



**IN THE COURT OF DISTRICT JUDGE, ORAKZAI AT BABER MELA**

Case Title: Qadeem Khan etc VS Fazal Wadood etc

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
Note Reader	08.06.2023	<p align="center">Presiding Officer is on station leave today. Case file be put up for 15.06.2023.</p> <p align="center">             (READER)            To District Judge, Orakzai            at Baber Mela         </p>
Order No.06	15.06.2023	<p align="center">Syed Hamza Gilani and Saqib Roshan Advocates for appellants present. Abdul Qayyum Advocate for respondents no. 1 to 6 present. Appellant No. 1 Qadeem Khan present in person. Respondent No. 3 Qamar Zaman also present in person. Respondents no. 7 to 9, despite being served through notices, not present. Hence, they are placed and proceeded ex-parte. Record received.</p> <p>Today, the case was fixed for final arguments; however, learned counsel for appellants/plaintiffs submitted application for withdrawal of the suit with permission to file a fresh one for the reasons mentioned therein. Counsel for respondents/defendants submitted reply. Arguments on application heard and record perused.</p> <p>In a suit before the learned trial court, appellants being plaintiffs sought declaration-cum-perpetual injunctions and specific performance of partition deed dated 04.01.2012 and contented that the suit property was jointly owned by the parties which was privately partitioned vide aforementioned partition deed vide which the suit property situated at Chaman Jana Bala was allotted to respondents/defendants no. 1 to 6 whereas the property situated at Chaman Jana Payan was allotted to the appellants/plaintiffs. That the respondents/defendants having got no concern whatsoever with the suit property</p>


**Subordinate District & Sessions Judge**  
 Orakzai at Mangu.  
 15/06/23

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<p><b>Contin. Order No.06</b></p>	<p align="center">   <b>Shaikat Ahmad Khan</b>                      District &amp; Sessions Judge,                      Orakzai at Wangu.                      15/06/23                 </p>	<p>at Chaman Jana Payan, are making interference therein. The contesting respondents/defendants no. 1 to 6 submitted written statement wherein they, besides raising various legal and factual objections, denied the title of the appellants/plaintiffs to the suit property and also objected to the execution of partition deed dated 04.01.2012. In the light of pleadings of the parties, issues were framed and the parties led pro and contra evidence. The learned trial, after having heard the arguments, held that the appellants/plaintiffs failed to prove the execution of partition deed dated 04.01.2012 and non-suited the appellants/plaintiffs vide impugned judgment/decree dated 05.04.2023. The appellants/plaintiffs, being aggrieved of the impugned judgment/decree, filed the instant appeal.</p> <p>The appellants/plaintiffs through the instant application under Order 23 Rule 1 of the CPC want to withdraw the suit with permission to file a fresh one on the ground, that parties are co-owners in the suit property and as the appellants/plaintiffs have failed to prove the execution of partition deed dated 04.01.2012; therefore, they want to file a fresh suit for partition of the suit property. The respondents/defendants contested the application on the ground, that the pre-requisite for filing a suit for partition is, that the parties must be co-owners but as the appellants/plaintiffs are neither co-owners nor in possession of the suit property; therefore, they cannot file a fresh suit for partition of the suit property.</p> <p>After having heard arguments of learned counsels for the parties and after going through the available record, it is held that the main plea of the appellants/plaintiffs for seeking declaration and specific</p>

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<p>Contin. Order No.06</p>		<p>performance was a partition deed dated 04.01.2012 which has been held by the learned trial court as not proved by the appellants/plaintiffs, but neither any issue regarding the ownership of the appellants/plaintiffs in the suit property is framed nor any findings in that respect has been recorded. Moreover, the relief of seeking possession through partition would change the nature of the suit; therefore, the same cannot be cured through amendment in the plaint.</p> <p>Hence, in view of what is discussed above, the application of the appellants/plaintiffs is accepted. The impugned judgment/decreed dated 05.04.2023 is set aside. Suit of the appellants/plaintiffs is dismissed as withdrawn with permission to the appellants/plaintiffs to file a fresh one. However, to compensate the agonies of respondents/defendants, the appellants/plaintiffs are burdened with a cost of Rs. 10,000/- to be deposited with the trial court at the time of filing of fresh suit for payment of the same to the respondents/defendants. File of this court be consigned to record room. Record be returned. Copy of this order be sent to learned trial court for information and compliance.</p> <p><b>Pronounced:</b> 15.06.2023</p> <p> (SHAUKAT AHMAD KHAN) District Judge, Orakzai at Baber Mela</p>

