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IN THE COURT OF REHMAT ULLAH WAZIR,
CIVIL JUDGE-I, ORAKZAI AT BABER MELA

Civil Suit No. 59/1 of 2020
Date of Institution: 11/01/2020
Date of Decision: 01/04/2021

1. **Haji Zarman Shah S/O Akbar Shah**
Resident of Qoum Sheikhan, Tappa Umar Zai, Tehsil & District Orakzai.
(Plaintiff)

VERSUS

1. Mehboob Ali S/O Raees Khan
 2. Haji Rehmat S/O Azal Jan, R/O Rabia Khel, Tappa Piyao Khel, Orakzai.
 3. DC, Orakzai.
 4. Provincial Government through Secretary Mines and Minerals, KPK, Peshawar.
 5. Assistant Director Mines and Minerals, Orakzai.
 6. Director Mines and Minerals, Kohat Division, Kohat.
- (Defendants)

**SUIT FOR DECLARATION CUM PERPETUAL AND
MANDATORY INJUNCTION**

SUMMARY JUDGEMENT:

01.04.2021

1. Brief facts of the case in hand are that plaintiff filed the instant suit for declaration cum perpetual and mandatory injunction to the effect that there was a partnership between the plaintiff and the father of the defendant no. 01 and the brother of the defendant no. 02, namely Haji Raees Khan, w.r.t coal mining in which the plaintiff was the owner of 75% shares while this Raees Khan was the owner of 25% shares. That accordingly, the profit and loss would be shared by the parties. That in the year 2008, due to law & order situation in

the district Orakzai, the suit mining caught fire and resultantly the business was stopped. That after restoration of law & order situation in the year 2017, the defendant no. 01 & 02 were asked for restarting of the mining but they refused. Thereafter, the plaintiff spent a huge money over the restarting of the business. That after success, these defendants including the defendant no. 03, the DC, Orakzai are interfering in the coal mining and have stopped the same. That the defendants were asked not to do the aforesaid acts, but they refused, hence, the present suit.

2. Defendants were summoned, in whom all the defendants contested the suit by filing their written statements, but later on, the plaintiff filed an application for permission to file amended plaint, which was accordingly accepted and the plaintiff filed amended plaint. Thereafter, notice for summary disposal of the instant case was given to the parties on 11.03.2021 but during arguments, it was revealed that the defendants have not filed their amended written statements and accordingly, they were directed to file the same. The defendants no. 03 to 06 filed the written statement on the previous date while the defendants no. 01 & 02 filed the written statement today.

3. Both the counsel for the parties were given once again a notice for summary disposal of the instant case, to which both the counsel for the parties replied that they have already produced their respective documents and have argued their pleadings so, they don't want to go through further proceedings.
4. During the scheduling conference within the meaning of order IX-A of CPC, it was revealed that the matter involved in the instant case is very petty in nature, which can be decided through summary judgement as per relevant record. To this effect notice was given to the parties that why not the case in hand be decided on the basis of available record without recording lengthy evidence, as the primary aim and objective of Amended Management Rules in CPC is, "to

enable the court to-


- a. Deal with the cases justly and fairly;
- b. Encourage parties to alternate dispute resolution procedure if it considers appropriate;
- c. Save expense and time both of courts and litigants; and
- d. Enforce compliance with provisions of this Code."

5. Learned counsel for the parties heard and record gone through.
6. The written statements submitted by the defendants, wherein the grounds of the bar of jurisdiction of this court u/s 102 (6) of the KPK Mines and Minerals Act, 2017 and the bar of

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subletting of the liberties, powers, privileges and obligations by a holder of a mineral title to a third person u/s 54 of the KPK Mines and Minerals Act, 2017, have been taken.

7. Record reveals that plaintiff through instant suit is seeking declaration cum perpetual and mandatory injunction to the effect that there was a partnership between the plaintiff and the father of the defendant no. 01 and the brother of the defendant no. 02, namely Haji Raees Khan, w.r.t coal mining in which the plaintiff was the owner of 75% shares while this Raees Khan was the owner of 25% shares. That accordingly, the profit and loss would be shared by the parties. That in the year 2008, due to law & order situation in the district Orakzai, the suit mining caught fire and resultantly the business was stopped. That after restoration of law & order situation in the year 2017, the defendant no. 01 & 02 were asked for restarting of the mining but they refused. Thereafter, the plaintiff spent a huge money over the restarting of the business. That after success, these defendants including the defendant no. 03, the DC, Orakzai are interfering in the coal mining and have stopped the same. That the defendants were asked not to do the aforesaid acts, but they refused, hence, the present suit.


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8. In short, the plaintiff is doing coal mining and wants to restrain the defendants from any type of interference despite the fact that he is not a lease holder rather admittedly someone Fazal Hakim has sublet the suit lease to both the parties but sublet of mine is strictly prohibited u/s 54 of the KPK Mines and Minerals Act, 2017, where it is provided that “(1). No holder of a mineral title shall transfer the liberties, powers, privileges and obligations in the form of subletting, under the license or lease, as the case may be, to a third party in respect of the area demised under the mineral title.

(2). The mineral title shall be cancelled by the Licensing Authority, if the provisions of Sub-Section (1) are violated”.

Thus, in the light of the aforesaid section of the Ibid Act, the contract of the parties with the lease holder is void ab-initio and something illegal.

Furthermore, according to the KPK Minerals Sector Governance Act, 2017 and the KPK Minerals Sector Governance (Amendment) Act, 2019, there is a complete scheme and frame work of things to be done has been provided in the said Acts and also laid down means and procedures for protection of rights claimed by the interested persons. They can approach for redressal of grievances to the licensing authority as envisaged in the section 02 (U) of the

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KPK Minerals Governance Act, 2017 and then to the Appellate Tribunal as envisaged in the section 05 (A) of the KPK Minerals Governance (Amendment Act, 2019). Further, u/s 102 (6), it is provided that;

“notwithstanding anything provided in the other law for the time being in force, no court shall have jurisdiction to entertain or to adjudicate upon any matter to which the Appellate Authority under this Act is empowered to dispose off or to determine the validity of anything done or an order passed by it”.

10. Thus, jurisdiction of the Civil Court is specifically barred under the said provisions.

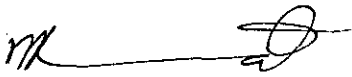
11. Consequently, upon what has been discussed above, the parties are doing illegal mining and the plaintiff wants to carry on with the illegal mining through the order of the court despite the fact that the jurisdiction of this court is specifically barred under the relevant law, therefore, by exercising the jurisdiction vested in this court under order IX-A and XV-A of CPC, suit of the plaintiff is hereby *dismissed summarily*.

12. No order as to costs.


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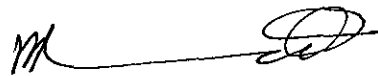
13. File be consigned to the record room after its necessary completion and compilation.

Announced
01.04.2021


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CERTIFICATE

Certified that this judgment of mine consists of **07** (Seven) pages, each has been checked, corrected where necessary and signed by me.


(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai (at Baber Mela) „