


Court of Additional Sessions Judge, Orakzai at Baber Mela

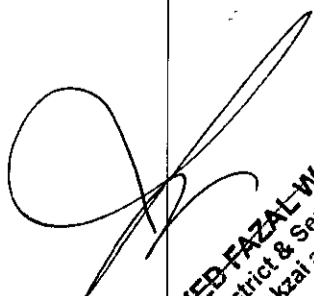
Case Title Haji Gulwar Jan ^{etc} vs Ghulam Habib etc

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order No.9	02.07.2021	<p>No one is before the Court despite repeated calls and reasonable wait; therefore, proceed with the case for being fixed for determination of the question of maintainability.</p> <p>2. Complainants are of the stance that they are owners in possession of the property on the strength of Judgement and Decree of the Civil Court passed in suit No. 23/1 of 2021 decided on 10-02-2021. Respondents equipped with Weapons with the active assistance of other persons illegally grabbed the property and threatened them of dire consequences if resisted. This matter was clutched in Complaint under Section-3,4,7 and 8 of the Illegal Dispossession Act, 2005, which is under consideration.</p> <p>3. One of the complainant Haji Gul Warjan was examined on oath and matter was referred to the SHO of Police Station Kalaya for investigation. Investigation Report dated: 17-06-2021 was presented along with its enclosures and counsel for complainant was heard for determination of the maintainability of complaint.</p> <p>4. For taking cognizance of complaint under Section-3 of the Illegal Dispossession Act, 2005, this Court being trial court is under legal obligation to see that:</p> <ul style="list-style-type: none"> i. whether complainant was in possession of disputed property under proper legal cover; ii. whether he has been dispossessed by use of force; iii. whether accused has got no title in disputed property;


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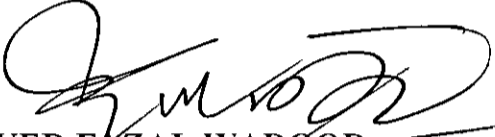
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		<p>iv. whether accused party belongs to group of land grabbers and;</p> <p>v. whether complaint discloses unlawful act and criminal intent. Complainant, at initial stage, has to satisfy court about existence of every ingredient of alleged offence. If make out a triable case, court should proceed with the matter by taking cognizance of offence under Section-3 of Illegal Dispossession Act, 2005. Without the same, trial court is not obliged to summon accused and record evidence like ordinary criminal trial. (2015 PCr.L.J.308)</p> <p>5. The bare reading of the complaint reflects that no specifications of disputed property has been mentioned therein. Complainant is also silent about the mode and manner of alleged dispossession. Even the title documents for establishing ownership have not been annexed with complaint except the copy of Consent Decree; that too, with no explanation or justification of opting presentation of the complaint instead of filing execution petition. The case file is also silent about the possession of complainants before their alleged dispossession. The investigation report of the SHO of Police Station Kalaya coupled with statements of the local elders as well as compromise deed are also negating any type of dispossession of complainants.</p> <p>6. While considering the averments made in the complaint, the statement of the complainant recorded on oath and</p>


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		<p>investigation report and for the reasons discussed above, there is no case existing on the face of it; therefore, instant complaint is dismissed being not maintainable.</p> <p>7. File be consigned to record room after its necessary completion and compilation within span allowed for.</p> <p><u>Announced</u> 02-07-2021</p> <p> SYED FAZAL WADOOD, Additional Sessions Judge, Orakzai at Baber Mela</p>