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IN THE COURT OF JAMAL SHAH MAHSOOD,
ADDITIONAL DISTRICT JUDGE-I, ORAKZAI

Civil Appeal No. 08 of 2019

Date of institution 19-10-2019
Date of Decision 06-11-2019

Ms. Gul Khaperai w/o Eidman Shah; presently r/o Ghiljo, Tehsil
Ismailzai, District Orakzai

(Appellant)

Vs

- 1) **Ex. Political Agent** of district Orakzai (presently DC, through record keeper
- 2) FDMA Islamabad, through record keeper
- 3) Head of Aman Committee, Rabia Khel tribe (Muhammad Rahim, Rabia Khel)

(Respondents)

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- Shaheen Muhammad Advocate, for Appellant
 - District Attorney, Gul Karim Afridi, for Respondents 1 and 2
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APPEAL against order/judgment and decree of learned CJ/JM-I, dated 11-10-2019, passed in case No 34/1 of 2019. (**Impugned Judgment**)

Judgment in Appeal:

1. Through the impugned judgment the learned lower court rejected the plaint of the present appellant/plaintiff, under order 7 rule 11 of CPC.
2. The facts of the case are; that the appellant filed her suit seeking recovery of Rs. 400,000 (four lac) as compensation for the damage caused to her house due to military operations, which compensation was allowed to her under CLCP (Citizens Losses Compensation Program) token/receipt No. 96203, dated 30-05-2018. The appellant has alleged that she remained IDP (internally

displaced person) for about 10 years, during which period her house and chattels were completely destroyed; that on return to the area a survey was conducted by officials, in which she was held entitled to compensation. She alleged that other people were paid compensation but she was not. The learned lower court summoned the defendants. The District Attorney made appearance and submitted the written statement and application under order 7 rule 11 of CPC. The learned lower court after hearing arguments of the parties accepted the application and rejected the plaint, through the impugned judgment.

3. Being aggrieved, the appellant/plaintiff has filed the instant appeal. The main grounds taken in the memorandum of appeal are; that the impugned judgement of the learned lower court was passed without considering the material available on record and without framing of issues or recording of evidence; and that the impugned judgment was passed against the relevant law and facts of the case.
4. Notices was issued to the respondents; respondents No. 1 and 2 appeared through their representatives and the District Attorney. Respondent/defendant No. 3 remained ex parte before lower court as well as before this court. Arguments of contesting parties were heard and the record has been perused.
5. The grounds mentioned in order 7 rule 11 CPC for rejection of plaint are: where the plaint does not disclose a cause of action; where the relief claim is undervalued and the same is not corrected within time fixed by court; where the plaint is written

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Orakzai

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upon insufficiently stamped paper; and where the suit appears from the statement in the plaint to be barred by any law.

6. In the present case the learned lower court has rejected the plaint on the ground that defendant/respondent No. 1 was the ultimate investigating agency, which held an inquiry to declare that the survey of house of plaintiff was done in the name of her son, Imtiaz, and that she got survey done in her favor on the strength of house of her brother Gul Zaman. These specific findings/declarations made by the learned lower court do not emanate from the plaint; rather, these facts have been endorsed on the photocopy of CLCP available on record. Thus, it is evident that the circumstances of the present case did not fall under the ambit of order 7 rule 11 of CPC. All controversial points between the parties are required to be determined after framing of issues and recording of evidence. In the present case no finding has been given by the learned lower court to the effect that the plaint was barred by any specific law. A mere presumption that there might be appellate administrative hierarchy is not a proper method for rejecting a plaint under order 7 rule 11 of CPC.
7. Moreover, the civil court, being court of ultimate jurisdiction, has the authority to nullify any administrative act which is based on malafide. However, these matters can only be resolved after recording of evidence on issues. In the present case written statement was submitted and the proper procedure was to frame issues and proceed with the trial.

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8. In light of the above observations it is held that the suit of the appellant was improperly rejected under order 7 rule 11 CPC. Resultantly, the instant appeal is **accepted** and the impugned judgment/order is hereby set aside. The case is remanded back to the learned trial court with directions to proceed further with case in accordance with applicable law.
9. No order as to costs. Let a copy of this judgment in appeal be placed on the file of lower court and the same be returned for further proceedings. The parties are directed to appear before the court of learned CJ-I Orakzai on 13-11-2019. Let this file be consigned to record room after its necessary completion and compilation.

Announced
06-11-2019


Jamal Shah Mahsood
Additional District Judge-I,
Orakzai

CERTIFICATE

Certified this judgment consists of 04 pages. Each page has been signed by me, and corrected wherever necessary.


ADJ-I, Orakzai