

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

Civil Appeal No. 16/20 of 2020

Date of institution: 25-02-2020

Date of decision: 29-09-2020

1) **Muhammad Qasim** s/o Lal Meen (since deceased, and succeeded by LRs) **Ms. Marjana** (widow), **Muhammad Habib**, **Abdul Wali**, **Abdullah**, **Ms. Akhter Majana** and **Ms. Fazal Janana**; all belonging to caste Rabia Khel, sub caste Ayaz Khel; residents of Mohalla Sarak Dana, Hangu.

(Appellant/s)

Vs

1) **Akhterman Shah** s/o Ghulam Shah,
2) **Waliman Shah** (since deceased, and succeeded by LRs **Salma Bibi**, **Shahnawaz**, **Jamshed Khan**, **Shazia Bibi**, **Menhaj Bibi**, **Shahida Bibi** and **Seema Bibi**),
3) **Gulzameen Shah**
4) **Marwat Shah** (1 to 4 sons of Ghulam Shah)
5) **Amjad Ullah** s/o Khukaliman Shah; all belonging to caste Rabia Khel, sub caste Ayaz Khel; residents of Khi Kada, Mula Tabai, PO Samana, Tehsil Ismailzai, District Orakzai

(Respondents)

- Fazal Malik Kaka Khel Advocate, for Appellants
- Aurangzeb Khan Advocate for Respondents

APPEAL against order/judgment and decree of learned CJ-II, Orakzai, dated 11-02-2020, passed in civil suit no. 90/1 of 2019.

(Impugned Judgment)

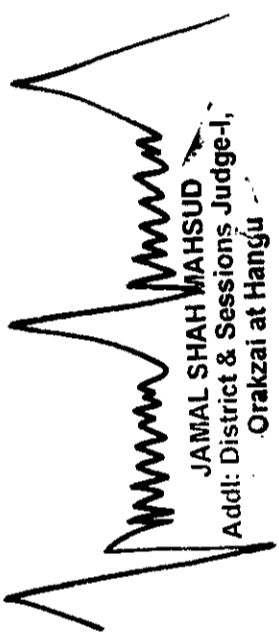
Judgment in Appeal:

1. Through the impugned judgment the learned lower court disposed of the case of the appellants (plaintiffs), on the ground of being defective and non-maintainable – with permission to the parties to submit their respective/proper pleadings as per law within the time provided by law.

2. The predecessor-in-interest of present contesting appellants (late Muhammad Qasim - plaintiff) had filed a petition before the Assistant Political Agent of Upper Orakzai. After merger of FATA into KP Province, this petition was transferred to civil court; where he filed a fresh formal plaint, seeking declaration and perpetual injunction, in respect of suit property situated in Khi Kada area of tehsil Ismailzai, Orakzai (as described in plaint). The plaintiff alleged that the respondents/defendants had no right in the suit property and that they must be restrained perpetually from raising any claim or from interfering in the suit property.

3. The respondents/defendants submitted written statement, wherein they raised several legal and factual objections. The parties initially agree for decision of case on oath; however, the proceedings for disposal on oath failed subsequently. The lower court then perused the file of the case and held that the plaint suffered from "legal defects like mis-joinder and non-joinder of parties, the description of the suited property and document of reliance etc." The case was thus disposed of, through the impugned judgment, for being defective and non-maintainable.

4. Being aggrieved, the appellant/plaintiff filed the instant appeal. The main grounds taken in the memorandum of appeal are; that the impugned judgement was passed in contravention of law on point and against the facts of the case, and that the appellant/plaintiff was non-suited on technical grounds – in a hasty manner, without considering the merits of the case. In application of temporary injunction was also filed along with the instant appeal, however, the same remained un-pressed.


JAMAL SHAH MAHSUD
Addl: District & Sessions Judge-I,
Orakzai at Hangju

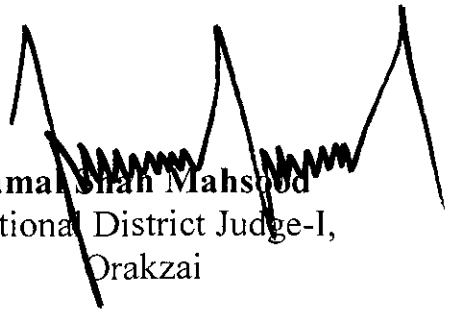
5. Notices were issued to the respondents. Both the parties were represented through counsels and the names of legal representatives of the deceased parties were added in the memo of appeal. Arguments of counsels for the parties were heard and the record has been perused.
6. The learned lower court has admittedly dismissed the suit on technical grounds as mentioned above. The law on rejection of plaint is quite clear. These grounds are mentioned in Order 7 Rule 11 CPC; which are: where the plaint does not disclose a cause of action; where the relief claimed is undervalued and the same is not corrected within time fixed by court; where the plaint is written upon insufficiently stamped paper; and where the suit appears from the statement in the plaint to be barred by any law.
7. In the present case none of the ingredients mentioned above were present, which could justify the dismissal (disposal) of case on technical grounds. The modes for rectifying any deficiency in plaint, like description of suit property or mis-joinder and non-joinder of the parties, are available in the Code of Civil Procedure. The objection in respect of mis-joinder or non-joinder of the parties can be rectified after framing of a preliminary issue in this respect; moreover, a suit cannot be defeated for mis-joinder or non-joinder (under Order 1 Rule 9); while the mis-description of suit property or documents of alliance etc. may also be clarified by asking the relevant party for better statement or interrogatories (under Order 6 Rule 5 or under Order 11 of CPC).
8. In light of the above observations it is held that the suit of the appellant was improperly "disposed of". Resultantly, the instant

JAMAL SHAH MAHSUD
 Afdl: District & Sessions Judge-I,
 Orakzai at Hangju

appeal is **accepted** and the impugned judgment/order is hereby set aside. The case is remanded back to the trial court with directions to proceed further with the case, in accordance with applicable law. The parties are to bear their own costs.

9. 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 court of CJ-II, Orakzai is vacant at present. The record shall be sent to the court of learned SCJ, Orakzai, for disposal or for further entrustment to another civil court for trial. The parties are directed to appear before the court of learned SCJ, Orakzai on 06-10-2020. Let this file be consigned to record room after its necessary completion and compilation.

Announced
29-09-2020


Jamal Shah Mahsood
Additional District Judge-I,
Orakzai

CERTIFICATE

Certified this judgment consists of 04 pages. Each page has been signed by me.


ADJ-I, Orakzai