

**IN THE COURT OF SHAUKAT AHMAD KHAN  
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)**

CIVIL APPEAL NO. : 3/13 OF 2023  
DATE OF INSTITUTION : 03.02.2023  
DATE OF DECISION : 09.02.2023

IKRAM ALI S/O NANI KHAN, R/O DEEPAR, TEHSIL UPPER, DISTRICT ORAKZAI

....(APPELLANT)

-VERSUS-

1. LIAQAT ALI S/O MUHAMMAD KHAN, R/O DAPAR
2. IQBAL HUSSAIN S/O KIMYA GUL, R/O CHIKAR MELA, TEHSIL UPPER, DISTRICT ORAKZAI
3. DG MINES AND MINERALS, KKP
4. AD MINES AND MINERALS, KPK
5. DC, DISTRICT ORAKZAI
6. DR. KHIALMEEN GUL S/O HALEEM GUL, R/O CASTE ALI KHEL, TAPA MIRWAS KHEL, DAPAR, DISTRICT ORAKZAI
7. HAJI RAZEEM S/O MIWA KHAN, R/O CASTE ALI KHEL, TAPA MIRWAS KHEL, DAPAR, DISTRICT ORAKZAI
8. ZARIF KHAN S/O SARDAR KHAN, R/O CASTE ALI KHEL, TAPA MIRWAS KHEL, DAPAR, DISTRICT ORAKZAI

....(RESPONDENTS)

**Present:** Noor Karim Advocate for appellant.

ORDER  
09.02.2023

Noor Karim Advocate, the counsel for the appellant present. He submitted application for amendment of the plaint, which is placed on file. Preliminary arguments heard.

(2). In a suit before the learned trial court, the plaintiff/appellant sought declaration-cum-perpetual and mandatory injunctions, cancellation of the lease No. 130/131 and 132 in favour of respondents/defendants no. 1 and 2, cancellation Iqrar Nama and possession through partition to the fact that defendants/respondents along with proforma defendants/respondents No. 6 to 8 are owners in possession of the suit property. That defendant/respondent No. 5 with the connivance of defendants/respondents No. 1 & 2 without

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conducting Jalsa e Aam, have granted lease No. 132 and lease No. 130/131 of coal mining over suit property to defendants/respondents No. 1 & 2 respectively, which are illegal, ineffective upon the rights of the plaintiff/appellant and liable to be cancelled by restraining the defendants/respondents from making interfering in the suit property. Plaintiff/appellant had also sought possession through partition of suit property. The defendants/respondents had contested the suit on various legal and factual grounds with application for rejection of plaint under Order 7 Rule 11 of the CPC.

(2). After having heard the arguments, the learned trial court has rejected the plaint of plaintiff/appellant being barred by law.

(3). Being aggrieved of the impugned order of learned trial court, plaintiff/appellant filed the instant appeal.

(4). After filing of appeal, it was fixed for preliminary arguments; however, prior to preliminary arguments counsel for the appellant/plaintiff submitted application for amendment of plaint to the extent of deletion of the names of respondents/defendants No. 3 and 5, the DG Mines and Minerals Khyber Pakhtunkhwa and DC, Orakzai. Which is placed on file.

Preliminary arguments as well as arguments on the application heard.

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It is evident from the record that as discussed above, the appellant/plaintiff through the instant suit had sought cancellation of lease No. 132 and lease No. 130/131 in respect of coal mining in favour of defendants/respondents No. 1 & 2 respectively, cancellation of agreement deed in respect of coal mining executed in favour of defendants/respondents No. 1 and 2, with permanent injunctions to restrain the defendants/respondents no. 1 & 2 of carrying mining activities over the suit property. He had also sought possession through partition of the suit property. As per provision of section 9 of the Khyber Pakhtunkhwa Mines and Minerals Act, 2017, the mineral title in respect of large and small scale mining are granted by the Licensing Authority as defined under section 2 (u) of the ibid Act. Similarly, as per section 102 (1) of the Khyber Pakhtunkhwa Mineral Governance Act, 2017, any person aggrieved of an order of the Licensing Authority may file an appeal to the Appellate Authority within 30 days of the communication of the impugned order. Section 102 (6) of the ibid Act bars the jurisdiction of civil court to entertain or to adjudicate upon any matter to which the Appellate Authority under the ibid Act is empowered to dispose of or to determine the validity of anything done or an order passed by it.

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- (5). As in the instant case, the mineral titles in favour of defendants/respondents No. 1 & 2 are granted by the Licensing Authority; therefore, the civil court has got no jurisdiction to

determine the validity of the acts of the Licensing Authority, hence the learned trial court has rightly rejected the plaint under Order 7 Rule 11 of the CPC being barred by law. So far, the application of the plaintiff/appellant for amendment of plaint is concerned, learned counsel for the appellant/plaintiff submitted that besides seeking cancellation of lease in favour of defendants/respondents No. 1 & 2, the appellant/plaintiff had also sought possession through partition of the suit property regarding which the civil court has got exclusive jurisdiction. The argument of learned counsel of plaintiff/appellant, though to that extent seems genuine; however, the main suit pertains to cancellation of mineral title and cancellation of agreement deed; therefore, instead of amendment in the plaint, plaintiff/appellant may file a fresh suit to the extent of relief of possession through partition.

(6). Hence, in view of what is discussed above, the instant appeal is dismissed in limini; however, the plaintiff/appellant may file a fresh suit to the extent of relief of possession through partition, if he so desires. Consign. Copy of this order be sent to learned trial court for information.




**Pronounced**  
09.02.2023

  
(SHAUKAT AHMAD KHAN)  
District Judge, Orakzai  
At Baber Mela

**CERTIFICATE**

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

Dated: 09.02.2023

  
(SHAUKAT AHMAD KHAN)  
District Judge, Orakzai  
At Baber Mela