

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO. : 15/13 OF 2021
DATE OF INSTITUTION : 17.03.2021
DATE OF DECISION : 12.06.2021

RIQAB ALI S/O ABDUL HASSAN, R/O KALAT, TEHSIL LOWER,
DISTRICT ORAKZAI
.....(APPELLANT)

-VERSUS-

HAJI NIAZ MAST S/O ZAR MAST, R/O MALO SAR VILLAGE
LAGHAR, TEHIL LOWER UTMAN KHEL DISTRICT ORAKZAI AND
TWENTY-SIX OTHERS
..... (RESPONDENTS)

Present: Syed Hamza Gilani Advocate for appellant.
: Fazal Haq Koh Damani Advocate for respondents no. 1, 2, 4, 6, 7, 9
to 11, 15 to 17 and 21
: Mudassir Jalil Advocate for respondents no. 3, 5, 8, 13, 14, 18 to 20
: District Attorney for respondents no. 22 to 26

CROSS-OBJECTIONS

CIVIL APPEAL NO. : 22/13 OF 2021
DATE OF INSTITUTION : 16.04.2021
DATE OF DECISION : 07.06.2021

MUHAMMADA KHAN S/O SHARBAT KHAN, R/O VILLAGE
MILOSAR LAGHAR KALAY, TEHSIL LOWER, DISTRICT ORAKZAI
AND FIFTEEN OTHERS (DEFENDANTS NO. 3, 8, 13, 14, 18, 19, 20, AND
LRS OF DEFENDANTS NO. 5 IN CIVIL SUIT)
.....(APPELLANTS)

-VERSUS-

HAJI NIAZ MAST S/O ZAR MAST, R/O MALO SAR VILLAGE
LAGHAR, TEHIL LOWER UTMAN KHEL DISTRICT ORAKZAI AND
TWELVE OTHERS (DEFENDANTS NO. 1, 2, 4, 6, 7, 9, 10, 11, 12, 15, 16, 17, 21
TO 27 AND PLAINTIFF IN CIVIL SUIT)
..... (RESPONDENTS)

Present: Mudassir Jalil Advocate for appellants.
: Syed Hamza Gilani
: Fazal Haq Koh Damani Advocates for respondents no. 1 to 13
and 20 (defendants no. 2, 4, 6, 7, 9 to 11, 15 to 17, 21 and 27 in
civil suit)
: District Attorney for respondents no. 14 to 19 (defendants no. 22
to 26 in civil suit)

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Orakzai at Baber Meja
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JUDGEMENT
12.06.2021

Impugned herein is the order dated 17.02.2021 of learned CJ-I, Orakzai vide which plaint of the plaintiff in a civil suit mentioned above has been rejected under order 7 rule 11 of the CPC.

2. In a suit before the trial court, appellant/plaintiff sought specific performance of agreement deed dated 16.12.2016 vide which respondents/defendants no. 1 to 5, being elders of the Laghar Tabar Utman Khel tribe, had agreed to lease out 926 acres of land situated at Utman Khel, Pitaw Mela Lower Orakzai for coal mining, on the basis of which the appellant/plaintiff applied to the Director Minerals, FDA for grant of prospecting license. Accordingly, FATA Development Authority vide its letter dated 08.02.2017 forwarded the case to the then PA, Orakzai for executing a qoumi agreement in Ijlas-e-aam. In pursuance of which the AC, Lower Orakzai on 10.01.2019 hold Ijlas-e-aam where the participants of the ijlas including respondents/defendants no. 1 to 5 refused to lease out the area to the appellant/plaintiff. Meanwhile, the tribe executed qoumi agreement in favour of respondent no. 27 whose case was forwarded by respondent no. 22 for lease of the subject mining. That the appellant/plaintiff approached the respondents/defendants no. 1 to 5 to admit his claim but they refused, hence the subject suit. Respondents/defendants were summoned, out of whom respondents no. 1, 2, 4, 6, 7, 9, 10, 11,

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15, 16, 17, 20, 21 and 27 attended the court and submitted application for rejection of plaint. The learned trial court heard the arguments and on acceptance of the application, rejected the plaint, hence the present appeal.

3. Defendants no. 3, 8, 13, 14, 18, 19, 20, and LRs of defendants no. 5 through cross-objections have also objected to the validity of impugned order mainly on the grounds that they have been proceeded ex-parte and have not been provided opportunity of submission of written statement, and as such condemned unheard.

4. The appeal as well as the cross-objection being result of the same order are taken together for disposal.

5. I heard the arguments and perused the record.

6. Perusal of the case file shows that the agreement deed dated 25.11.2016 between the appellant/plaintiff and respondents no. 1 to 5 is admitted on record but there is nothing available on file which would show that the respondents no. 1 to 5 expressly or impliedly were authorised by the tribe to enter into such an agreement on behalf of it. Similarly, the appellant/plaintiff has also annexed with his application submitted to the then FDA Directorate of Minerals for grant of prospecting license, the challan of processing fee of 2050/-, a rough sketch showing the area applied for prospecting license of coal and the agreement deed dated 25.11.2016 which have been sent by the Deputy Director (MCC) to the then Political Agent

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for holding Ijlas-e-aam and executing a qoumi agreement but no such agreement was executed by the qoum (tribe) in Ijlas-e-aam held on 10.01.2019 where the tribe has refused to execute qoumi agreement with the appellant/plaintiff regarding the subject mining, therefore, the appellant/plaintiff cannot claim a prospecting license on the basis of suit agreement deed. As per Standard Operating Procedure approved by the Governor of KP prevalent at that time for regulating the issuance of NOC by the then Political Agent, the appellant/plaintiff must have a qoumi agreement executed in Ijlas-e-aam by the whole tribe, in his favour. But as no such an agreement was executed by the qoum in his favour, therefore, he has got no cause of action to claim issuance of NOC in his favour on the basis of suit agreement deed.

7. So for the jurisdiction of the civil court is concerned, as per section 102 (1) of the KP Mineral Governance Act, 2017, any person aggrieved of an order of the Licensing Authority may file an appeal to the Appellate Authority within 30 days of the communication of the impugned order. Section 102 (6) of the ibid Act bars the jurisdiction of civil court to entertain or to adjudicate upon any matter to which the Appellate Authority under the ibid Act is empowered to disposed-off or to determine the validity of anything done or an order passed by it.

In the instant case neither any order has been passed by the Licensing Authority in respect of application of the

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appellant/plaintiff for grant of prospecting license nor any other order of the Licensing Authority is challenged through the instant suit, therefore, the jurisdiction of the civil court in respect of the specific performance of an agreement deed between the appellant/plaintiff and private respondents no. 1 to 5, is not barred.

8. In the view of what is discussed above, though the suit of the appellant/plaintiff is not barred by law as declared by the learned trial court, however as the suit agreement deed dated 30.11.2016 is neither executable nor the appellant/plaintiff can claim issuance of prospecting license on the basis of said agreement, therefore, the appellant/plaintiff has got no cause of action to the extent of specific performance of agreement deed mentioned above.

9. Thus, the learned trial court in these circumstances has rightly dismissed the suit of the appellant/plaintiff. The impugned judgement and decree of the trial court in the circumstances is unexceptional and not open to any interference by this court. Accordingly, the appeal in hand as well as cross-objections resultantly stand dismissed being meritless with no order to cost. Copy of this be placed on cross-objections file. File of the trial court be returned while file of this court be consigned to Record Room after its completion and compilation.

Announced
12.06.2021



(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela