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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-12/13 of 2022

Date of institution: 22.08.2022

Date of decision: 10.11.2022

Imran Khan son of Samin Gul resident of Qaum Shekhan, Tappa Samozai, Mishti Mela, District Orakzai.

..... (**Appellant/plaintiff**)

...Versus...

1. Muhammad Rauf son of Hameed Shah
2. Azim Shah son of Haleem Shah
3. Sultan son of Hazrat Noor
4. Bakht Mir son of Mir Hassan
5. Fazal Rabi son of Fazal Kamal
6. Mir Hassan Shah son of Gharib Shah
7. Fazal Rehman son of Badshah Gul

(Residents of Qaum Shekhan, Tappa Umarzai, District Orakzai)

8. Sar Khan son of Iman Shah
9. Firdos son of Khan Gul
10. Khan Shah son of Iman Shah

(Residents of Bazid Khel Orakzai)

11. Islam Khan son of Mir Afzal
12. Umar Gul son of Eid Akbar
13. Fazal Shah son of Mir Doran Shah
14. Muhammad Ayub son of Anar Shah
15. Mir Bat son of Azam Khan

(Residents of Shaikhan Umerzai District Orakzai)

16. Assistant Commissioner Central Orakzai.
17. DPO Orakzai.

..... (**Respondents/defendants**)

Appeal against Judgement, Decree and Order dated 29-07-2022, passed in Civil Suit No. 69/1 2021.


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JUDGMENT

Instant Civil Appeal has been preferred by the appellant/plaintiff against the Judgment, Decree & Order dated 29.07.2022, passed by learned Senior Civil Judge, Orakzai in Civil Suit bearing No.69/1 2021; whereby, the plaint of the appellant/plaintiff with the title of "Imran Khan vs Muhammad Rauf etc." was rejected under Order-7 Rule-11 Code of Civil Procedure 1908.

2. Plaintiff claimed ownership and possession of landed property known as *Ismail Pattay*, situated at Mishti Mela District Orakzai. District Collector Orakzai has initiated acquisition process for Police Department Orakzai where some of the portion of *Ismail Pattay*. The plaintiff was promised to be paid compensation thereof but now the District Collector is intending to pay the amount to Defendant No. 1 to 15 which necessitated presentation of suit for declaration, injunction and other consequential relief that attracts to the facts and circumstances of the case.

3. Defendants/respondents on appearance objected the suit on various legal as well as factual grounds in their written statement. First set of defendants (No.1 to 7) had negated the ownership of the plaintiff and termed it misidentification of property. They are the actual owners in possession of the property and thus plaint of the plaintiff is liable to be rejected. Second set of defendants (8 to 15) had pleaded that the property is owned and possessed by first set of defendants and they being second set of defendants are Nambardaran of the area and had got no nexus with the dispute. The District Attorney Orakzai has represented the District Collector and Police Department. He submitted the photocopy of Notification dated 07-12-2020 issued by Land Acquisition Collector Orakzai for public purpose of


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Establishment of Police Station Central at Mishti Mela Orakzai and contented that award has already been passed.


4. Vide deciding application for grant of temporary injunction, learned Trial Court has rejected the plaint on the score of lacking jurisdiction vide Order No. 16 dated 19-07-2022; feeling aggrieved, plaintiff presented instant Civil Appeal, which is under consideration.

5. Learned counsel representing appellant argued that instead of granting or withholding of temporary injunction, the plaint has wrongly been rejected. The Civil Court is the court of ultimate jurisdiction and was rightly knocked by the plaintiff. The order of rejection of plaint is result of misconception as the matter agitated was regarding payment which is exclusive domain of Civil Court.

6. Learned counsel representing respondents/defendants is of the stance that Award has already been passed and if plaintiff/appellant is feeling aggrieved, he may file objection petition before the Land Acquisition Collector. The Trial Court has rightly rejected the plaint on the score of lacking jurisdiction; District Attorney concluded.

7. There are two points for determination of this Court; one is the stage rejecting plaint and the second is that of jurisdiction.

8. Bare reading of impugned order reflects that the plaint has been rejected under Order-7 Rule-11 Code of Civil Procedure, 1908; that too, on the score of lacking jurisdiction. The word dispute has been mentioned in Section-30 of the Land Acquisition Act, 1894, which obviously include compensation and the person to whom such compensation is payable. A mechanism has been provided under Land Acquisition Act, 1894, for settlement of dispute of all


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types and natures pertaining to every matter of acquisition. Similarly, barring clause of section-5A of Land Acquisition Act, 1894 exclude the jurisdiction of Civil Court and thus it has rightly been determined by the learned Trial Court that Civil Court has got no jurisdiction. As for as operating part of the impugned order is concerned, it is well settled notion of the Law that objection to jurisdiction shall be dealt with under Order-7 Rule-10 of the Code of Civil Procedure, 1908 and Rule-11 of this Order is not applicable to the bar of jurisdiction (1986 CLC 1181). The Trial Court was required to attract Rule-10 which prescribes the return of plaint instead of rejecting of the plaint. The second objection of the learned counsel for appellant is that the case was fixed for withholding or granting of temporary injunction and was not stage for rejecting plaint. To determine this objection, the law on the subject is mandatory in nature as an adjudication by a Court without jurisdiction is *Coram non judice*. When the Court lacks jurisdiction, the plaint is to be returned for presentation to proper Court and Court cannot pass any Judicial Order (2013 MLD 1532-2011 CLC 1450).

9. For what has been discussed above, appeal is partially allowed to the extent of setting aside order of rejection of plaint under Order-7 Rule-11 of Code of Civil Procedure, 1908. The case is remanded back to the learned Trial Court for return of plaint under Order-7 Rule-10 of Code of Civil Procedure, 1908 on the score of lacking jurisdiction. The appellant/plaintiff shall appear before the learned Trial Judge for receiving plaint with endorsement thereon the date of its presentation and return, the name of the party presented it and a brief statement of reasons for return. Requisitioned record be returned with copy of this Judgement; whereas, File of this Court be


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consigned to District Record Room, Orakzai as prescribed within span allowed for.

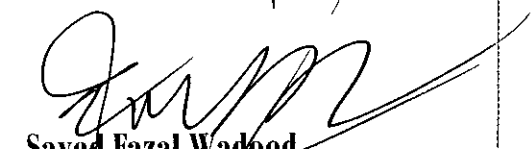
Announced in the open Court
10.11.2022



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment is consisting upon five (05) 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