

(26)

Order-37
14/01/2021

Plaintiffs present through counsel.

Plaintiff No.3 also present in person.

Defendant No.1 present in person and as attorney for defendants No.2 to 6 along with the counsel present.

Defendant No.7 along with counsel present.

Reply submitted by defendant No.7.

Arguments on application under Order-7 Rule-11

CPC heard. File be put up for order on 21.01.2021.

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Senior Civil Judge,
Orakzai at Baber Mela

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Plaintiff No.5 in person and as attorney for remaining plaintiffs.

Defendant No.1 present in person and as attorney for defendant No.2 to 6.

Defendant No.7 present in person.

My this order is aimed at disposal of an application for rejection of plaint u/o-7 r-11 CPC filed by defendants No.1 to 6.

Defendants No.1 to 6 filed instant petition by contending that matter in controversy between the parties has already been resolved under FCR by the competent court

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vide judgement dated: 24.11.2016; that no appeal was filed by the plaintiffs against the said judgement, hence, the same order has attained finality and is past and closed transaction. Hence, requested for rejection of plaint on this ground.

Plaintiffs and defendant No.7 contested the application by filing their respective replies, wherein, they objected the application on various grounds.

Learned counsel for the parties heard and record gone through.

Perusal of the record reveals that plaintiffs through instant suit are seeking declaration, permanent, mandatory injunction and possession through partition to the effect that Zarghoon Shah and Hussain Shah were brother interse while disputed property comprising 30 Kanal, 50 shops and adjacent hill situated at Mishti Mela was their ancestor property, which was jointly owned by the two brothers. That plaintiffs are legal heirs of Zarghoon Shah while defendants No.1 to 6 are legal heirs of Hassan Shah. Hence, plaintiffs and defendants are equally owners in disputed property and defendants have no right to claim exclusive ownership over the same, receive the rent of shops and cultivate the disputed property rather disputed property is liable to partition among the parties.

Record depicts that defendants previously submitted an application to Political Tehsildar, Central Orakzai in respect of property situated at Mishti Mela, by contending; that disputed property is their ownership, on which they have also

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constructed shops and receiving the rent but Yousaf Khan son of Nazeer Jalal (Plaintiff No.3) and his family members are interfering and claiming their ownership over the same.

On such a petition, proceedings were conducted and Jirga was constituted and to this effect Iqrar Nama dated: 20.04.2016 was executed between Imran Khan (1st Party) and Shah Munawar Khan (2nd Party). The Iqrar Nama clearly depicts that a Jirga was constituted between the parties in respect of controversy over shops and other property situated at Mishti Mela. Issues framed by the learned APA lower Orakzai, also manifests that dispute between the parties was regarding shops and other property situated at Mishti Mela. The members of Jirga unanimously decided the matter in favour of 1st party (defendants No.1 to 6 in instant case) and against the 2nd party (plaintiffs in instant case) by holding that disputed property is the ownership of 1st party and 2nd party has got no right of ownership over the same and to this effect decision was also reduced into writing on 04.09.2016. The learned APA Lower Orakzai vide judgement dated: 24.11.2016 accepted the verdict of Jirga members and decided the matter in favour of 1st party (defendants No.1 to 6). No appeal against the said judgement was preferred by the 2nd party (plaintiffs) and thus the judgement dated: 24.11.2016 has attained finality.

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The description of disputed property mentioned in the plaint in the instant case reflects that plaintiffs are seeking declaration, partition, permanent and mandatory injunction

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regarding shops and landed property situated at Mishti Mela. The comparison of matter in issue instant case with matter in controversy in previous case shows that controversy between the parties in the previous case and in the instant case is the same, which has been finally determined by the competent court of jurisdiction in previous round of litigation under FCR vide judgement dated: 24.11.2016. Hence, plaintiffs are precluded u/s 11 CPC read with Article 264 of Constitution and S-6 of General Clauses Act, to file instant suit.

In view of above discussion, application in hand is accepted and plaint is rejected u/o-7 r-11 CPC. No order as to cost.

File be consigned to record room after necessary completion and compilation.

Announced
21.01.2021

FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela
Farman Ullah
Senior Civil Judge,
Orakzai at Baber Mela.