

Order-13
05/10/2021


Plaintiff present along with the counsel.

Defendant No.2 also along with the counsel present.

From perusal the record it was found that defendant has submitted an application u/o 7 rule 11 CPC. The reply of which has also been submitted by the plaintiff but the same application has not been decided. Today arguments on application heard.

File be put up for order on 11.10.2021

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Farman Ullah
Senior Civil Judge,
Orakzai at Baber Mela.

Order-14
11/10/2021

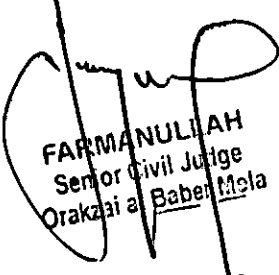
Plaintiff No. 2 present in person and as attorney for plaintiff No.1.

Defendant No. 2 present in person.

My this order is aimed at disposal of an application for rejection of plaint under order 7 rule 11 CPC filed by defendant No. 2.

Defendant No.2 filed instant application by contending, therein, that defendant No. 2 was appointed on 30.04.2021 and to this effect notification was also issued. That Civil Court has got no jurisdiction to entertain the instant suit rather the powers are vested with the Service Tribunal to resolve the matter, hence the plaint is liable to be rejected u/o 7 rule 11 CPC.

Plaintiffs contested application by submitting his written reply wherein, he objected application on various grounds.


FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela

11.10.2021

(10)

Learned counsel for the parties heard and record gone through.

Perusal of the record reveals that plaintiffs are seeking declaration, permanent and mandatory injunction to the effect that land of Govt Girls Primary School Shamar was the ownership of plaintiff No. 1 and the same was transferred to the District Education Department Orakzai on the condition that defendant No.1 will appoint nominee of plaintiff No.1 against the post of class IV, hence defendant No. 1 is bound to appoint plaintiff No.2, being the son of plaintiff No.1, on the post of class IV and defendant No.1 has got no right to appoint defendant No.2 on the post of Chowkidar at Govt Girls Primary School Shamar. It is also the contention of plaintiffs that agreement was executed between plaintiffs and defendant No.2 in year 2014, wherein, it was categorically stipulated that the appointment in the school is the right of plaintiffs.

From the bare reading of the plaint, it is evident that plaintiffs are seeking appointment of plaintiff No. 1 against the post of Chowkidar at Govt Girls Primary School Shamar on the sole ground that land for the construction of the school was transferred by plaintiff No.1 with the condition to appoint plaintiff or his nominee against the post of class IV. For the moment, if it is presumed that any such agreement was executed between the parties, then question arises before the court that whether such agreement, between the plaintiffs and defendants is a valid contract and enforceable by law or not? To answer this question, it has to be seen that which agreements are contracts and enforceable by the law and which agreements are void. According to section 10 of The Contract Act, 1872,

FARMANULLAH
Senior Civil Judge
Orakzai at Haber J. P. S.

11.10.2021

11

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void"

From the bare reading of definition of contract, it is evident that apart from other ingredients of contract, there must be lawful consideration and with a lawful object. The considerations of agreements which are forbidden by the law have been stipulated in section 23 of The Contract Act, 1872. For ready reference the same section is reproduced as under.

What consideration and objects are lawful and what not. *"The consideration or object of an agreement is lawful, unless it is forbidden by law; or.*

Is such a nature that, if permitted, it would defeat the provision of any law; or is fraudulent; or involves or implies injury to the person or property of another; or the court regards it as immoral or opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful.

Every agreement of which the object or consideration is unlawful is void".

In view of above provisions of law, if the consideration of agreement between the parties is analyzed then it is evident from the plaint that plaintiff No.1 has transferred his land to the Education Department in consideration of appointment on public post. Such agreement in fact amounts to sale of public office for property, which is against the public policy and it is completely an illegal act. As the consideration of agreement is illegal and contrary to the public

FARMANULLAH
Senior Civil Judge
Orakzai at Baher Mela

11.10.2021

12

policy, hence the same agreement u/s 23 of Contract Act, 1872, is a void agreement and which cannot be enforced through process of law. Reliance in this respect is placed on 1997 SCMR 855.

In view of above discussion application in hand is accepted and plaint is rejected u/o 7 rule 11 CPC. No order as to cost.

File be consigned to the record room after its completion and compilation.

Announced
11.10.2021

FARMANULLAH
Senior Civil Judge
Orakzai at Baber Mela.
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Senior Civil Judge,
Orakzai at Baber Mela.