





IN THE COURT OF DISTRICT JUDGE, ORAKZAI AT BABER MELA

Case Title: Ali Hassan etc vs District Education Officer etc

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Superintendent Note	29.11.2021	<p>Civil appeal presented through representative of counsel, Khalid Iqbal Khattak Advocate to the office of Superintendent. Be put up before Honorable District Judge, Orakzai, for further orders, please.</p> <p style="text-align: right;">  (SUPERINTENDENT) To District Judge, Orakzai at Baber Mela. </p>
Order No.01	29.11.2021	<p>Register. Case file be put up for preliminary arguments on 04.12.2021.</p> <p style="text-align: right;">  (SHAUKAT AHMAD KHAN) District Judge, Orakzai at Baber Mela </p>
Order No.02	04.12.2021	<p>Mr. Khalid Iqbal Khattak Advocate, the counsel for appellants present. Preliminary arguments heard.</p> <p>In a suit before the court of learned SCJ, Orakzai appellants/plaintiffs sought declaration cum perpetual injunctions and specific performance of contract to the fact that in 2008 to 2009 appellant/plaintiff no. 1 has donated a land for construction of the Government Girls Primary School Shamar subject to the condition that respondent/defendant no. 1 would be bound to appoint appellant/plaintiff no. 2 (the son of appellant/plaintiff no. 1) against a post of class IV in the school. The suit was</p> <p style="text-align: left;">  Shaukat Ahmad Khan District & Sessions Judge, Orakzai at Baber Mela 04/12/21 </p>

(4)

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Contin. Order No.02		<p>contested by respondent/defendant no. 2 by submission of his written statement while respondent/defendant no. 1 submitted application for rejection of the plaint under order 7 rule 11 CPC. The learned trial court heard arguments and passed the impugned order vide which plaint of the appellants/plaintiffs was rejected under order 7 rule 11 CPC on the ground that the contract between appellants/plaintiffs and respondents/defendants for transfer of land against a consideration of appointment to the post of class IV, if proved, does not constitute a valid consideration for a contract which cannot be enforced.</p> <p>Being aggrieved of the order, appellants/plaintiffs filed the present appeal.</p> <p>I heard preliminary arguments and perused the record. Learned counsel for the appellants/plaintiffs stressed upon the fact that the existence of a contract between the parties is a question of fact which can only be determined after recording of pro and contra evidence and that in view of the prevalent customs – having got a status of law, the subject contract between the parties has a valid consideration, therefore the plaint cannot be rejected without giving the parties an opportunity to produce pro and contra evidence.</p>



Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Peta
04/12/21

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<p>Contin. Order No.02</p>	<p>Shaukat Ahmad Khan District & Sessions Judge, Orakzai at Baber Mela 04/12/21</p>	<p>In view of the aforementioned arguments of the learned counsel for appellants/plaintiffs, I perused the available record on file and the law on the point.</p> <p>The law on the point as laid down in section 23 of The Contract Act, 1872, that all agreements are enforceable with a lawful consideration or object and every agreement of which the object or consideration is unlawful, is void. The consideration of the agreement, if any, between the parties in the instant case is, appointment of the nominee of appellant/plaintiff no. 1 to the post of class IV in the school for the construction of which appellant/plaintiff no. 1 has donated a land. However, such a consideration has been declared illegal, invalid and not enforceable vide dictum of the Honorable Supreme Court of Pakistan in a case titled as "Hameed Ullah and 09 others VS Headmistress Government Girls Primary School Chokara District Karak and 05 others" reported in SCMR 1997 page 855. It has been held in the supra judgment that</p> <p>"S.21 --- Agreement to transfer land in consideration - for employment---Validity---Agreement between plaintiff and defendant (Government) was in the nature of sale of public office, consideration being transfer of land---Such agreement was illegal and against</p>

(6)

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<p>Contin. Order No.02</p>		<p>public policy being hit by S.23, Contract Act, 1872, specific performance whereof, could not be granted.”</p> <p>So far, the arguments of the learned counsel for appellants/plaintiffs regarding the custom having a force of law, is concerned, the same is also not valid for, true a longstanding usage or custom, in absence of express provision of law on the point, has got a force of law unless contrary to the Constitution of Pakistan. In the instant case, as the agreement of donation of land against a consideration for appointment to the post of class IV, has been held against the Constitution vide aforementioned dictum of August Supreme Court of Pakistan, therefore the custom of the nature, if any, is against the Constitution and cannot be held a force of law.</p> <p>Hence, in view of what is discussed above, the instant appeal in not maintainable; hence, dismissed in limini. File of this court be consigned to record room. Copy of this order be sent to learned trial court and Incharge record room.</p> <p><u>Pronounced:</u> 04.12.2021</p> <p style="text-align: right;"> (SHAUKAT AHMAD KHAN) District Judge, Orakzai at Baber Mela</p>