

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

CIVIL REVISION NO. : 3/12 OF 2021
DATE OF INSTITUTION : 22.02.2021
DATE OF DECISION : 18.03.2021

SYED MUHAMMAD AMEER JAAN S/O MIR SYED, R/O STORI
KHEL, BABA NAWASI, DISTRICT ORAKZAI

.....(PETITIONER)

-VERSUS-

HASHIM ALI S/O MORAN ALI, CASTE STORI KHEL, TAPA TAZI
KHEL, DISTRICT ORAKZAI

..... (RESPONDENT)

Present: Jabir Hussain Advocate for petitioner.
: Muzahir Hussain Advocate for respondent.

JUDGEMENT

18.03.2021


It is on the record that litigation with regard to the suit property under the old regime of FCR while routing through Assistant Political Agent, Lower Orakzai and Commissioner, FCR Kohat reached to the FATA tribunal Peshawar where vide order dated 22.02.2018 the case was remanded to the trial court. Meanwhile, the FCR got abolished and the case came to trial in the court of Civil Judge-II, Orakzai who vide order dated 03.10.2019 directed the parties to submit their respective pleadings as per law. Thereafter, the plaint was submitted by the respondent/plaintiff, Hashim Ali in the trial court and the case was in progress when on 26.03.2020 the petitioner/defendant submitted an application for the

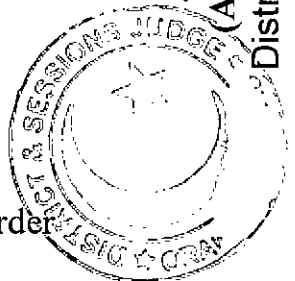
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at Baber Mela



rejection of the plaint on the ground that the earlier suit was for pre-emption between Ameen Ali vs Muhammad Ameer Jan whereas, in the present plaint Hashim Ali has stepped into the shoes of Ameen Ali as plaintiff besides the nature of suit has been changed from pre-emption to declaration. The trial court after due process passed the following impugned order on 26.01.2021,

“Secondly, so far as the application for the rejection of plaint is concerned, I am of the opinion that the bare reading of the plaint discloses a cause of action against the defendant and the plaint cannot be rejected at this stage without recording pro and contra evidence. Thus, the application is dismissed with no order as to costs.”


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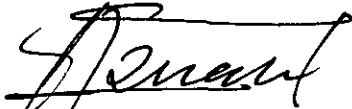
2. The brief perusal of the above cited impugned order of the trial court would reveal that the two grounds taken by the petitioner/defendant regarding the changing of nature of suit from pre-emption to declaration and substitution of plaintiff Ameen Ali with Hashim Ali has neither been addressed nor discussed by the trial court and no decisions on the said grounds is available in the impugned order besides for rejection of plaint there is no need to record pro and contra evidence. The impugned

order of the trial court is thus a non-speaking order hence cannot be sustained in the circumstances.

3. Therefore, without touching the other merits of the case, revision in hand is accepted and impugned order of the trial court dated 26.01.2021 to this extent is set aside and the trial court is directed to decide the matter afresh after hearing both the counsel for the parties by properly addressing the grounds taken by the petitioner/defendant in his application submitted for rejection of the plaint. No order as to costs.

4. File be consigned to Session Record Room after its completion and compilation.

Announced
18.03.2021



(ASGHAR SHAH)
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at Baber Mela

CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 18.03.2021




(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela
18/3/2021