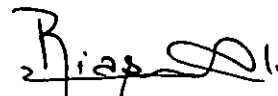


Note Reader

21.01.2022

Presiding Officer is on casual leave.

File be put up for the previous proceedings on 24.01.2023.


Reader to CJ-I,
Orakzai (at Baber Mela)

Order...05

24.01.2023

Present:

Plaintiff through counsel.

Defendants No.03 in person and as attorney for defendant No.01 & 02.

This order is directed to dispose of the application for withdrawal of the instant suit with permission to file a fresh suit by plaintiff.

Counsel for the plaintiff submitted an application for the withdrawal of instant suit with permission to file a fresh one.

Arguments heard and record perused.

Plaintiff/petitioner has requested for withdrawal of the suit with permission to file a fresh one alleging that there is a formal defect in the suit to the effect that the plaintiff in his plaint has not mentioned the details of transactions related to the suit property and due to which he seeks declaration of the same. That the details so left out in the plaint is not curable through amendment in plaint, therefore, the suit may be dismissed as withdrawn with permission to file a fresh one.


Order XXIII, Rule 1 CPC empowers the plaintiff to withdraw his suit at any time after the institution of the suit with permission to file a fresh one subject to satisfaction of the court. Suit of plaintiff is for declaration cum- permanent injunction and recovery and as per plaint and documents annexed with the plaint, the formal defect brought in notice of the court by the plaintiff is not curable by amendment in plaint. And this court of the view that there are incorrect averments in the plaint which amounts to formal defect and suit of plaintiff will ultimately fail by reason of this formal defect.

Keeping in view the formal defect in the suit, application for withdrawal of the suit with permission to file a fresh one is hereby accepted subject to cost of Rs.2000/-. Resultantly, suit in hand is **Dismissed** as withdrawn with permission to file a fresh one subject to all legal limitations.

File be consigned to record room after necessary completion and compilation.

Announced

24.01.2023


Sami Ullah
Civil Judge-I,
Orakzai (at Baber Mela)