

Order...05

20.09.2022

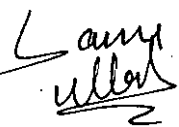
Present:

Plaintiff in person alongwith counsel.

Defendant in person alongwith counsel.

Counsel for the plaintiff submitted reply on an application Under Order 7 Rule 11 which is placed on file. Arguments heard on both the applications.

File be put up for order on the above stated application and for reply and arguments on application for amendment in plaint on 28.09.2022.


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

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Present:

Plaintiff in person.


Defendant in person.

Arguments on application already heard.

This order of mine is directed to dispose of an application submitted by defendants for rejection of plaint under Order-VII Rule 11 CPC. The plaintiff/respondent contested the application by filing reply.

Brief facts of the case are that plaintiff/respondent filed the instant suit for deceleration-cum perpetual mandatory injunction and possession through partition to the effect that he is owner and possessor of 2/3 shares along with other co-owners in the suit

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Sami Ullah
Civil Judge/JM-I
Orakzai (Babar Mela)

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property measuring 30 Kanal fully detailed in the head note of the
plaint and that petitioners/defendants have got no concern what so
ever with the said property.

Detailed arguments on application already heard and record
perused.

In the light of detailed arguments and perusal of record, it
transpires that plaintiff/respondent is claiming himself to be owner
and possessor of 2/3 shares in the suit property measuring 30 Kanal
alleging that the said property was his ancestral property. On the other
hand, the petitioners/defendants contended that plaintiff has got no
cause of action and locus standi to file the instant suit as the father of
the plaintiff is still alive and he is not even party to the present suit
and is a necessary party to the suit and his absence the plaintiff can
not succeeds in his suit.

The plaintiff/respondent in rebuttal produced some documents
and averted that the said property was gifted to the plaintiff by his
father.

Keeping in view the available record on file and the arguments
made by the counsels of the parties in the instant suit, the facts
emerged before this court which helped determine the fate of the
instant application.

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Sam Ullah
Sam Ullah
Civil Judge (M-1)
(Bakhat (Babar Mela))

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Firstly, there is no mention of the property been gifted to the plaintiff by his father in the plaint.


Secondly, the relief claimed in the plaint reveals that the relief in shape of possession through partition is also sought from this court through the present suit regarding the suit property. It is pertinent to mention here that if the suit property was gifted to the plaintiff by his father, then why he sought partition in the suit.

Thirdly the father of the plaintiff is alive and this fact is admitted by the plaintiff in the pleadings and documents annexed with the pliant. This fact incapacitates the present plaintiff to file a suit for declaration and partition in case where his father is still alive.

In the light of the above discussion, this court ^{is} of the view that the plaintiff has got no cause of action to file the instant suit. Hence, the application in hand is accepted and the suit is rejected Under Order VII Rule XI with cost.

File be consigned to record room after necessary completion and compilation.

Announced
28.09.2022


Sami Ullah
Civil Judge-I,
Orakzai (At Baber Mela)