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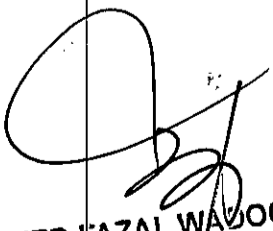
**IN THE COURT OF ADDITIONAL DISTRICT JUDGE ORAKZAI, AT BABAR MELA**

Civil Misc. Appeal No. 11/14 of 2023

Date of institution: 18.07.2023

**Jamal Khan Vs Khameen Gul 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-07	18/10/2023	<p>Appellant along with Mr. Asad Naeem Advocate and Mr. Arif Jan Afridi and respondents along with Mr. Insaf Ali Advocate are in attendance. Arguments heard; whereas, this is the disposal of captioned Civil Misc. Appeal.</p> <p>2. This Miscellaneous Civil Appeal calls in question the validity and propriety of the Order dated 05.07.2023, passed by learned Civil Judge-II, Kalaya, Orakzai, in Civil Suit titled "Jamal Khan vs Khameen Gul etc"; whereby, petition for grant of permission to cultivate the suit property has partially been allowed.</p> <p>3. The brief facts of the suit pending trial in the Civil Court are such that ownership and possession of landed property situated at Lerri, Lower Orakzai is apple of discard between the parties. The petition for grant of permission to cultivate the property in dispute has partially been accepted against which plaintiffs as appellants are before this Court in instant Civil Misc Appeal. Defendants have preferred cross objection alleging therein that they are possessors and had cultivated the disputed land. Allowing the plaintiffs for cultivating the property for next time is nullity in the eye of law that needs interference.</p> <p>4. Mr. Asad Naeem Advocate and Mr. Arif Jan Afridi representing Appellants stated at the bar that they are not pressing appeal if commission is appointed for getting on the spot information about matter under adjudication and thereafter decide the application afresh. Mr. Insaf Ali representing respondents as well the objectors of the pending cross objection is agreed the proposal of the opposite counsel at the bar and requested the Court to dispose of both the appeal and cross objection on mutual</p>

  
**SAYED FAZAL WAJOOD**  
Additional Sessions Judge

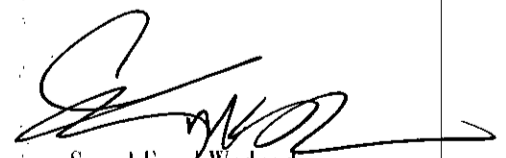
consent.

5. Parties before the Court have agreed that commission may be appointed to get on the spot information before disposal of application for grant of permission to cultivate the suit property. The question involved in the grant and withholding of permission to cultivate the property by either party is factual question needs on the spot information which has also been agreed by counsel representing both the parties. Counsel representing parties had requested to dispose of the pending appeal and cross objection on mutual consent accordingly.

6. In the light of above discussed facts and circumstances of the case followed by mutual consent of the parties and without touching merits of the case, this Court holds that commission with predetermined terms of reference shall be appointed for local investigation through getting on the spot information required for disposal of such petition which may also be helpful in final determination of the matter in issue of the suit.

7. Instant Civil Miscellaneous Appeal and Cross Objection are being disposed of accordingly. Consequently the impugned Order dated 05-07-2023 is set aside and the case is remanded back to the learned Trial Court for appointment of commission and further proceedings in accordance with the determination recorded in foregoing paragraph. As record has not been requisitioned for being matter of Civil Misc Appeal; therefore, copy of this Judgement be sent to learned Trial Judge; while, file of this Court be consigned to the District Record Room Orakzai after completion and compilation, within the span allowed for.

**Announced in open Court**

  
Sayed Fazal Wadood,  
AD&SJ, Orakzai at Baber Mela