

In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

Civil Appeal No. CA-08/13 of 2023

Date of institution: 23.02.2023

Date of decision: 19.06.2023

Muhammad Ahmed son of Mastan Gul, Qaum Shekhan, Tappa Samozai, District Orakzai.

..... **(Appellant/plaintiff)**

...Versus...

1. Muhammad Rauf son of Hameed Shah
2. Azim Shah son of Aleem Shah
3. Sultan son of Hazrat Noor
4. Bakht Mir son of Mir Hassan
5. Fazal Rabi son of Fazal Rehman
6. Mir Hassan Shah son of Gharib Shah
7. Fazal Rehman son of Badshah Gul

(All residents of Kach Mela, Qaum Shekhan, Tappa Umarzai, District Orakzai.

8. Deputy Commissioner/Collector Orakzai.


..... **(Respondents/defendants)**

Appeal against Judgement, Decree and Order dated 30-01-2023, passed in Civil Suit No. 36/1 of 2022.

JUDGMENT

Instant Civil Appeal has been preferred by the appellant/plaintiff against the Judgment, Decree & Order dated 30.01.2023, passed by learned Civil Judge, Orakzai in Civil Suit bearing No.36/1 2022; whereby, the plaint of the appellant/plaintiff with the title of "Muhammad Ahmed vs Muhammad Rauf etc." was rejected under Order-7 Rule-11 Code of Civil Procedure 1908.

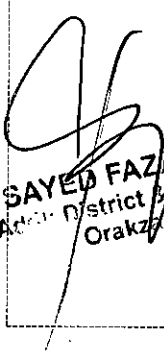
2. Plaintiff, in representative capacity, claimed ownership and possession of landed property known as *Ismail Pattay*, situated at Mishti Mela District


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Orakzai. District Collector Orakzai has initiated acquisition process for establishing Police Station under Police Department Orakzai; wherein, compensation thereof is to be paid. It is in averments of the plaint that both the parties are hailing from Qaum Shekhan which is further divided into sub sects of Umarzai, Samozai and Bazid Khel. Plaintiff is representing sub sect of Tappa Samozai; whereas, defendants are belonging to sub sect of Tappa Umar Zai. The property in dispute is located within the boundaries of sub sect tappa samozai and defendants being of tappa Umar zai being residents of Kach Mela are far away and thus not entitled for any compensation. They have managed to obtain the compensation amount of award granted for establishing Telephone Exchange which is also recoverable. The District Collector is intending to pay the award amount of acquisition for Police Station to Defendant No. 1 to 7 that necessitated presentation of suit for declaration, injunction, recovery of amount and other consequential relief that attracts to the facts and circumstances of the case.

3. Defendants/respondents on appearance objected the suit on various legal as well as factual grounds in their written statement. First set of defendants (No.1 to 7) had negated the ownership of the plaintiff and termed it misidentification of property. It was added that they are the actual owners in possession of the property and thus plaint of the plaintiff is liable to be rejected. The property is falling within the exclusive ownership of defendants and have rightly been paid the award money of Telephone Exchange as well as that of Police Station. The District Attorney Orakzai has represented the District Collector who submitted that suit property has already been acquired by the Land Acquisition Collector Orakzai for public purpose of establishing

Police Station Central at Mishti Mela Orakzai and contented that award has


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already been passed. It was added that the previous ground of litigation on the same property has already been completed and institution by different person is engineered for protracting litigation without justifiable reason.

4. While deciding application for grant of temporary injunction, learned Trial Court has rejected the plaint on the score of lacking jurisdiction vide Order No. 16 dated 30-01-2023; feeling aggrieved, plaintiff presented instant Civil Appeal, which is under consideration.

5. Learned counsel representing appellant argued that instead of granting or withholding of temporary injunction, the plaint has wrongly been rejected. The Civil Court is the court of ultimate jurisdiction and was rightly knocked by the plaintiff. The order of rejection of plaint is result of misconception as the matter agitated was regarding payment which is exclusive domain of Civil Court.

6. Learned counsel representing respondents/defendants is of the stance that Award has already been passed and if plaintiff/appellant was feeling aggrieved, he may have filed objection petition before the Land Acquisition Collector. The Trial Court has rightly rejected the plaint on the score of lacking jurisdiction; District Attorney concluded.

7. There are two points for determination of this Court; one is the stage rejecting plaint and the second is that of jurisdiction.

8. Bare reading of impugned order reflects that the plaint has been rejected under Order-7 Rule-11 Code of Civil Procedure, 1908; that too, on the score of lacking jurisdiction. The word dispute has been mentioned in Section-30 of the Land Acquisition Act, 1894, which obviously include compensation and the person to whom such compensation is payable. A mechanism has been provided under Land Acquisition Act, 1894, for settlement of dispute of all


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types and natures pertaining to every matter of acquisition. Similarly, barring clause of section-5A of Land Acquisition Act, 1894 exclude the jurisdiction of Civil Court and thus it has rightly been determined by the learned Trial Court that Civil Court has got no jurisdiction. As for as operating part of the impugned order is concerned, it is well settled notion of the Law that objection to jurisdiction shall be dealt with under Order-7 Rule-10 of the Code of Civil Procedure, 1908 and Rule-11 of this Order is not applicable to the bar of jurisdiction (1986 CLC 1181). The Trial Court was required to attract Rule-10 which prescribes the return of plaint instead of rejecting of the plaint. The second objection of the learned counsel for appellant is that the case was fixed for withholding or granting of temporary injunction and was not stage for rejecting plaint. To determine this objection, the law on the subject is mandatory in nature as an adjudication by a Court without jurisdiction is *Coram non judice*. When the Court lacks jurisdiction, the plaint is to be returned for presentation to proper Court and Court cannot pass any Judicial Order (2013 MLD 1532, 2011 CLC 1450). It has also been settled in case titled "Muhammad Maskeen vs Muhammad Zareen" reported as 2009 YLR-1402 that answer to the question of lying suit in acquisition matter before Civil Court is negative.

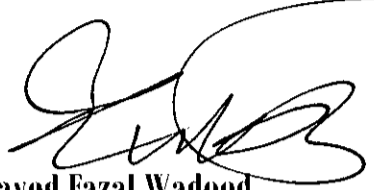
9. For what has been discussed above, appeal is partially allowed to the extent of setting aside order of rejection of plaint under Order-7 Rule-11 of Code of Civil Procedure, 1908. The case is remanded back to the learned Trial Court for return of plaint under Order-7 Rule-10 of Code of Civil Procedure, 1908 on the score of lacking jurisdiction. The appellant/plaintiff shall appear before the learned Trial Judge for receiving plaint with endorsement thereon the date of its presentation and return, the name of the


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party presented it and a brief statement of reasons for return. Requisitioned record be returned with copy of this Judgement; whereas, File of this Court be consigned to District Record Room, Orakzai as prescribed within span allowed for.

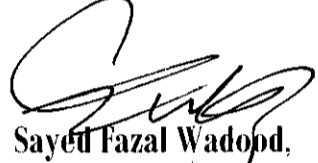
Announced in the open Court
19.06.2023



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment is consisting upon five (05) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela