

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

CIVIL APPEAL NO. : 14/13 OF 2021  
DATE OF INSTITUTION : 10.02.2021  
DATE OF DECISION : 19.03.2021

NAZIR JALAL S/O MIR JALAL, R/O MISHTI MELA, SHEIKHAN,  
TAPA MAMOZAI, TEHSIL CENTRAL, DISTRICT ORAKZAI AND  
FOUR OTHERS

.....(APPELLANTS)

-VERSUS-

IMRAN S/O SAMEEN GUL, R/O MISHTI MELA, SHEIKHAN, TAPA  
MAMOZAI, TEHSIL CENTRAL, DISTRICT ORAKZAI AND SIX  
OTHERS


..... (RESPONDENTS)

**Present:** Sajjad Ahmad Advocate for appellants.  
: Abdul Qayyum Khan, Noor Badshah Bangash Advocates for  
respondents no. 1 to 6  
: Abid Ali Advocate for respondent no. 7

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**JUDGEMENT**  
19.03.2021

In the suit before the trial court, appellants/plaintiffs through suit for declaration, perpetual and mandatory injunction and partition claimed that the suit property measuring 30 kanals alongwith adjacent mountain and 50 shops were jointly owned and possessed by Zarghoon Shah (predecessor of appellants/plaintiffs) and Hassan Shah (predecessor of respondents/defendants). That plaintiffs are having their houses, hujra and mosque in the suit property and are residing therein and as such both plaintiffs and defendants are jointly entitled for their half share in the suit property, which right is denied by the defendants to the plaintiffs, hence the suit was instituted for

  
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determination of ownership rights, half share in the rent of the suit shops as well as partition of the suit property.

(2). The case was contested by the respondents/defendants by submission of written statement and the case was in progress when meanwhile on 30.09.2020 respondents/defendants no. 1 to 6 submitted an application under order 7 rule 11 of the CPC for the rejection of plaint and the trial court after due process accepted the application and rejected the plaint while impugned judgement and decree dated 21.01.2021. Hence the appeal in hand.

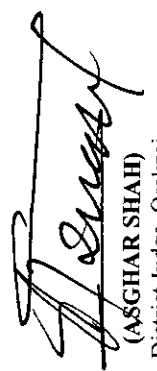
(3). Arguments heard and record perused.

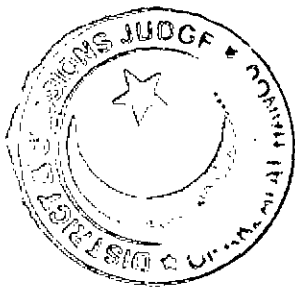
(4). From the arguments and record available on file, it reveals that the main ground taken for the rejection of plaint is that earlier parties moved the court of Assistant Political Agent Lower Orakzai for the resolution of dispute in question and the matter was decided under the FCR (the prevailing law by that time) vide order dated 24.11.2016 in favour of respondents/defendants no. 1 to 6. Hence, the plaint was rejected on account of suit being hit by section 11 of the CPC read with Article 264 of the Constitution and section 6 of the General Clauses Act. The contention of the learned counsel of the appellants is that after the case being decided in favour of respondents/defendants, an execution petition was filed in the civil court after the merger of Orakzai Agency into the province of KPK and vide order dated 12.03.2020, the court of CJ-I,

  
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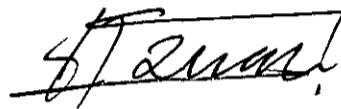
Orakzai held that the execution petition is not maintainable and disposed of the matter accordingly. As such as per view of the learned counsel of the appellants at the moment by virtue of order dated 12.03.2020 of CJ-I, Orakzai, the judgement passed in favour of respondents/defendants on 24.11.2016 by the APA, Lower Orakzai has become infructuous and is no more in field. However, it is admitted and not out of question to mention here that the order of the APA dated 24.11.2016 in favour of respondents/defendants was never challenged by the appellants in the next higher forum and thus has got the finality. No subsequent suit on the similar and same cause of action with regard to the same property can be brought again between the same parties and under the same title as provided under section 11 of the CPC. As far as the order dated 12.03.2020 of the CJ-I, Orakzai is concerned, the same has only held the execution petition as not maintainable and the said order by no means has set aside the intact order of the APA, Lower Orakzai dated 24.11.2016. The said order of the APA, Lower Orakzai is in field, intact and a matter of past and closed transaction as such the matter once decided by a competent forum cannot be reagitated again. The learned trial court has thus rightly rejected the plaint under order 7 rule 11 and section 11 of the CPC read with Article 264 of the Constitution of the Islamic Republic of Pakistan as well as under section 6 of the General Clauses Act.

  
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(5). The impugned judgment and decree of the learned trial court in the light of above discussion is unexceptional, hence needs no interference from the present court. Accordingly, the impugned judgment and decree of the trial court stands upheld/maintained and the appeal in hand resultantly stand dismissed being devoid of force. No order as to cost. File of the trial court be returned while file of this court be consigned to Session Record Room after its completion and compilation.

**Announced**  
19.03.2021

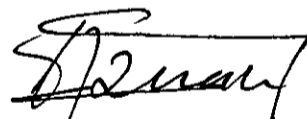


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**CERTIFICATE**

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

Dated: 19.03.2021



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