

In the name of Almighty Allah who has got unlimited Jurisdiction over each and every subject of the universe and beyond.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, ORAKZAI.

Civil Misc. Appeal No: 01/14 of 2021
Date of Institution: 09.06.2021
Date of Decision: 27.07.2021

Toorak Jan s/o Mustajab Khan R/O Feroz Khel, Jesal Khel, Toor Khawri, Tehsil Lower Orakzai, District Orakzai.

..... (Appellant/plaintiff)

VERSUS

Saberin s/o Fazal Rehman R/O Feroz Khel, Jesal Khel, Toor Khawri, Tehsil Lower Orakzai, District

..... (Respondent/Defendant)

Civil Misc. Appeal against Order dated 07-04-2021, passed by learned Civil Judge, Orakzai; whereby, application for appointment of local commission was turned down.

Attendance:

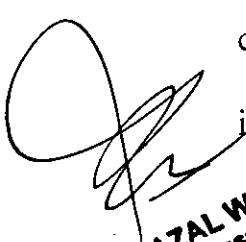
Mr. Khalid Mehmood Khan Advocate, counsel for appellant/plaintiff.
Mr. Sana Ullah Khan Advocate, counsel for Respondent/defendant.

JUDGMENT

27th July, 2021

Misc. Civil Appeal is presented by the appellant/plaintiff challenging therein, the Order dated 07-04-2021 passed in Civil Suit bearing No. 98/1 of 2020, by learned Civil Judge, Orakzai; whereby, application for appointment of local commission has been dismissed.

2. Mr. Khalid Mehmood Khan Advocate representing appellant/plaintiff has argued that the gutter of the dwelling house owned and possessed by the plaintiff has been blocked by the defendants that created havoc in the street with unhygienic atmosphere full of rankness. Local Investigation through commission is necessary for reaching to the just conclusion of the matter in issue; learned counsel concluded.


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3. Mr. Sana Ullah Khan, Advocate representing respondents is of the stance that plaintiff is under the legal to discharge for proving his case. The appointment of commission will amount to collect evidence for the plaintiff which is neither required nor necessary; learned counsel stated.

4. On examination of the record available, the matter in issue between the parties is that of appointment of local commission. Order-26 Rule-9 of the Code of Civil Procedure, 1908 is dealing the subject of appointment of commission for local investigation; which is reproduced herein below:

“Commissions to make local investigations. In any suit in which the Court deems a local investigation to be requisite or proper for the purpose or elucidating any matter in dispute, or of ascertaining the market value of any property, or the amount or any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court.

Provided that, where the (Provincial Government) has made rules as to the person to whom such commission shall be issued, the Court shall be bound by such rules”.

5. The matter in issue between the parties in pending civil suit as that of the blockage of the drain. This issue cannot be decided on direct evidence as getting on the spot information is pivotal in reaching to the just conclusion of the matter in issue. Where obtaining on the spot information is necessary, the Court is required to appoint local commission (1998 SCMR-730).

6. For what has been discussed above, it is held that the learned Trial Court was not justified in rejecting the application for appointment of local commission. Resultantly, by accepting instant Misc. Civil Appeal, impugned Order dated 07-04-2021, passed by learned Trial Court is hereby set aside.

Learned the Trial Court shall appoint commission for local investigation of


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the questions deemed appropriate so as to get on the spot information subject to framing of issues and commencement of Trial Management.

7. Requisitioned record be returned forthwith. File of this Court be consigned to District Record Room Orakzai after necessary completion and compilation within span allowed for.

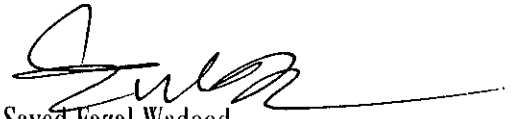
Announced
27th July, 2021



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

CERTIFICATE

Certified that this judgment is consisting of (03) pages. Each page has been read, corrected and signed by me wherever, necessary.



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