

In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI

Civil Appeal No. CA-1/13 of 2021

Date of institution: 05.08.2021

Date of decision: 03.11.2021

Muzamil Hassan son of Bait ul Hassan and five others, all residents of
Qaum Bar Muhammad Khel, Tappa Mirazi Khel village Kurez, lower
Orakzai. (Appellants)

...Versus...

Shah Wali Khan and Shoaib Khan sons of Zaman Khan, all residents of
Qaum Bar Muhammad Khel, Tappa Mirazi Khel village Kurez, lower
Orakzai and Executive District Education Officer Orakzai.
..... (Respondents)

**Appeal against Judgement, Decree and Order dated 28-07-2021 in
Civil Suit No. 70/1 of 2021.**

JUDGMENT

Instant Civil Appeal has been preferred by the appellants against the
Judgment/Decree & Order dated 28.07.2021, passed by learned Civil
Judge, Orakzai in Civil Suit bearing No.70/1 of 2021; whereby, the suit of
appellants has been rejected under Order 7 Rule 11 of the Code of Civil
Procedure, 1908.

2. The brief facts of the case are such that the plaintiffs Muzamil Hassan
etc (appellants herein) have filed suit against the defendants (respondents
herein) for declaration-cum-mandatory injunction to the effect that parties
to the suit had delivered joint landed property in village Kurez of Orakzai
for construction of Government Girls Higher Secondary School, Kurez
Orakzai. This piece of land was owned and possessed to the extent of two
third by defendants and one third by plaintiffs. On the basis of such shares
in the joint holding, an agreement was concluded between the parties;


SAYED FAZAL WADOOD
Addl. District & Sessions Judge
Orakzai at Hangu


wherein, one post of menial establishment was agreed to be filled through initial recruitment either from plaintiffs or their selected one; whereas, 02 posts were agreed to be filled from defendants or their nominee as reflected in Agreement dated 02-07-2011. Respondent No.3 (Executive District Education Officer Orakzai) while conducting recruitment has allegedly joined hands with other defendants and is determined to recruit defendants or their nominees on all vacant positions by ignoring one seat of the plaintiffs. Specific performance of contract dated 02-07-2011 has also been prayed in Part-B of the plaint.

3. Defendants (respondents) on appearance objected the suit on various legal as well as factual grounds in the written statements submitted by 02 different sets of defendants. Petition for rejection of plaint was presented on the ground that the private defendants are in the stage of life where they are considered overage and thus not entitled for any type of such employment. The official defendant being state functionary contended that the proposed recruitment will be carried out in accordance with law and rules on the subject; wherein, there is no scope of such distribution of the posts amongst the parties. Learned the Trial Court has rejected the plaint by invoking the provisions of Order-7 Rule-11 of the Code of Civil Procedure, 1908 that necessitated plaintiffs to present instant appeal, which is under consideration.

4. This Court has considered the rival contentions of the learned counsel for the parties, learned District Attorney and has determined the following on perusal of the available record on file and thereby applying the relevant law.

5. It is the main contention of the appellants/plaintiffs that Agreement dated 02-07-2011 has been concluded between the parties and according to

shares in the landed property delivered for construction of Government Girls Higher Secondary School Kurez, one post of menial Establishment shall be given to plaintiffs and two posts shall be given to defendants or their nominees. Similarly, the proposed recruitment against all of the three vacant positions from the nominees of defendants is in absolute violation of the terms of the Agreement dated 02-07-2011. It was added by learned counsel representing plaintiffs that plaintiff is disclosing cause of action and thus trial was necessary for final determination of the matter in issue. He referred Haji Mitha Khan vs Muhammad Younis case reported as 1991 SCMR 2030 where it was held by august the Supreme Court of Pakistan that test of cause of action was that if what plaintiff had stated was taken to be correct, was he entitled to relief or not? But to the comprehension of this Court, if what has been stated in the plaint has been taken as correct, even then, the contract of the year 2021 being the sole base of the suit is void ab initio. According to Section-23 of the Contract Act 1872, every agreement of which the object or consideration is unlawful is void. The recruitment against the Public Policy of merits is considered against the Policy of the Law with the same magnitude as it applies to the spirit as well as letter of the Law. Hon'ble, the Peshawar High Court, Peshawar in a case, titled "Zia ul Haq and others vs Abdul Ghafoor" reported as PLD, 2019 Peshawar 176, clearly adjudges that no person could be allowed to own such like community based projects merely on the ground that it was constructed or located on his personally owned property. Moreso, recruitment to Civil Service, Government Service and other State regulated bodies are being carried out in accordance with the Law, Rules and Public Policy for the time being enforced and entering into contract between two private parties

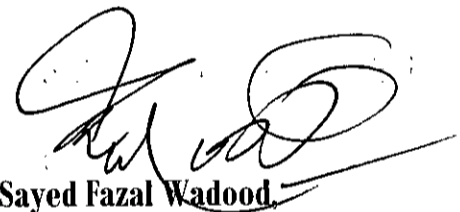

SAYED FAZAL WADOOD
 Addl: District & Sessions Judge
 Qawalrai at Hangu

cannot be given overriding effects; that too, when the very agreement is void ab initio.

6. For what has been discussed above, this Court holds the view that learned the Trial Court has properly and correctly appreciated the pleadings of the parties and has passed a speaking order which could reflect the judicial mind of the Court and the plaintiffs have been correctly non-suited. Consequently, it is held that the same impugned order/judgment of the Trial Court needs no interference of this Court; hence, maintained and instant appeal being devoid of any merits stand dismissed. Costs shall follow the events.

7. Requisitioned record be returned back while file of this Court be consigned to District Record Room, Orakzai after completion and compilation within the span allowed for.

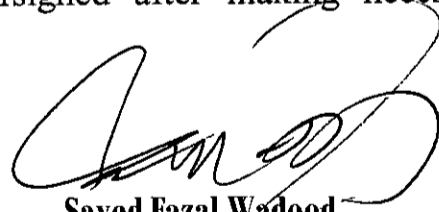
Announced in the open Court
03.11.2021



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment consists of four (04) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela