

FORM "A"
FORM OF ORDER SHEET

IN THE COURT OF SYED ABBAS BUKHARI, CIVIL JUDGE/JUDICIAL MAGISTRATE/CJ-II, KALAYA ORAKZAI

Serial No. of Order of Proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of Parties or Counsel where necessary.
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Order No. 11	01/11/2023	Parties present.

Vide this order I intend to dispose of instant application filed by defendant, hereinafter referred as petitioner, for rejection of plaint under Order VII, Rule 11 C.P.C.

Arguments already heard and record perused.

Stance of petitioner: Respondents have got no cause of action to file the instant suit. Furthermore, a previous suit regarding the same subject matter and same parties has been dismissed and thus respondents have not approached this court with clean hands rather has committed fraud with this court by concealing real facts. Hence prayed that the application in hand may kindly be allowed and instant plaint may kindly be rejected under Order VII Rule 11 C.P.C.

Stance of Respondents: Respondents have got a cause of action. Nothing has been concealed from this court. Due to institution of prior suit, instant suit is not liable to be rejected rather pro and contra evidence is necessary in the instant suit. Application in hand is pre-mature, hence may kindly be dismissed with costs.

Brief Facts: Brief facts of the case are that previously one Amin Ali s/o Suleman Ali filed an application before APA Orakzai against present petitioner for possession of suit property and accordingly vide Judgment dated: 08.09.2016, APA Orakzai decided the matter in favour of said Amin Ali. Feeling aggrieved of the judgment dated: 08.09.2016 of APA Orakzai, the present petitioner

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CIVIL JUDGE/JM-II
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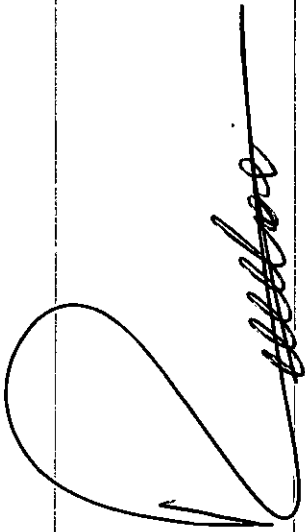
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preferred an appeal no. 78/2017 before Commissioner FCR Kohat Division Kohat and accordingly said appeal was dismissed by Commissioner FCR Kohat Division Kohat vide order dated: 17.08.2017. Feeling aggrieved of the order dated: 17.08.2017 of Commissioner FCR Kohat Division Kohat, the present petitioner filed revision petitioner before FATA Tribunal Peshawar and accordingly FATA Tribunal Peshawar vide its order dated: 22.02.2018 allowed the revision petition filed by the present petitioner and by setting aside impugned orders/judgments of subordinate courts, remanded back the case to the trial court/APA Orakzai to the decide the matter afresh after compliance of the provision contained in section 8 FCR. However after remand of the case, the merger of FATA took place and accordingly the matter was referred to civil court by APA Orakzai. Accordingly vide order dated: 03.10.2019 the learned Civil Judge-II Orakzai held that as FCR has been abolished and the same is no more in field, hence the case pending before the court is not maintainable having no legal force, thus disposed of. However, parties were directed to submit their respective pleadings as per law for the time being enforced. Thereafter in light of order dated: 03.10.2019 of learned Civil Judge-II Orakzai, one Hashim Ali, predecessor of present respondents, filed suit no. 14/1 titled as "**Hashim Ali vs Syed Ameer Jan**", which was subsequently rejected under Order VII Rule 11 C.P.C. filed by present petitioner, by learned Senior Civil Judge Orakzai vide order dated: 28.02.2023.



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Court findings and observations: Now on perusal of

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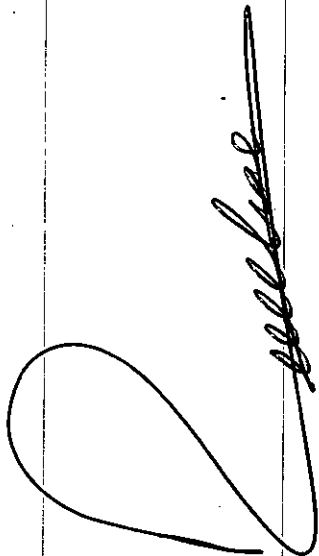
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the record and valuable assistance of both the learned
counsel for the parties, this court is of the humble view
that admittedly the institution of prior suit by the
predecessor of present respondents has not been denied
by the respondents in their replication. Furthermore, it is
also evident from the record that the prior suit, filed by
the predecessor of present respondents, was rejected
under Order VII Rule 11 C.P.C. Accordingly this court
has to ascertain that as to whether the parties and subject
matter in both the prior suit and instant suit are same or
otherwise. In given circumstances, perusal of the record
of suit no.14/1 (prior suit) would reveal that same was
initially filed by one Hashim Ali, predecessor of present
respondents and after his death during the pendency of
suit, present respondents were impleaded in the column
of plaintiffs as his legal heirs vide order no.26 dated:
04.08.2022. Hence parties in both the prior as well as
instant suit are one and the same. Furthermore, as for as
the subject matter of both the suits in question is
concerned, it is pertinent to mention here that prior suit
was filed in respect of the property measuring 07-K 5.25-
M situated Da Ghari Rawaz. On the other hand perusal
of the instant suit would reveal that the same has also
been filed in respect of property measuring 07-K 5.25-M
situated Da Ghari Rawaz, hence the subject matter in the
prior suit as well as the instant suit is also one and the
same. Furthermore, as for as the relief/prayer in both the
suits is concerned, it is pertinent to mention here that
both the suits were filed for declaration cum perpetual
injunction in respect of the suit property. In given



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Civil Judge (M-II)
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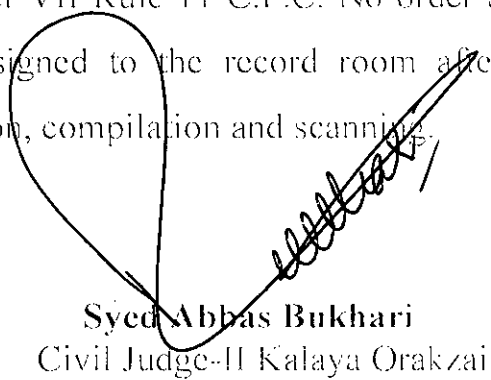
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circumstances, this court is of the humble view that as the relief claimed, subject matter and parties in both the prior suit as well as the instant suit are same, hence the respondents should have challenged the order dated: 28.02.2023 of learned Senior Civil Judge Orakzai, passed in suit no. 14/1 (prior suit) instead of filing instant suit.

Court Verdict: In light of what has been discussed above, as plaintiffs have got no cause of action to file the instant suit, hence accordingly the paint in hand is hereby rejected under Order VII Rule 11 C.P.C. No order as to costs. File be consigned to the record room after its necessary completion, compilation and scanning.

Announced
01.11.2023



Syed Abbas Bukhari
Civil Judge-II Kalaya Orakzai