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**Miqdad Ali and others Vs Hamid Hussain and others**

**Order...24**  
16.11.2023

**Present:**

Plaintiffs through attorney along with counsel.

Defendant No.12, 15 & 17 in person while defendant No.10, 11, 13, 14 and 16 through attorney along with counsel.


Defendant No.19 in person and as attorney for defendant No.18.

Defendant No.20 & 21 through District Attorney.

Defendant No.18 and 19 submitted written statement which is placed on file.

Counsel for the defendants argued an application Under Order 7 Rule 11 CPC while counsel for the plaintiffs have already argued the same previously.

File to come up for order on the aforementioned application on **27.11.2023.**

  
**Sami Ullah**  
Civil Judge-I,  
Orakzai (at Baber Mela)

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27.11.2023

**Present:**


Plaintiffs through attorney.

Defendant No.12 &15 in person.

Arguments on application already heard.

1. This order shall dispose of an application submitted by defendants for rejection of plaint under Order-VII Rule 11 CPC. The plaintiffs/respondents contested the application by filing reply.
2. Brief facts of the case are that plaintiffs/respondents filed the instant suit for deceleration-cum perpetual mandatory injunction to the effect that they are in possession of their houses and landed property fully detailed in the head note of the pliant. That defendants have no right to deny the legal rights of plaintiffs and start mining activities without

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**Sami Ullah**  
Civil Judge/JM-I  
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the permission of the plaintiffs and the act of defendants denying the legal rights of plaintiffs is illegal and against the law. The plaintiffs also sought recovery of 22 lacs rupees in lieu of compensation received by the defendants for providing joint land for construction of a government installation. That defendants be restrained from denying the rights of plaintiffs and that defendants were asked time and again to admit the legal claim of plaintiffs but in vain, hence, the present suit.

3. Defendants were summoned and they appeared before the court by submitting written statement and reply. In the written statement, contesting defendants have denied the claim of plaintiffs contending that plaintiffs do not belong to the area rather they are tenants/Hamsayagan, therefore, they have no right/share in the suit property.
4. Through application in hand, petitioners/defendants have sought rejection of suit contending that plaintiffs have no cause of action to file the instant suit and that plaintiffs are seeking relief/declaration in respect of mines and minerals; therefore, suit of plaintiffs is barred by law.
5. The application was contested by plaintiffs/respondents through written replications alleging that plaintiffs have got cause of action and that this court has got jurisdiction in the matter.
6. Detailed arguments on application already heard and record perused.
7. Perusal of case file reveals that the plaintiffs has sought declaration to the effect that they are possessors of their houses and landed property from time of their ancestors and they also have share in the produce of the mines and amount of compensation received in lieu of land which have been acquired from the defendants for construction a government establishment.
8. This court is of the view after keeping in consideration the relevant law and the instant pleadings that as per Section 2(A) of The Khyber

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Pakhtunkhwa Mineral Sector Governance (Amendment) Act, 2019, all mines and minerals shall be and shall always be deemed to have been the property of Government and Government shall have all powers necessary for the proper enjoyment of its rights thereto.

9. Moreover, the section 102(1) of the Khyber-Pakhtunkhwa Mines and Minerals Act, 2017 provides for appeal to appellate authority against any impugned order of the Licensing authority. Section 102 and specifically section 102(6) of the Act ibid bars the jurisdiction of civil court to entertain and adjudicate upon any matter against an order of the licensing authority.

10. Section 102 of the KP Mines and Mineral Act 2017 connotes:

**102. Appeal: - (1).**

1. *If a person is aggrieved by an order of the licensing authority, he may within thirty (30) days of the communication of the impugned order on payment of prescribed fee, prefer an appeal to the appellate authority.*
2. *The decision of the appellate authority, on such appeal shall be final.*

Similarly, sub section 6 of section 102 of KP mines and Mineral Act, 2017 connotes: -

*Notwithstanding anything provided in any other law for the time being in force, no court shall have jurisdiction to entertain or to adjudicate upon any matter to which the appellate authority under this act is empowered to dispose off or to determine the validity of anything done or an order passed by it.*

11. In the instant case the plaintiffs have filed the instant suit mainly on the pretext of claiming share in the minerals regarding which license has been granted by the competent authority without recourse to the proper mechanism provided by the Act ibid.

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*Sami Ullah*  
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12. Moreover, recovery of 22 lac rupees in compensation received by the defendants in prayer "bay" has also been sought from this court. Land Acquisition Act, 1894 deals with the matter and Section 52 of the Act Ibid bars the jurisdiction of this court to adjudicate upon such matters.
13. Further, the procedure provided by the Act ibid is such that an objector/aggrieved person is supposed to move to the office of the collector in case of any grievance against Award so granted. And then the collector may file reference in the court of Referee Judge as provided in section 18, 30 and 52 of the Act ibid. But in the instant case the plaintiff didn't follow the mechanism provided by the law and have brought the suit in this court. This court lack jurisdiction in the present suit as alternate procedure is provided by the Act ibid.
14. The object of exercise of power Under Order-VII, Rule-11 of Civil Procedure Code, 1908, is to bring an end to the incompetent suits at the earliest to avoid wastage of time and on account of some legal impediments full-fledged trial would be futile exercise
15. Hence, in the light of aforementioned discussion, the suit of the plaintiffs is barred by law as provided by section 102(6) of Khyber Pakhtunkhwa Mines and Minerals Act, 2017 and section 52 of land acquisition Act, 1894. Resultantly, the instant application filed by defendants/petitioners under Order-VII Rule 11 CPC order stands **Accepted** and suit of the plaintiffs is Rejected.
16. Cost to follow the events.
17. File be consigned to record room after necessary completion and compilation.

Announced

27.11.2023

  
**Sami Ullah**  
Civil Judge-I,  
Orakzai (At Baber Mela)