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## COURT OF SENIOR CIVIL JUDGE/JM, ORAKZAI AT BABER MELA

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14/01. Case Title: <u>Hashim Ali</u> VS Syed Amis Jan			
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 .52	16.02.2023	Plaintiff present through attorney and counsel. Defendant present in person.	
		Counsel for the plaintiff also argued the maintainability	
	· ·	of the present suit.	
		File is to come up for order on 28.02.2023.	
	Ĵ,	<b>(Rehmat Ullah Wazir)</b> Senior Civil Judge, Orakzai (Baber Mela)	
Order No <b>53</b>	A8-02-2023	Presence as before. Through my this single order, I intend to dispose off an application for rejection of plaint afresh U/O 7-R-11 CPC as per the orders of the Worthy D&SJ, Orakzai, Dated: 18.03.2021 filed by the defendant against the plaintiff. This application was strongly contested by the other party by filing replication and forwarding arguments thereto.	
REHM	AT ULLAH WAZIN Or Civil Baber M alzai at Baber M	why the plaintiff through the one Muhib Ali, the late	
		approached the defendant to either purchase the same or sale out the same. That the said Muhib Ali struck the sale of the suit property with the one Meer Syed, the father of the present defendant, who requested for 20-days time for payment of the sale consideration. <i>Continue</i>	

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order or	Order Proceedings 2 28.02.2023	Magistrate and that of parties or counsel where necessary <b>3</b> That the said Muhib Ali advised the plaintiff not to write down any deed because the paternal cousin of the plaintiff namely Ameen Ali have preempted over the same. That after that neither the plaintiff sold out the suit property nor have signed any sale deed and nor have received any amount. That in the meanwhile the paternal cousin of the plaintiff namely Ameen Ali filed an application before the then APA, L/Orakzai, who constituted the jirga and resultantly, the said Ameen Ali was declared as entitled to the suit property vide decision of the then APA, L/Orakzai, Dated: 08.09.2016. That the present defendant challenged the said decision before the Commissioner, Kohat, who also dismissed the appeal. Then the present defendant. challenged the order of the Commissioner, Kohat before the FATA Tribunal, which remanded the case back to the trial court. That in the meanwhile the district Orakzai
	at Baber In	who disposed off the case vide order Dated: 03.10.2019 for being non-maintainable and without any legal force with directions to both the parties to submit their respective pleadings as per the law. That accordingly the plaintiff filed the present suit. Arguments heard and record perused. After hearing of arguments and perusal of the record, I am of the opinion that the name of the present plaintiff is Hashim Ali s/o Moran Ali while the one who filed an application before the then APA, L/Orakzai was Ameen Ali s/o Suleman Ali, admittedly the paternal cousin of the plaintiff, who is also the special attorney for the plaintiff in the present case. It was the said Ameen Ali, whose case was remanded back by the then FATA Tribunal to the then APA, L/Orakzai and then as a result of constitutional amendment, the same case was transferred to the Civil Judge-II, Orakzai, who on the ground of non- maintainability and without any legal force, disposed off

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Order No 53 28.902.2023 Continued the same with directions to the parties to submit their respective pleadings as per the law. But instead of the said Ameen Ali s/o Suleman Ali, the then plaintiff, the present plaintiff namely Hashim Ali s/o Moran Ali, came forward and submitted the present plaint by availing the said permission of the court, though he was not a plaintiff in the case. Further, admittedly and as per the record, the suit/claim of the one Ameen Ali was a preemption suit in its nature while the present plaintiff has filed a suit for declaration-cum-perpetual and mandatory injunction and possession in the alternate meaning thereby that the nature of the claim has also been changed in addition to the change of the plaintiffs. Further that it is very strange that the said Ameen Ali is also the special attorney for the plaintiff in the present suit.

Syed Amees Jon

Therefore, in the light of the aforesaid findings, it is deduced that the plaintiff has not come to the court with hands and not have acted clean upon the directions/permission of the court Dated: 03.10.2019 granted for proper pleadings rather he has practiced fraud and nonsense with the court by replacing the plaintiff and by changing the nature of the suit in the garb of the said directions/permission and resultantly, barred by law and non-maintainable. Thus, the application in hand is accepted and the plaint of the plaintiff is hereby rejected with costs. File be consigned to the record room after its

necessary completion and compilation.

Announced

28.02.2023

(Rehmat Ullah Wazir) Senior Civil Judge, Orakzai (at Baber Mela)