

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

CIVIL APPEAL NO. : 6/13 OF 2024
DATE OF INSTITUTION : 02.05.2024
DATE OF TRANSFER-IN : 26.11.2024
DATE OF DECISION : 20.01.2025

1. MALANG JAN S/O SHAH WALI,
 2. SAMAND S/O SHAH WALI,
 3. MALIK ALIAS MALIKE S/O SHAH WALI,
 4. ABBAS WALI S/O SHAH WALI,
R/O KARGHAN, TAPA MIR KALI KHEL, TEHSIL LOWER, DISTRICT ORAKZAI
 5. AKRAM KHAN S/O AZAN KHAN,
 6. DAULAT KHAN S/O ASHRAF KHAN,
 7. AKA KHEL S/O MASI KHAN,
 8. MUHAMMAD DIN S/O ALEEL KHAN,
R/O CASTE BEZOT, TAPA QAMBAR KHEL, CHOWAR KHEL, TEHSIL LOWER DISTRICT ORAKZAI
-(APPELLANTS)

-VERSUS-

1. AYYUB KHAN S/O MIANDAD KHAN,
 2. TALHA MUHAMMAD S/O HUSSAIN GUL,
R/O CASTE BEZOT, TAPA QAMBAR KHEL, CHOWAR KHEL, DISTRICT ORAKZAI
 3. MIR AKBAR S/O MUHAMMAD AKBAR, R/O WALI KALEY, FEROZ KHEL, TEHSIL LOWER DISTRICT ORAKZAI
- (RESPONDENTS)

Present : Mr. Insaf Ali Advocate for appellants.
: Syed Bakhtiar Hussain Advocate for respondent no. 1.
: Muhammad Irfan Khattak Advocate for respondents no. 2 and 3.

JUDGEMENT
20.01.2024

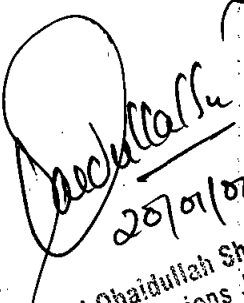
Impugned herein is the judgement/decreed dated 19.03.2024 of the learned Senior Civil Judge, Orakzai vide which suit of the respondents/plaintiffs has been decreed as prayed for.

- (2). Through a suit before the trial court, the respondents (hereinafter referred to as plaintiffs) claimed declaration along with perpetual injunctions with possession to the fact that the plaintiff no. 1 and defendants no. 3 to 6 and 10 (cousins inter

are owners in possession of the suit property measuring 10

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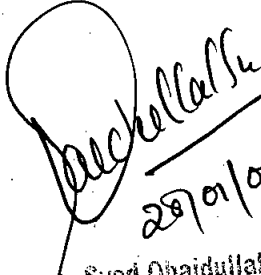
Jerabs as detailed in the headnote of the plaint. The plaintiff also claimed that amongst the four shares of the suit property which were determined in presence of witnesses, he is entitled to one share and defendants no. 3 to 6 and 10 are entitled to two shares while the remaining one share has already been given to defendant no. 2. That defendants no. 3 to 6 secretly sold their two shares to defendant no. 1 besides handed over the shares of the plaintiff no. 1 and defendant no. 10 to him as well, whereupon defendant no. 1 is making construction. The defendants were asked not to raise construction without a partition but they refused. The defendants were summoned who appeared before the trial court and among them defendant no. 2, the alleged tenant of the suit property submitted a cognovit while the defendants no. 1 and 3 to 6 submitted a joint written statement contested the suit on various legal and factual grounds. During pendency of suit before the trial court, the plaint was amended and besides declaration-cum-perpetual injunctions, plaintiff sought possession through partition of the suit property with fresh application for grant of temporary injunctions, to which defendants no. 2 and 10 submitted a cognovit while defendants no. 1 and 3 to 9 relied upon their previous written statement and opted not to file amended written statement as evident from order dated 31.07.2021 of the learned trial court. Pleading of the parties were culminated into the following issues;


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1. *Whether the plaintiff has got cause of action?*
2. *Whether the plaintiff is estopped to sue?*
3. *Whether the suit of the plaintiff is time barred?*
4. *Whether the suit property is the ancestral ownership of the parties?*
5. *Whether the plaintiff is co-sharer in the suit property measuring 10 Jerab detailed through boundaries in the plaint?*
6. *Whether defendants no. 1, 7, 8 and 9 acquired through purchase of five Jerab land including share of the plaintiff from defendants no. 3 to 6 without formal partition between the parties?*
7. *Whether defendants no. 1, 7, 8 and 9 are in illegal possession of the suit property?*
8. *Whether the defendants no. 3 to 6 are the cultivators of the suit land?*
9. *Whether defendants no. 1, 3 to 6 have made improvements in the suit property by constructing hospital?*
10. *Whether plaintiff is entitled to the decree as prayed for?*
11. *Relief.*

(3). Parties were given opportunity to produce evidence.

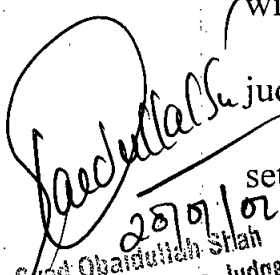
Accordingly, pro and contra evidence were produced before the trial court. After conclusion of evidence of both the parties, the learned trial court heard the arguments and decreed the suit of the plaintiff, vide impugned judgement/decree. Feeling themselves aggrieved of the impugned judgement/decree, the appellants filed the instant appeal.


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(4). Arguments heard and record perused.

(5). Indeed, the defendants' learned counsel's sole contention is that they haven't produced an amended written statement following the plaintiffs' submission of an amended plaint before the learned trial court. Given the aforementioned argument, the case file reveals that, despite being given the opportunity to submit an amended written statement, the defendants chose not to do so, instead relied on their prior written statement in which they did not specifically denied the status of the plaintiffs as co-sharers. However, this court recognizes that the amended plaint may certainly have introduced new claims or revised issues that require a more thorough and updated response from the defendants. Allowing the defendants to submit an amended written reply ensures that the proceedings remain just and equitable, providing the defendants with an adequate chance to address each aspect of the suit and properly contest the amended claims, followed by presentation of any relevant evidence in support of their defense, if desired so. Ultimately, the trial court must proceed to deliver a judgment, taking into account all submissions and evidence presented by both parties in a fair and impartial manner maintaining the integrity of the legal process. Thus, without touching the merits of the case, the impugned judgment/decree dated 19.03.2024 of the learned trial court is

set aside and suit in hand is remanded to the learned Senior

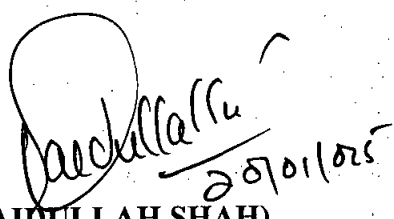

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Civil Judge, Orakzai with direction to let the defendants submit their written statement and proceed with the case as per law. Parties are directed to appear before the court of learned Senior Civil Judge, Orakzai on 05.02.2025.

Judgement announced. Copy of this judgement be sent to the learned trial court for information and compliance. File of this court be consigned to record room after necessary completion and compilation.

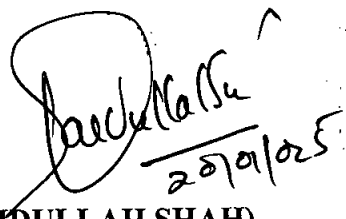
Dated: 20.01.2025


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CERTIFICATE

Certified that this judgement consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 20.01.2025


(SYED OBAIDULLAH SHAH)
District Judge, Orakzai
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