

27

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

BEFORE THE COURT OF
ADDITIONAL DISTRICT JUDGE, ORAKZAI AT BABER MELA

Civil Appeal No. CA-10/13 of 2022

Date of institution: 11.05.2022

Date of decision: 16.07.2022

Darwish Ali son of Gul Wazir, resident of Marai Bala Tehsil and District Kohat. **(Appellant/plaintiff)**

...Versus...

Ishaq Ali son of Sarwar Ali and fifteen others all residents of Darma, District Orakzai, Tehsildar and Roman Ali son of Nazir Ali resident of Marai Bala Tehsil and District Kohat..... **(Respondents/defendants)**

**Appeal against Judgement, Decree and Order dated 11-03-2022,
passed in Civil Suit No. 23/1-TI of 2020.**

JUDGMENT

Instant Civil Appeal has been preferred by the appellant/plaintiff against the Judgment, Decree & Order dated 11.03.2022, passed by learned Civil Judge, Orakzai in Civil Suit bearing No.23/1-TI of 2020; whereby, the plaint of the appellant/plaintiff with the title of Darwish Ali vs Ishaq Ali etc. was rejected under Order-7 Rule-11 of the Code of Civil Procedure, 1908.

2. Briefly stated facts of the case are that the plaintiff Darwish Ali (appellant herein) has filed civil suit against the defendants (respondents herein) for possession, recovery and perpetual injunction to the effect that he is the owner of the suit property through Jirga dated 20-11-2014. That the suit property was delivered to the defendants for cultivation against consideration of Rs. 200,000/- per year which was duly paid and received

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

28

on completion of the first year of agreement. Since 2016 till date, neither amount nor produces whatsoever have been paid to the plaintiff followed by refusal to pay the outstanding amount to the plaintiff and have taken illegal possession of the suit property. That the defendants were asked time and again to pay the outstanding amount and handover the possession of the suit property to the plaintiff but they failed to do so that necessitated presentation of Civil Suit.

3. On appearance, the defendants had submitted written statement, stating therein that the plaintiff has got no nexus with the ownership and possession of the suit property. The Jirga of 2014, which is the sole base of the claim of plaintiff is concocted and has already been discarded by Court of competent jurisdiction. The matter in issue is falling within the definition of decided matter and thus prayed rejection of plaint in petition submitted under Order-7 Rule-11 of the Code of Civil Procedure, 1908 (Code hereinafter). The same application was contested by the plaintiff by submitting his written reply. After hearing arguments of learned counsels for the parties on such application, the learned Trial Court vide impugned Judgment, Order and Decree dated 11.03.2022, rejected the plaint by invoking the provisions of Code with costs. Feeling aggrieved the plaintiff/appellant has filed instant appeal which is under consideration.


4. Mr. Haroon Khan Advocate representing appellant argued that there is no documentary proof of the ownership of defendants. The defendants were not arrayed as party in the suit decided by the Court of Assistant Political Agent, Orakzai and thus they cannot draw benefit of


SAYED FAZAL WADOOD
District & Sessions Judge
Orakzai at Hangu

it. He added that the suit is involving various questions of law and facts and that cannot be decided in summery manner. It was prayed that the appeal may be allowed and case may be remanded to the Trial Court for recording pro and contra evidence.

5. Mr. Fahad Yousaf Advocate for respondents/defendants contended that the Judgement of APA Orakzai was within the knowledge of the plaintiff who was party to the proceedings and this fact was willfully concealed in the plaint with mala fide. The Judgement of the APA Orakzai dated 08-05-2017 is decree still intact in favor of Jan Muhammad but the present plaintiff is neither his legal heir nor remote relative and is before the Court for no justifiable reason. Plaintiff was required to prefer appeal against that decree which was omitted and has got finality. He concluded that the plaint has rightly been rejected for being barred by law.

6. Landed property situated at Darma, Tehsil Lower, and District Orakzai was property in dispute in Case No. 14/2015 instituted on 14-06-2015 before the Court of Assistant Political Agent, Lower Orakzai by one Muhammad Jan (stranger to the present Civil Suit) against Darwish Ali (plaintiff in civil suit). The case was tried by the then competent forum and was decreed in favor of Muhammad Jan vide Judgement and decree dated 08-05-2017. The plaintiff who happened to be defendant therein has dragged this landed property in Civil Suit excluding the real decree holder Muhammad Jan and concealed the fact of decree in field against him. This was contesting set of defendants who raised the issue of such decree despite the fact that they had not established any link with the decree holder Muhammad Jan. When it has been surfaced that there is decree in


SAYED FAZAL WADOOD
District & Sessions Judge
Orakzai at Hangu

field regarding suit property, rejection of plaint was the single available option with the trial court which has rightly been attracted.

7. In the light of above discussed facts and circumstances of the case, this Court holds the view that learned Trial Court has correctly non-suited the plaintiff by attracting jurisdiction under Order VII Rule 11 of the Code. Therefore, it is held that the same impugned order/judgment of the Trial Court needs no interference of this Court; hence, maintained. Consequently, instant appeal being devoid of any merits stand dismissed. Costs shall follow the events.

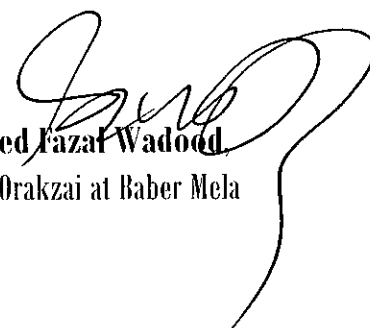
8. Requisitioned record be returned back with the copy of this Judgement while file of this Court be consigned to the District Record Room after completion and compilation within the span allowed for.

9. Announced in the open Court
16.07.2022


Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment is consisting upon 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