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IN THE COURT OF MUHAMMAD JUNAID ALAM CIVIL JUDGE-II
TEHSIL COURT KALAYA, DISTRICT ORAKZAI

Petition No.1/12 (2) neem of 2025.

Date of Institution.....07.04.2025.

Date of Decision.....18.08.2025.

**Mst: Naila Jan W/O Janan Gul and 01 other resident of Qoum
Rabia Khel, Ismail Zai District Orakzai.....Petitioners.**


Versus

**Abdul Jameel S/O Naryab Gul and 07 other all resident of
Darvi Khel, Village Zawan Tehsil Lower District
Orakzai..... Respondents.**

PETITION UNDER SECTION 12 (2) CPC AGAINST THE
JUDGMENT & DECREE DATED 23.05.2023, PASSED IN SUIT
NO. 09/1 OF 2023

Order No.07

18.08.2025


MUHAMMAD JUNAID ALAM
Civil Judge / JM-II
Orakzai at Kalaya


Petitioner has challenged validity of judgment and decree dated 23.05.2023 passed in suit 09/1 of 2023 in terms of section 12 (2) CPC on the grounds of fraud, concealment of facts and misrepresentation.

Facts of the case are that respondent filed the suit No. 09/1 of 2023 for the declaration-cum-perpetual & mandatory injunction and possession against the defendants, seeking therein that plaintiff/respondent is the owner of 04 fields situated at Zawan, which were actually given to the defendants on ijara. That the defendants had been paying the ijara amounting Rs. 2500/year till 2012 but they stopped the said payment in the year 2013 and began asserting themselves as the owners of the suit property and now they have completely refused to admit the ownership and

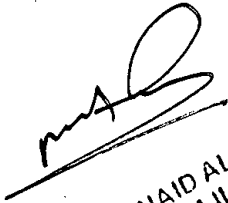
proprietary right of the plaintiff/respondent despite the fact that the plaintiff/respondent are the owner of the suit property since their forefathers and have never sold the same to any person including the defendants. That the defendants were asked time and again to admit the ownership of the plaintiff/respondent and hand over the possession of the same to the plaintiff/respondent and not to do any construction etc over the suit property but they refused, hence, the previous suit. The said suit was proceeded with and on the basis of evidence it was decreed in favor of plaintiff/respondent on 23.05.2023.

On 21.05.2024 the present petitioners filed the petition in hand whereby they have challenged the impugned judgment and decree in terms of section 12(2) CPC on the ground of fraud, misrepresentation and concealment of facts. Petition 12(2) CPC was dismissed in default vide order dated: 05.12.2024 and later on restored on 07.04.2025.

Petitioners have contended that petitioners are the daughters of Naryab Gul and sister of respondent No.01 and real legal heirs of late Naryab Gul. That respondent No.01 and respondent No.02 to 08 had filed a case in the court of Assistant Political Agent Lower Orakzai which was decreed vide order dated: 26.10.2018 on the basis of Jirga opinion. (copy of decree passed by APA Lower is annexed). That the case of respondent No.1 was filed on the basis of Ijara and present petitioners were deliberately kept unaware from the proceedings. Due to deteriorated relationship between respondent No. 1 and petitioners, petitioners remained unaware from the proceedings. That respondent No.1 to 08 and


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others secretly perused their case in the court of APA Lower Orakzai, in order to conspire and defraud the petitioners and also concealed their shareholding. That case number 20/13 of 2023 which was decided on 06.11.2023 by the court of Worthy ADJ Orakzai was also part of fraud and miss representation. Before that, Civil Court passed decree in the suit titled "Muhammad Jameel vs Waziristan" vide order dated: 23.05.2023, which was dismissed on the basis of that very decree. That petitioners are domestic women and belong to Tribal areas, therefore, decree holder tried to keep them unaware from the proceedings and grabbed the possession of the suit property. That respondent No.1 and respondent No.2 to 04 are concealing the facts from the court and obtained decree and they had not made the legal heirs of late Naryab Gul parties to the suit and lastly requested to set aside the decree dated: 26.10.2018 passed by the then APA Lower Orakzai. That the impugned judgment and decree was obtained by playing fraud concealment of facts and misrepresentation, hence the petition in hand.


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Respondents were summoned.

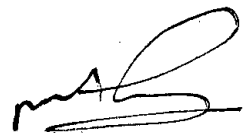
Respondent No. 01 and 02 appeared and contested the petition by filing written reply wherein they denied the version of the petitioners and objected the same on so many legal and factual grounds.

For deciding 12(2) CPC application, two types procedure are adopted by the courts. One, to decide the cases on available record if sufficient, and secondly to record evidence and then to decide the 12 (2) CPC application.

As mentioned above, petitioners are alleging fraud, misrepresentation and concealment of facts but none of the allegation of fraud, misrepresentation and concealment of facts has been prima facie brought before the court.

For the above reasons, it is crystal clear that petitioners have failed to prove the factum of fraud, misrepresentation and concealment of facts. Judgement of learned Assistant Commissioner Orakzai dated 26.10.2018 is within the time frame which the laws presumed to be competent and within jurisdiction; therefore, the principle of res-judicata has rightly been attracted by the learned Trial Court. Learned Trial Court has correctly appreciated the evidence and rightly applied the law. Furthermore, petitioners have no case of prima facie, hence, dismissed. Therefore, proceeding in the instant petition 12(2) CPC is futile of exercise and wastage of precious time of the court. Hence, dismissed. File be consigned to record room after its necessary completion and compilation.

Announced:
18.08.2025


Muhammad Junaid Alam,
Civil Judge -II, Tehsil Court
Kalaya, Orakzai