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Case Title: Qudrat Hussain etc Vs Zikar Ali etc.

Or-----21
14.02.2020

Plaintiff No. 02, 05 and 08 present.
Defendant No. 01 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. On the previous dated learned counsel for the parties heard.

2. Perusal of the file reveals that Plaintiffs have filed Suit against the defendants for **Declaration, Perpetual-cum-Directory Injunction and Possession through partition.** But perusing the Plaint in detail from its substance it appears that Plaintiffs are seeking Declaration as their main relief. Nothing has been mentioned regarding partition 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 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.
3. The description, measurement and nature of property which is important for proceedings, has not been mentioned clearly. Whether suit property is Agricultural or built up property. 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.
4. 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

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

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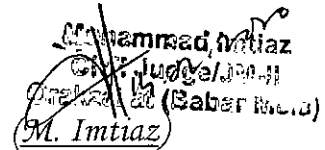
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14.02.2020

plaintiffs are asserting their rights of ownership upon un-partitioned ancestral property. Let all the proper and necessary parties be included in the Suit on both sides (Plaintiffs and Defendants).

5. 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.
6. 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
14/02/2020


M. Imtiaz
Civil Judge-II, Orakzai

Civil Judge-II, Orakzai