

Order-10
22/06/2021

Plaintiff present in person.

Defendant No. 6 present in person and as attorney for remaining defendants.

My this order is aimed at disposal of an application for rejection of plaint u/o 07 rule 11 CPC filed by the defendants.

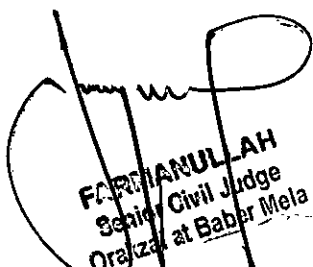
Learned counsel for the parties heard and record gone through.

Perusal of head note of plaint reveals that plaintiff through instant suit is seeking declaration to the effect that parties are co-sharer in disputed hill, which was partitioned into 04 portions in year 2008/2009 at the time of Talibanization and 1/4th share was given to the people of Lower Ayar Kalay district Orakzai but the same share was taken back by the defendants from them and cut 80/90 trees on the same. Such act of defendant is illegal and ineffective upon the rights of plaintiff, hence liable to cancellation.

Plaintiff in para Bay, Jeem and Daal of the plaint also sought permanent, mandatory injunction, possession and redemption of 80/90 trees to the effect that defendants be restrained from further transfer, interference and cutting of trees in the above-mentioned share and to pay the share of plaintiff in sold out trees.

From the head note of plaint, it is evident that plaintiff admits that the disputed hill was partitioned into 4 shares and out of which 1/4th share was given to the people of Lower Ayar Kalay district Orakzai.

From the head note of plaint it is also evident that plaintiff has no allegations against defendants that the


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share given to the plaintiff on the bases of such partition has encroached upon by the defendants or defendants are interfering and denying the share of plaintiff rather it is the allegations of plaintiff that 1/4th share given to the people of Lower Ayar Kalay district Orakzai on the basis of partition has taken back by the defendants and this act of defendants is ineffective upon the rights of plaintiff. Being such position if defendants have occupied or taken back the ~~share of~~ 1/4th share of Lower Ayar Kalay in the disputed hill in whatever manner, then in such like circumstances, people of Lower Ayar Kalay have got the locus standi and cause of action to challenge such act of defendants while plaintiff has got neither cause of action nor he has got any locus standi to challenge such act of defendants regarding the share of Lower Ayar Kalay.

Though plaintiff has not expressly challenged the previous partition of disputed hill in the head note of plaint, however, in para 3 and 4 of the plaint, it is the contention of plaintiff that the previous partition and all jirgas in respect of disputed hill were held without the consent of the plaintiff and thus ineffective upon his rights. For the moment, if it is presumed if such partition and jirgas were held without the participation and consent of plaintiff, then why he did not challenge the same in relevant forum at that time? Plaintiff has categorically stated in the plaint that such partition took place in 2008/09. Meaning thereby that plaintiff was in knowledge of partition since year 2008/09, but inspite of that he remained mum for sufficient length of time. Period provided for filing of declaratory suit under Art. 120 of Limitation Act 1908 is 06 years but plaintiff has

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filed instant suit in year 2021 by challenging the act of years 2008/09. Hence the suit of plaintiff is also time barred.

In view of above discussion, the application in hand is accepted and plaint is rejected u/o 7 rule 11 CPC. No order as to cost.

File be consigned to record room after its necessary completion and compilation.

Announced
22.06.2021

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