

Case title: Saiful Hassan VS Murtuza Ali and one other

Or-----06

09.11.2019

*Plaintiff along with his counsel Mr. Jabir Hussain advocate present.  
Mr. Janat Khan (SST) on behalf of the education department and father of  
defendant NO.01 Ajmeen Ali present.*

(1) I have heard all the parties. Mr Janat Khan (SST) also submitted the copies of advertisement, merit list and appointment order of defendant No 1 for the post of Lab attendant at GHSS Andkhel District Orakzai.

(2) Form of suit is defective for the reason that S. 42 of the Specific Relief Act 1877 Declaratory Decree could only be sought by person whose legal Character or status was being denied. In such a lis, legal Character of person seeking declaration should be of much importance and without establishing the same he could not insist for declaratory decree. (2016 YLR 980). Whatever the heading of plaintiff be, substance of the Plaintiff Without approaching proper forum, filed suit for declaration and challenged the appointment of defendant No 01 which as per law not maintainable in the eyes of law.

(3) Suit of the Plaintiff is also incompetent for the reason; as per bar contained in Section 42 of S.R.A 1877 where it is provided that no court shall make any Declaration where the plaintiff been able to seek further relief that mere declaration of title omits to do so. Suit can even be called barred by Law if the suit is impliedly barred [2001 MLD 1159 cit(d)] or **where relief prayed for cannot be granted**. Whatever the fate of the present Suit, even after recording evidence Declaratory Decree cannot be granted in the favour of the Plaintiff as per above discussion.

(4) To bring an end to the incompetent suit at the earliest and to avoid wastage of time of the court and to bury the still born incompetent suit at its inception suit of the plaintiff in hand being non maintainable stands rejected.

(5) Parties are left to bear their own cost. Case file be consigned to record room after necessary completion and compilation.

Announced  
09-11-2019

Muhammad Imtiaz  
Civil Judge/JM-II  
Orakzai at (Babar Mel)

(M. Imtiaz)

Civil Judge-II, Orakzai