

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE ORAKZAI, AT BABAR MELA**

Civil Misc. Appeal No. 14/14 of 2022

Date of institution: 09.12.2022

Date of decision: 24.01.2023

**Amjid Ali etc. Vs Noroz Ali etc.**

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	24.01.2023	<p>Sayed Amir Hussain Shah Advocate for appellants (seeking impleadment) and Mr. Abid Ali Advocate for respondents (defendants) are in attendance. Mr. Basit Ali Shah advocate put appearance on behalf of respondents (plaintiff). Arguments heard; whereas, this is the disposal of captioned Civil Misc. Appeal.</p> <p>2. Instant Civil Misc Appeal has been preferred by the appellant against the Judgment, Decree and Order dated 02.12.2022 passed by learned Civil Judge-II, Kalaya Orakzai in Suit titled "Noroz Ali vs Wajid Ali etc." whereby, the Court has rejected the plea of impleadment raised by petitioner/appellants under Order 1 Rule 10 of Code of Civil Procedure, 1908.</p> <p>3. Facts are such that the plaintiff has instituted a suit for declaration and possession regarding landed property situated at Zaridar Kalaya which has fully been described in the plaint, on the score of being owner. The defendants (respondents herein) contended in written statement that they are owners in possession of the property and plaintiff has got nexus. The issue have been framed and case was scheduled for the evidence of the plaintiff. During course of recording evidence, petitioners Amjid Ali etc. have moved the Court with application that they are co-sharer in the property and being necessary party may be impleaded in the panel of defendants. The plaintiffs conceded the plea; whereas, the defendants termed it as prolongation with mala fide. Hon'ble the Court concerned has dismissed the plea of impleadment which is impugned herein.</p> <p>4. Learned counsel for appellants (petitioners of</p>

**SAYED FAZAL WADOOD**  
 Addl. District & Sessions Judge  
 Orakzai at Hangu

impleadment) argued that they are consanguine of the plaintiffs and equally entitled in the disputed property on the score of being joint holding. They are necessary parties and required to be impleaded in the suit. It was concluded that the impugned order is result of material irregularity that constitutes illegality and need interference. Counsel for plaintiffs confirmed that he had not objected the petition in the Trial Court and is still owing prior statement of no objection.

5. Learned counsel representing respondents (defendants) opposed by stating that being cousin of the plaintiff is no ground for impleadment. Sufficient evidence has already been recorded and presentation of petition for impleadment is nothing except prolongation.

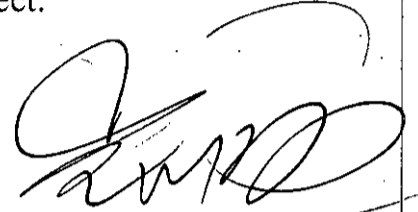
6. Order-1 Rule-10 of the Code of Civil Procedure, 1908 is dealing the subject of deletion and addition of parties. Law classifies parties into two kinds; the proper party and necessary party. For purpose of addition of the parties the Court is governed by the provision of Order-1 Rule-1 and 3 read with Order-2 Rule-3 of Code of Civil Procedure, 1908. When common question of law or fact is raised relating to a united cause of action, all such persons shall be joined as defendants. When such primary duty has not been fulfilled or ignored, the Court has empowered to add or delete a party by attracting jurisdiction under Order-1 Rule-10 Code of Civil Procedure, 1908. In this legal background, the plea of petitioners is that of co-sharer in the disputed property on the score of inheritance being consanguine of the plaintiff and is sufficient to drag them in the ambit of the parties to the suit. As for as protraction of litigation is concerned, the imposition of cost worth Rupees. 10,000/- is sufficient compensation for first set of defendants.

7. In the light of above discussed facts and circumstances of the case, this Court holds the view that the petitioners are falling under the category of proper party and are allowed to be impleaded in the panel of defendants

  
**SAYED FAZAL WADOOD**  
Addl. District & Sessions Judge  
Orakzai at Hangu

with cost of 10,000/- Rupees to be paid to the first set of defendants for compensating them on protraction of litigation; whereas, the plaintiff has conceded petition for impleadment in Trial Court as well as before this Court and is therefore excluded from receiving amount of cost. File of this Court be consigned to the District Record Room after necessary completion and compilation with the span allowed for; whereas, copy of this Judgment be sent to Hon'ble Trial Court for giving effect.

8. Announced in open Court.  
24.01.2023



Sayed Fazal Wadood,  
AD&SJ, Orakzai at Baber Mela