

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

CIVIL APPEAL NO. : 14/13 OF 2024
DATE OF INSTITUTION : 20.30.2025
DATE OF DECISION : 16.04.2025

1. JALABAT KHAN S/O JALAT KHAN
R/O QAUM FEROZ KHEL, TAPA QASIM KHEL TEHSIL, DISTRICT,
ORAKZAI
2. SEENA GUL S/O NAZIR GUL
R/O QAUM BEZORT, DISTRICT ORAKZAI.

..... (Appellants)

-VERSUS-

1. HAJI NASEEM KHAN S/O QASIM KHAN
R/O QAUM FEROZ KHEL, TAPA QASIM KHEL
2. ABDUL MAT KHAN S/O MUHAMMAD JAN
R/O QAUM FEROZ KHEL, VILLAGE GOEEN
3. NIAZ BAHADAR S/O GUL BAHADAR
R/O QAUM FEROZ KHEL, TAPA ZEENA KHEL
4. LAL KARIM S/O LAL BADSHA
R/O QAUM BEZOT,
5. GHULAM HABIB S/O WALI HABIB
R/O QAUM BEZORT
6. GHALIB SHAH S/O SAKHI MAT SHAH
R/O QAUM FEROZ KHEL, TAPA QASIM KHEL
7. GUL RAHIM S/O AWAL JAN
R/O QAUM FEROZ KHEL, TAPA QASIM KHEL
8. HABIB ULLAH LATE THROUGH ABDUL QAYYUM ALIAS
MUHAMMAD QAYYUM S/O HABIB ULLAH.

..... (RESPONDENTS)

JUDGEMENT
16.04.2025

Impugned herein are the order dated 18.02.2025 rendered by the court of learned Civil Judge-II, Kalaya District Orakzai vide which the said court has dismissed application for setting aside Ex-parte decree dated 22.03.2024 and Ex-parte proceedings initiated against the appellants/petitioners vide order dated 08.11.2023.

- (2). Brief facts of the instant appeal are that the appellants/defendants are law abiding senior citizen of District

appeal. On 11.04.2025 learned counsel for the appellant submitted an application for impleadment Seena Gul as appellant, who was defendant No. 6 in the main suit. He argued that the name of Seena Gul was inadvertently not impleaded as appellant despite of the fact that he is also aggrieved from the impugned order. He further argued that all the other defendants who even did not filed appeal against the impugned order were impleaded by him as proforma respondents, but the name of Seena Gul was left to be arrayed as appellant or proforma respondent. The said application was made part and parcel of the main appeal vide order dated 11.04.2025 and he is impleaded as appellant No. 2 in the main appeal. It is categorically mentioned in his application that no notice has been served upon appellant No. 2 during the trial of main suit and still he is placed and proceeded Ex. parte. It is on record that appellant No. 1 Jalabat Khan (Defendant No. 8) was served in the main suit and as per order sheet No. 04, Dated 20.09.2023, he has attended the court in the main suit and later on he remained absent and was placed and Ex. parte and consequently Ex. parte decree was passed against him by the learned trial court, but appellant No. 2 was neither served with any notice during the attendance proceeding before the trial court, nor he has put his appearance before the court; therefore, the grievances of appellant No. 2 are genuine and he cannot be condemned unheard. As for as, appellant No. 1 is concerned he is admitted put appearance before the court during the trial proceedings and later on placed and proceeded

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Orakzai at Hangu

Orakzai. That present respondents instituted a suit on 04.09.2023 for cancellation of deed vide which appellants (defendants No. 8 & 6 of the main suit) and proforma respondents No. 2 to 8 allegedly handed over the property of the respondents to appellants. That appellant No. 8 appeared in the said suit and later on due to absence was placed and proceeded Ex-parte on 08.11.2023 and consequently Ex. parte decree was granted in favour of the respondent No. 1/plaintiff on 22.03.2024, while present appellant No. 2 has alleged in his application vide which he is impleaded as appellant in the instant appeal that no notice has been served upon him in the main suit and that his valuable rights are involved in the main suit .That the present appellants an submitted application on 04.07.2024 for setting aside Ex. parte proceedings dated 08.11. 2023 and Ex. parte decree dated 22.03.2024, but the said application was dismissed vide order dated 18.02.2025. It is prayed that impugned order is against law and facts and valuable rights of the appellants are involved in the case. It is further requested that in view of the various judgments of the superior courts, cases should be decided on merits and technicalities should be avoided. He prayed for setting aside Ex. parte proceedings and Ex. parte decree at the acceptance of instant appeal.

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- (3). Arguments heard and available record perused, which shows that initially the instant appeal was filed appellant No. 1 Jalabat Khan s/o Jalat Khan, while the other defendants of the main suit were impleaded as proforma respondents in the instant

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Ex. parte due to absence. As the grievances of appellant No. 2 are genuine consequently Ex. parte proceedings and Ex. parte decree dated 22.03.2024 being not in accordance with law are hereby set aside. After setting aside ex. parte decree appellant No. 1 Jalabat Khan can also take part in the proceedings; however, cost of Rs. 25000/- is imposed against appellant No. 1 which is to be paid to respondent No. 1 at the trial court. Appeal accepted accordingly and the case is remanded to the learned trial court to proceed in the case in accordance with law. Copy of this order be placed on the main file while file of this court be consigned to the record room.

Pronounced:
16.04.2025

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

CERTIFICATE

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

Bakht Zada
16.4.25

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