD,**  
**ADDITIONAL DISTRICT JUDGE-I, ORAKZAI**

**Civil Appeal No. 9/19 of 2019**

Date of institution 11-11-2019  
Date of Decision 22-07-2020

**Tajamal Hussain, Shakeel Hassan, Wasil Hassan, Jamil Hassan and Parveen Begum** (sons and daughter of Speen Gul), **Asif Ali, Raza Ali and Murtaza Ali** (sons of Meer Hassan); all belonging to caste Stori Khel, Tapa Tazi Khel, Tehsil Upper, District Orakzai

**(Appellants)**

**Vs**

**Nasir Ali, Baseer Hussain and Habib Hussain** (sons of Baidar Ali), **Sudher Ali, Azeem Ali** (sons of Sardar Ali); all belonging to caste Mani Khel, Tapa Mirwas Khel, Starsam Orakzai

**(Respondents)**

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- Javid Muhammad and Jabir Hussain Advocates for Appellants
- Muhabbat Khan Bangash Advocate for Respondents

**APPEAL** against order of learned CJ-I, dated 12-10-2019, passed in civil suit No 61/1 of 2019. **(Impugned Order/Judgment)**

**Judgment in Appeal:**

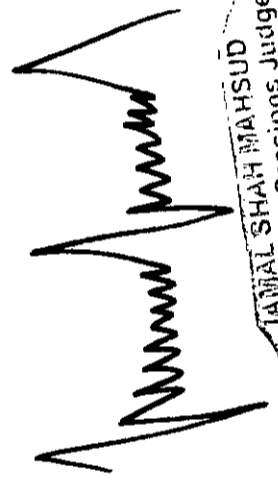
1. Through the impugned judgment, the plaint of the present appellants was rejected, on the ground of non-maintainability.
2. The present matter, which was earlier resolved by the court of APA, Lower Orakzai (through order dated 02-09-2015) and later ratified by learned CJ-II, Orakzai (through order dated 16-07-2019), was declared by the learned lower court as a past and closed transaction, through the impugned judgement.
3. The appellants filed their suit seeking declaration, in respect of a house along with some landed property, situated in village Tazi

Khel; they also sought, in alternative, the specific performance of an affidavit/declaration (sic), dated 01-02-2020, with prayer for cancellation of decisions of Jirga and APA. Finally, they sought possession of suit property, in case they are dispossessed from the same during pendency of suit.

4. The facts of the case, as can be ascertained from the plaint, are that the appellants/plaintiffs claim to be owners in possession of suit property, allegedly purchased by their predecessor-in-interest (Speen Gul) from the predecessor of the respondents, through declaration/jirga verdict (sic), dated 01-03-2000; that later jirgas were conducted due to dispute over actual possession of suit property; that the then APA took possession of the house and handed it over to Levy force; that at present a local police official is trying to hand over the possession of the disputed property to respondents/defendants. The appellants/plaintiffs claimed that the cause of action accrued to them on 16-07-2019, when learned CJ, Orakzai permitted them to file a fresh suit, on account of merger (sic), and after refusal by the defendants.

5. The suit was pending before learned CJ-1, which took up the matter of maintainability of the present suit. Arguments on maintainability were heard by the learned lower court, and the plaint was rejected on the basis of judgements/orders passed by APA Lower Orakzai (dated 02-09-2015) and CJ-II (dated 16-07-2019).

6. Being aggrieved of the impugned judgment, the instant appeal has been preferred. The main grounds taken in appeal are that the impugned judgement has been passed against the law and facts of

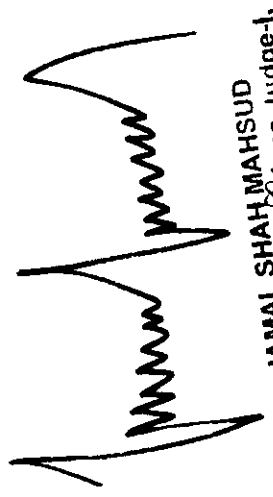
  
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the case; that the APA had passed a unilateral judgement/order which had not been acted upon; that the controversy was sent to the civil court and the same was not resolved by the APA; that no amount was returned to the appellants or their predecessor-in-interest; and that the lower court should have recorded evidence in the case. The appellants pray that the suit may be remanded to the trial court for decision on merits.

7. Notices were issued to the respondents, who appeared in person and engaged counsel. Arguments of counsel for appellants were heard, while written arguments submitted by respondents were considered and the record of the case perused.

It is abundantly clear from the record of the case that the present dispute was originally settled by the APA/ADM Lower Orakzai through in order/judgement dated 02-09-2015 (copy of order available on file of lower court). After merger of FATA into KP province, the present appellants contested the same controversy before the court of CJ-II, Orakzai. However, the matter was declared by CJ-II as a past and closed transaction, vide order dated 16-07-2019 (copy of order available on file of lower court). The written arguments submitted by counsel for respondents also reveals that an appeal against order of CJ-II, dated 16-07-2019, was dismissed by this court (ADJ-I, Orakzai) vide order dated 24-10-2019, passed in civil appeal no. 4/19 Of 2019.

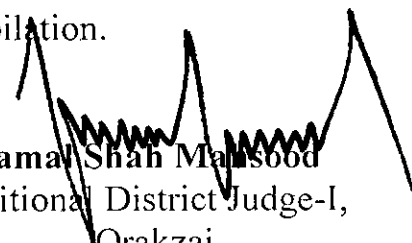
9. Instead of filing of appeal against order of this court dated 24-10-2019, passed in civil appeal no. 4/19 of 2019, the present appellant filed the instant suit afresh, before civil court in respect of the same controversy. The principal of res judicata applies to

  
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the final settlement of the instant dispute by the competent court of APA/ADM Lower Orakzai. This issue has previously been settled by the court of CJ-II Orakzai and also by this court in previous proceedings. The counsel for appellants could not raise any justification for institution of the present suit. The stance of counsel for appellants that the court of CJ-II Orakzai, vide order dated 16-07-2019, had given permission to file a fresh suit is misconceived; there is nothing in the said order about permission to file a fresh suit.

10. Resultantly, the instant appeal is **dismissed** being without any merit. No infirmity could be pointed out in the impugned judgment.
11. No order as to costs. Let a copy of this judgment in appeal be placed on the record of the case and the same be returned to the quarter concerned. While this file be consigned to record room after its necessary completion and compilation.

**Announced**  
22-07-2020

  
Jamal Shah Mansoor  
Additional District Judge-I,  
Orakzai

### CERTIFICATE

Certified this judgment consists of 04 pages. Each page has been signed by me, and corrected wherever necessary.

  
ADJ-I, Orakzai