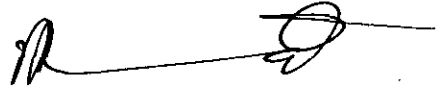


(16)

Or — 17 : parties present.
25/08/2021

Both the parties sought for adjournment.
Adjourned.

File is to come up for the previous
proceedings on 15/09/2021.



Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Babar Meia)

Or — 18 : parties present.
15/09/2021

Counsel for the defendant NO. 03
sought adjournment. Adjourned.

File is to come up for reply
on application u/o 23-R-1 by
the defendant NO 01 & 03 on


16/09/2021


Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Babar Meia)

Or.....19
16.09.2021

Presence as before.

The counsel for the plaintiffs filed a second application but this time it is simply for withdrawal of the suit. He also argued the earlier application u/o 23-R-01 CPC for withdrawal of the instant suit with permission to file a fresh suit by reason of some formal defect and the other application for simply withdrawal of the instant suit.


Rehmat Ullah Wazir
Civil Judge/JM-I
Orakzai at (Babar Meia)

Continue.....

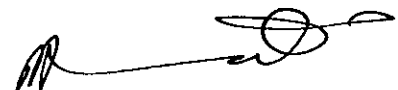
(17)

Or.....19
Continued
16.09.2021

Arguments heard and record perused.


I would like to discuss both the applications. The instant suit was filed by the plaintiffs for declaration-cum-perpetual and mandatory injunction to the effect that the property in which the defendants are going to extend the boundary wall of the GPS Mandra Khel is jointly owned by the parties, so, they be restrained not to extend the boundary wall towards this property. They filed an application for the grant of temporary injunction which was dismissed by this court vide Order no. 13, Dated: 10.03.2021. They filed an appeal against the said order which was dismissed by the Worthy D&SJ, Orakzai vide Order Dated: 31.03.2021. In the meanwhile, the father of the plaintiff no. 02 in the previous suit and the plaintiff no. 01 in the previous suit and 02 other persons filed another *Suit no. 56/1, titled as "Malak Bahadur Khan etc Vs Zyarat Gul etc" on 20.03.2021* and got status quo on the said construction. But this fact was kept secret and not disclosed to the court that status quo application on the said construction has already been dismissed by this court. Now firstly, there is no formal defect in the present suit which will effect the merits of the case, secondly, if the plaintiffs are allowed to withdraw the suit with or without permission to file a fresh one would be a support in furtherance of their ulterior motive to withdraw the suit in which the application for the grant of temporary injunction has been dismissed and keep pending the fresh suit in which status quo has been granted which they would keep linger on through different and common tactics used in courts. Thus, in the light of the aforesaid findings, both the applications of the plaintiffs are hereby dismissed being non-maintainable with costs.

File is to come up for further proceedings on 14-10-21



(Rehmat Ullah Wazir)
Civil Judge-I,
Orakzai at Baber Mela

19

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	02.10.2021	<p>Civil Misc. appeal presented through counsel, Dr. Ameer Ajam Advocate. The memo of appeal is accompanied by attested copy of the impugned order and other relevant record. Submitted, please.</p> <p> (SUPERINTENDENT) To District Judge, Orakzai at Baber Mela.</p>
Order No.01	02.10.2021	<p>Register. Counsel for the appellant present. Preliminary arguments heard. The appellant through a suit for declaration with a relief for possession before the learned Civil Judge-1, Orakzai claimed that appellants being plaintiffs and respondents no. 2 to 7 being defendants are joint owners of the suit property while the respondent/defendant no. 1, the District Education Officer Orakzai on the pretext of upgradation of Government Primary School Mandra Khel, Lagho to middle standard, is bent upon making encroachment over the adjacent property of the appellants/plaintiffs and respondents/defendants no. 2 to 7. The suit was contested by the respondents/defendants. During the course of proceedings, the appellants submitted application for withdrawal of the suit with permission to file a fresh suit on the ground of impleadment of other necessary parties and inclusion of some other property in the subject matter. The application was dismissed by the learned court vide order dated 16.09.2021. The appellants/plaintiffs being aggrieved of the order, filed the instant appeal.</p> <p>During the course of preliminary arguments when the learned counsel for appellants/plaintiffs was confronted with the law on the point that impleadment of necessary parties and inclusion of other property in the subject matter of the suit do not</p>


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

27/10/21

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
		<p>constitute formal defects and these can be cured by submission of application for amendment of the plaint, he conceded the point; however, submitted that a similar suit bearing no. 156/1 of 20.03.2021 titled as "Malak Bahadar etc. VS Ziarat Gul etc." is pending between the same parties regarding the same subject matter before the court of learned Civil Judge-I, Orakzai; therefore, the appellants/plaintiffs do not want to proceed further with the present suit before the court and want to continue the subsequent suit no. 156/1. In this respect, he also submitted a separate application for withdrawal of the suit before the trial court without seeking permission to file a fresh suit.</p> <p>Hence, keeping in view the aforementioned situation coupled with the application of counsel for the appellants/plaintiffs, there is no need to issue a notice to the respondents/defendants; therefore, on acceptance of the instant appeal to the extent of withdrawal of the suit, the impugned order dated 16.09.2021 of the learned trial court is set aside. The suit of the appellants/plaintiffs is dismissed as withdrawn with no order as to cost. File of this court be consigned to record room. Copy of this order be sent to learned Civil Judge-I, Orakzai for compliance.</p> <p>Announced: 02.10.2021</p> <p style="text-align: right;">(SHAUKAT AHMAD KHAN) District Judge, Orakzai at Baber Mela</p>

Seen

Rehmat Ullah Wazir
1st Civil Judge (J),
Orakzai at (Baber Mela)