

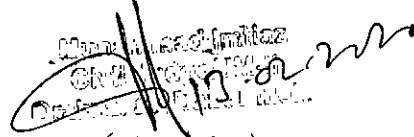
Case Title: Syed Alam Jan etc VS Ishaq Ali etc.

Or-----21

13.02.2020

Plaintiff No. 04 along with his counsel Mr Shaukat Hussain Advocate Present
Defendants No .06 along with his counsel Mr Jabir Hussain Advocate present.

1. Arguments on Preliminary issue was framed vide Order-15,
Dated: 14/01/2020 heard. File to come for order on 14/02/20
PP given.


(M. Imtiaz)
Civil Judge-II, Orakzai

Or-----22

14.02.2020

Plaintiff No. 04 along in person present.
Defendants No .03 in person present.

1. During the Course of proceedings under order IX-A CPC for
schedule conference, Court find it necessary to hear the learned
counsel for the parties on the following issue:

Issue: - *Whether suit of the plaintiff is defective and liable to be dismissed
being non-maintainable?*

On the previous date I heard the learned counsel for the parties on
the above issue in detail. Today is the date fixed for order on the
same.

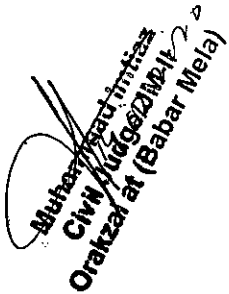
2. Perusal of the file reveals that Plaintiffs have filed Suit against the
defendants for **Declaration**, and **Perpetual-cum-Directory
Injunction**. But perusing the Plaint in detail from its substance it
appears that Plaintiffs are aggrieved of the **encroachment** made by
the defendants upon the plaintiffs' land. Wordings from the plaint
are reproduce as "

3. سال 1970 میں مدعا علیہم اور مدعیان نے اپنی اپنی حصہ اراضی کو قابل کاشت بنانے شروع ہو گئے۔ مدعا علیہم نے اپنی

حصہ رسدی سے تجاوز کر کے مدعیان کی حصہ رسدی اراضی میں مداخلت شروع کی۔

Nothing has been mentioned regarding encroachment or shown to
be a relief flowing directly and necessarily from the declaration
sought and a relief appropriate to and necessarily consequent on the
right or title asserted. It makes the suit of the

Continued.....


M. Imtiaz
Civil Judge-II, Orakzai
Orakzai (Babar Mela)

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Continued

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plaintiffs to fall within the ambit of barring provision of S.42 of S.R.A 1877 where Court shall not make any such declaration if Plaintiff/s being able to seek further relief than a mere declaration of title, omits to do so.

4. The description, measurement and nature of property which is important for proceedings, has not been mentioned clearly. Although it is within the Judicial Notice of this Court that there is no revenue record of land in District Orakzai. But still for the purpose of Jurisdiction and to protect the rights of third party it is important to give proper description, measurement and nature of suit property.
5. The suit is also bad for Mis-Joinder and Non-Joinder of the parties. For the reason that it is clear from the wordings of the plaint that plaintiffs are asserting their rights of ownership upon un-partitioned land of Qom (قوم). Let all the proper and necessary parties be included in the Suit on both sides (Plaintiffs and Defendants).
6. For aforementioned reasons if we continue with the present Suit it will serve no purpose and petitioner will get no relief. The law on the subject is very much clear, which provides that the legal defects may be corrected at any stage of the proceedings. Further, natural justice demands that equal opportunities may be given to the parties to correct their pleadings.
7. Hence, in present circumstances, the instant Suit in hand is hereby **disposed of** accordingly **with permission to the** parties to submit their respective pleadings as per Code of Civil Procedure 1908 within the time prescribe by the law. Case file be consigned to record room after necessary completion and compilation.

Announced

14/02/202

Muhammad Imtiaz
Civil Judge/JM-II
Orakzai (Bakar Mela)
(M. Imtiaz)

Civil Judge-II, Orakzai