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

CIVIL APPEAL NO. : 25/13 OF 2021  
DATE OF INSTITUTION : 18.05.2021  
DATE OF DECISION : 02.07.2021

HAJI ZARMAN SHAH S/O AKBAR SHAH, R/O CASTE SHEIKHAN,  
TAPA UMARZAI, DISTRICT ORAKZAI  
.....(APPELLANT)

-VERSUS-

MEHBOOB ALI S/O RAEES KHAN, R/O RABIA KHEL, TAPA  
PIYAO KHEL, DISTRICT ORAKZAI AND FIVE OTHERS  
..... (RESPONDENTS)

**Present:** Abdul Qayyum and Abid Ali Advocates for appellant.  
: Haseeb Ullah Khan Advocate for respondents no. 1  
: District Attorney for respondents no. 3 to 6

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**JUDGEMENT**  
02.07.2021

Impugned herein is order/judgement dated 01.04.2021  
of learned Civil Judge, Orakzai vide which suit of the  
appellants/plaintiffs has been summarily dismissed.

(2). In a suit for declaration-cum-perpetual injunctions, the  
appellant/plaintiff claimed that he and deceased Raees Khan, the  
father and brother of respondents/defendants no. 1 and 2  
respectively, were having a joint coal mining venture at the ratio  
of 75% and 25% shares respectively, that after the death of Raees  
Khan, respondents/defendants no. 1 and 2 stepped into the shoes  
of deceased Raees Khan and continued with the business, that in  
2008 due to law and order situation in the locality and catching  
of fire by the coal mine which continued till 2016, the mining

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activities were suspended on the spot, that in 2017 after restoration of law and order situation in the locality the respondents/defendants no. 1 and 2, through the elders of the locality, were approached by the appellant/plaintiff to join him in resumption of the business but they refused whereafter the appellant/plaintiff restored the mining activities with a cost of 05/06 crores, that after restoration of business the respondents/defendants wanted to enforce the previous partnership and made the appellant/plaintiff forcefully close the mining activities through official respondent/defendant no. 3. In view of the aforementioned facts, appellant/plaintiff sought declaration to the fact that he is owner in possession of the business with permanent injunctions to restrain the respondents/defendants from making interference in the business of the appellant/plaintiff.

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(3). The suit was contested by the respondents/defendants no. 1 and 2 by submission of written statement, mainly on the grounds; that after the death of Raees Khan in 2005 the share of respondents/defendants no. 1 and 2 has not been paid to them, that after 2009 as a result of jirga between the parties, the appellant/plaintiff has to pay them the amount of Rs. 1,400,000/- which is still pending. The respondents/defendants admitted that the mine was closed from 2009 to 2016 but denied the factum of catching of fire by the mine and incurring of rupees 05/06 crores of cost upon resumption of the business by the

appellant/plaintiff. The respondents/defendants further contended that in 2017 they asked the appellant/plaintiff to resume the business after payment of Rs. 1,400,000/- to the respondents/defendants with deputation of a representative of respondents/defendants on the mine to watch the accounts. The official respondents/defendants also submitted written statement wherein they raised legal objections to the jurisdiction of civil court under section 69 of the Partnership Act and section 102 of the KPK Mines and Minerals Governance Act, 2017.

(4). The learned trial court vide its order dated 11.03.2020 framed the following preliminary issue;

“Whether the suit is maintainable in its present form with reference to the relief claimed?”

The learned trial court heard the arguments on the point and vide impugned order dated 01.04.2021 dismissed the suit summarily.

(5). Appellant/plaintiff being aggrieved of the impugned order/judgment filed the instant appeal. Arguments heard and record perused.

(6). It is evident from the record that the learned trial court vide its impugned order has non-suited the appellant/plaintiff on the ground that he is not a lease holder rather the subject lease has been sublet to him by one, Fazal Hakim, the original lease holder whereas as per provision of section 54 of the KPK Mines and Minerals Act, 2017, subletting of lease is illegal, therefore

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the contract of parties regarding an illegal subject matter is void-ab-initio. Second that as per provisions of section 2 (u) of KPK Minerals Governance Act, 2017 any dispute between the parties regarding mineral activities should be heard by the Licensing Authority and the appeal lies to Appellate Tribunal u/s 5 (a) of the KPK Minerals Governance Amendment Act, 2019 and that the jurisdiction of civil court is barred u/s 102 (6) of the ibid amended Act of 2019.

(7). It is also evident from the record that respondents/defendants no. 1 and 2 on 04.02.2020 had submitted application under order 7 rule 11 of the CPC for rejection of plaint wherein they had objected to the jurisdiction of the civil court u/s 102 (6) of the ibid amended Act of 2019 which was decided by the learned trial court on 12.11.2020 as follow;

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*“Firstly, I would take the maintainability of the instant suit for which I am of the opinion that the bare reading of the plaint discloses a cause of action against the defendants and the same cannot be rejected without recording pro and contra evidence. Thus, the suit of the plaintiff is declared as maintainable”.*

(8). Hence, in the light of aforementioned order of the learned trial court once he decided the fate of case being maintainable requiring pro and contra evidence, the subsequent order of non-suiting the appellant/plaintiff under the same

provision of law, seems result of non-reading of the available material on file.

(9). Even otherwise the question of applicability of section 54 of the KPK Mineral Governance Act, 2017, would be seen in the light of Schedule VIII of the KPK Mineral Governance Amendment Act, 2019 where SPECIAL PROVISIONS PERTAINING TO REGULATION OF MINERAL RESOURCES IN THE MERGED DISTRICTS AND THE SUB DIVISIONS are laid down. Rule 10 of the ibid Schedule regulates the fate of lease granted in the NMDs prior to their merger in Khyber Pakhtunkhwa. It says;

**“Any lease granted to any public organization in the Merged Districts and Sub-Divisions before their merger in Khyber Pakhtunkhwa shall continue to operate as per the terms and conditions of the agreement signed with the Mineral Directorate of Erstwhile Federally Administered Tribal Areas Development Authority.”**

In view of the aforementioned provision of law, admittedly the lease has been issued to the original lease holder prior to merger of the then FATA with KP and the question that whether the original lease holder was allowed to sublet the lease or otherwise, would be governed by the agreement signed by the original lease holder with the then Mineral Directorate of Erstwhile Federally Administered Tribal Areas Development Authority. The said agreement is not available on file and this

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question can be decided after recording of pro and contra evidence.

So far, the bar of 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 the appellant/plaintiff has sought declaration-cum-perpetual injunction against the respondents/defendants no. 1 and 2 on the basis of partnership between the parties. The appellant/plaintiff has nowhere challenged any order of the Licensing Authority against which he should have filed appeal to the Appellate Authority. During the course of arguments learned counsel of respondents/defendants no. 1 and 2 failed to point out any adverse order of the Licensing Authority under section 102 (1) against which the appellant/plaintiff should have filed appeal u/s 102 (6) of the KPK Mineral Sector Governance Act, 2017 instead of approaching the civil court.

(10). Hence, in the light of aforementioned discussion, the impugned order/judgment of the learned trial court is the result

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of non-reading of material available on file, therefore not maintainable. Resultantly, the impugned order/judgement dated 01.04.2021 of learned Civil Judge-I, Orakzai is set aside. The case is remanded back to the learned trial court with the directions to decide the lis on merits after recording of pro and contra evidence. No order as to cost. File of the trial court be returned with a copy of this order while file of this court be consigned to Record Room after its completion and compilation.


**Pronounced**  
02.07.2021

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

**CERTIFICATE**

Certified that this judgment consists of seven (07) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 02.07.2021

  
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