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**SHIREEN ETC VS GUL AJAB KHAN**  
**CASE NO. 02/14, DATED 15.08.2024**

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

MISC. CIVIL APPEAL NO. : 02/14 OF 2024  
DATE OF ORIGINAL INSTITUTION : 15.08.2024  
DATE OF TRANSFER IN : 15.10.2024  
DATE OF DECISION : 22.01.2025

1. SHIREEN S/O MIBAL HUSSSAIN
2. SYED REHMAN S/O MUHAMMAD DIN  
BOTH R/O LAKH KANARY, SHEIKHAN, DISTRICT ORAKZAI.

..... (APPELLANTS)

-VERSUS-

1. GUL AJAB KHAN S/O NOOR MUHAMMAD
2. ZAFAR KHAN S/O NOOR MUHAMMAD
3. SHAUKAT KHAN S/O KHIYALI KHAN
4. WAJID KHAN S/O KHIYALI KHAN
5. FAIZ ULLAH S/O KHIYALI KHAN

ALL RESIDENCE OF CASTE SHEIKHAN TAPA UMERZAI,  
VILLAGE LAKH KANARY, DISTRICT ORAKZAI.

..... (RESPONDENTS)

**Present:** Mr. Adnan Afridi & Muhammad Mohtashim Advocates for appellants  
: Mr. Aziz Ur Rehman Advocate for respondents

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**JUDGEMENT**  
22.01.2025

Impugned herein is the judgment and order dated 29.07.2024 rendered by the learned Civil Judge-II, Tehsil Courts Kalaya, District Orakzai, vide which the said court has dismissed the application for dismissal of the execution petition filed by the present appellant/judgment debtors.

Brief facts of the case are that a civil suit for declaration cum perpetual and mandatory injunctions and possession was filed by the plaintiffs/decreed holders/ present respondents which was dismissed by the learned Civil Judge-II, Kalaya vide his judgment and order dated 17.11.2022. Being aggrieved from the said order and judgment the plaintiffs/present respondents preferred civil

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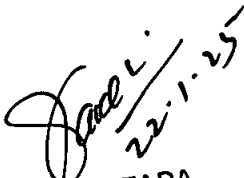
appeal No. 16/13 of 2022 before the learned District Judge, Orakzai which was decreed on 23.12.2022 and the judgement and order dated 17.11.2022 of the learned Civil Judge-II, Kalaya was set aside and the suit of the plaintiffs/present respondents was decreed against the appellants/defendants. The plaintiffs/decreed holders/present respondents filed execution petition before the learned executing court, but in the meanwhile the order and judgment dated 23.12.2022 of the learned District Judge, Orakzai was assailed in civil revision No. 32-P/ 2023 with CM13-P/2023, whereby the August Peshawar Hight Court, Peshawar suspended the operation of the judgment and decree dated 23.12.2023 and consequently the learned executing court adjourned the execution proceedings sine-die. Civil revision No. 32-P/ 2023 with CM13-P/2023 was decided by the August Peshawar High Court, Peshawar on 13.12.2023 and the judgment and decree dated 23.12.2022 of learned District Judge, Orakzai was maintained. The execution proceedings were restored by the executing court, during which application for dismissal of execution petition was submitted on the following grounds that;

(I) Appeal filed by the judgment/debtors is pending before August Supreme Court of Pakistan.

(II) Decree holders have admitted that property in question is in their possession hence in circumstances the execution proceedings are not possible.

(III) Learned District Judge had not passed any decree regarding possession of decretal property in favour of decree holders.

(6). After hearing arguments, the learned executing court dismissed the application of the appellants/judgment debtors vide

  
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his order dated 29.07.2024 and hence the instant appeal along with application for suspension of execution proceedings were filed on the following grounds;

- (I) That decree holders have wrongly mentioned in column No. 4 of the execution petition that no appeal has been filed, while appeal No. P-42-P/2024 is pending before August Supreme Court of Pakistan.
- (II) That an objection petition was filed, but the learned executing court without hearing arguments on the same has decided the application on 29.07.2024 in a cursory manner and contrary to the order of Peshawar High Court, Peshawar instead of declaration, order for possession has been issued.
- (III) The order and judgment of the executing court is not in accordance with the decree sheet of the District Judge and that the learned District Judge has mentioned the respondents as legal heir of Noor Muhammad.
- (IV) That according to customs the appellants have purchased the suit property from the elder son of deceased Noor Muhammad during his lifetime with his sweet will besides his other legal heirs and the transaction was recorded in audio cassette with mutual consent of the parties and it was the responsibility of the trial court to sent the same to FSL, furthermore, the parties have not denied the audio.

He prayed for dismissal of the execution proceedings by setting aside order dated 29.07.2024.

- (7). Arguments heard and available record perused.

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It is alleged by the appellant that appeal has been filed before the August Supreme Cour of Pakistan by the judgment debtors against the judgment and order dated 13.12.2023 of the Hon'ble Peshawar High Court, Peshawar, but mere pendency of appeal before the appellate forum, in absence of any express stay order execution proceedings do not automatically gets stayed when an appeal is filed before the Supreme Court, unless an injunctive order is granted by the appellate forum. There is nothing before the executing or this court that whether the injunctive order is not passed by the August Supreme court or the same is refused, therefore after filing of appeal before the appellate forum the judgment debtors cannot seek an injunctive order from the executing or trial court, furthermore, in the present case even the copy of appeal before the August Supreme court is not available on the case file what to say about injunctive orders, therefore mere pendency of appeal is no ground for dismissal or staying of execution proceedings before the executing court.

- (8). As for as the filing of the objection petition by the appellants before the executing court is concerned the same has been filed on 03.09.2024 after dismissal of the application dated 29.07.2024 and the same is pending adjudication before the executing court as evident from order sheet dated 03.09.2024. The present respondents/plaintiffs have filed the suit for declaration cum perpetual and mandatory injunctions and possession which is evident from their plaint and the same is decreed by the learned District Judge vide his order and judgment dated 23.12.2022 as prayed for in the plaint, so the question of conflict with the decree sheet does not arise. The question relating to FSL of the audio

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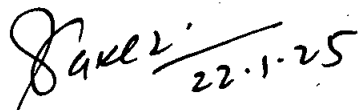
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cassette has not been agitated by the appellants in the application dated 27.07.2024 and, therefore, the same cannot be agitated at this stage, particularly when appeal is pending before the August Supreme court of Pakistan.

- (9). In view of what has been discussed above, this court finds no reason to interfere in the impugned order dated 29.07.2024 of the learned executing court and the instant appeal being devoid of merits is hereby dismissed. Case file of execution petition along with copy of this order and record be sent to the learned executing court with the direction to proceed in accordance with law while record of this court be consigned to the record room within the stipulated period.

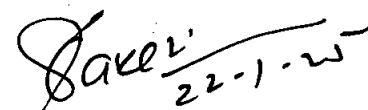
**Pronounced**  
22.01.2025

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

**CERTIFICATE**

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

Dated: 22.01.2025

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