

IN THE COURT OF ASGHAR SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL REVISION NO. : 2/12 OF 2021
 DATE OF INSTITUTION : 20.01.2021
 DATE OF DECISION : 03.02.2021

SHEHZAD S/O HASHIM KHAN, R/O SULTANZAI, DISTRICT
 ORAKZAI AND THREE OTHERS
(PETITIONERS)


-VERSUS-

AJMIR S/O ASLAM KHAN, CASTE FERAZ KHEL, TEHSIL
 KALAYA DISTRICT ORAKZAI AND FOURTEEN OTHERS
(RESPONDENTS)

Present: Syed Hamza Gilani Advocate for petitioner.
 : Muhammad Irfan Khattak Advocate for contesting respondents.

JUDGEMENT
 03.02.2021

In the suit before the trial court, the respondents/plaintiffs claimed that they are owners of the suit property consist of 25 Jareeb as detailed in the heading of the plaint, which property was claimed to have been given to the petitioners/defendants no. 1 to 4 temporarily for the purpose of cultivation but now they are claiming the ownership of the suit property, hence requested for the return of the suit property. The suit was contested by the petitioners/defendants by submitting written statement. On 16.09.2020, the petitioners/defendants submitted an application for rejection of the suit under order 7 rule 11 of the CPC, which application after due process turned down by the trial court vide impugned order dated


 (ASGHAR SHAH)
 District Judge, Orakzai
 at Baber Mela

21.10.2020, hence aggrieved from the same, petitioners/defendants submitted the civil revision in hand.


2. Arguments heard and record perused.

3. From the arguments and record available on file, it reveals that the petitioners/defendants in their application submitted in the trial court raised objections with regard to the matter being already decided, being time-barred, having annexed no court fee, plaintiffs having no locus standi to file the suit with certain other factual objections. However, it has to be noted that in order to attract the provision of order 7 rule 11 of the CPC, the petitioners have to show that the plaint discloses no cause of actions, the same is undervalued, the same is insufficiently stamped or the same is barred by any law. Thus, only the contents of plaint have to be seen in order to apply the ibid provisions of CPC. The facts alleged by the plaintiffs have been denied by the defendants through their written statement which gives a valid cause of action and locus standi to the plaintiffs to not only institute the suit but also the law requires that an opportunity should be afforded to them to prove their version by any legal means. The question of court fee is according to the value claimed and plaint valued for the purpose of court fee, which valuation as per plaint is determined Rs. 24,500/- which for the time being seems correct and is exempted from the court fee unless



(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela


proves otherwise during the trial. The suit being time-barred is mixed question of law and facts which cannot be decided without adducing evidence of the parties on the subject. As for as the factual grounds of the matter being already adjudicated upon is concerned in this regard as already stated the factual grounds cannot be based for rejection of the plaint besides the order of the Assistant Commissioner/APA Lower Orakzai dated 02.02.2019 is yet to be seen whether the same was within his jurisdiction as the same was passed after 25th Constitutional Amendment and merger of the Orakzai Agency into the KP Province as District. The said order and its legal effect also needed to be trashed out in the trial court to see whether the same was with respect to the disputed property or otherwise. The present court would not render any findings on the factual issues which might prejudice the rights of anybody in the trial court. The better course would be let both the parties to prove their versions in the trial court by means of evidence whereafter any party aggrieved from the same could approach the proper forum.


(ASGHAR SHAH)
 District Judge, Orakzai
 at Baber Mela

4. Thus, the trial court after considering the case from all the four corners was justified in dismissing the application of petitioners/defendants through impugned order dated 21.10.2020. No jurisdiction error, illegality or legal infirmity in the impugned order of the trial court was pointed out. Therefore, the impugned order of the trial court stands upheld

and the civil revision in hand resultantly stand dismissed with no order as to cost. File be consigned to Session Record Room after its completion and compilation.


Announced
03.02.2021


(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

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

Dated: 03.02.2021


(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela