

Order...07
30.09.2022

Present:

Plaintiff in person along with counsel.

Defendants No.03 in person along with counsel.

Arguments already heard and record perused.


This order of mine is directed to decide point of maintainability in the instant suit.

Perusal of record reveals that the plaintiff has brought the instant suit for declaration cum perpetual mandatory injunction etc. to the effect that the plaintiff is the owner and possessor in the suit property measuring 55 Marlas in the suit property fully detailed in the head note of the plaint. That the defendants have denied the claim of the plaintiff, hence, the instant suit.

Suit in hand was instituted on 21/07/2022 as suit No. 18/1 titled Meer Zali Shah Vs Janab Ali and others. Defendants have contended that another suit No. 16/1 of 2021 titled Naseer Orakzai and others Vs Janab Ali and others is regarding the same subject matter between the same parties, therefore, suit No. No. 18/1 of 2022 being subsequently filed be stayed within the meaning of Section. 10 Civil Procedure Code, 1908.

Record reveals that suit No. 16/1 of 2021 titled as Naseer Orakzai and others Vs Janab Ali and others is a declaratory suit regarding 125 Marlas land claimed to be the ancestral ownership of plaintiff while suit No.18/1 of 2022 titled Meer Zali Shah Vs Janab Ali and others is also

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


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a declaratory suit regarding the same 110 Marlas land in which the plaintiff claim 55 Marlas land being his share in the ancestral property of the plaintiff. The plaintiffs in the previously instituted suit are the nephews of the plaintiff in the subsequent/instant suit. The plaintiff in the instant suit was impleaded in the previously instituted suit through order No.3 dated 28.07.2022. Hence, in present, the parties in both the suits are same.

Section.10 of Civil Procedure Code of 1908, bars the trial of a subsequent suit in which the matter in issue was also directly and substantially in issue in a previous instituted suit between the same parties. Section.10 of Civil Procedure Code of 1908, requires that the cause of action, the subject matter, the parties and the relief sought must be the same in the subsequent suit. Insofar as the instant case is concerned, the subject matter of both the suits are directly and substantially in issue and the relief claimed are also the same. As the suit property in both the suit is 110 Marla land fully detailed in the head note of the plaint and both the suits seek declaration of ownership. Hence, requirements of section.10 of Civil Procedure Code of 1908 are fulfilled, resultantly, the instant suit being latter in time is hereby stayed with costs.

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

Announced
30.09.2022


Sami Ullah
Civil Judge-I,
Orakzai at Baber Mela.