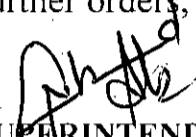

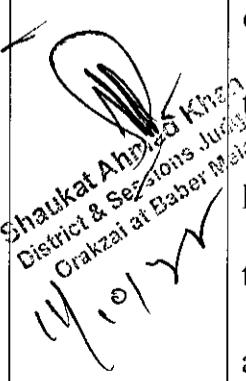


IN THE COURT OF DISTRICT JUDGE, ORAKZAI AT BABER MELA

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Case Title: Bilal Khan VS Sial Muhammad

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel, where necessary.
1	2	3
Superintendent Note	10.10.2022	Civil appeal presented through counsel, Khurshid Alam Advocate to the office of Superintendent. Be put up before District Judge, Orakzai for further orders, please.  (SUPERINTENDENT) To District Judge, Orakzai at Baber Mela.
Order No.01	10.10.2022	Register. Counsel for the appellant present. To come up for preliminary arguments on 11.10.2022.  (SHAUKAT AHMAD KHAN) District Judge, Orakzai at Baber Mela
Order No.02	11.10.2022	Mr. Khursheed Alam Advocate, counsel for the appellant present. Appellant also present in person. Preliminary arguments heard. The present appellant, being plaintiff through a civil suit for declaration-cum-perpetual injunction before the court of Civil Judge-I, Orakzai, claimed that the suit property measuring 30 kanals, detailed in the headnote of the plaint, being ancestral property of the appellant/plaintiff, is owned and possessed by him to the extent of 20 kanals, while the respondent/defendant,  Shaukat Ahmad Khan District & Sessions Judge Orakzai at Baber Mela


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Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge Magistrate and that of parties or counsel where necessary.
1	2	3
<p>Contin. Order No.02</p>	<p>Shaukat Ahmad Khan District & Sessions Judge Orakzai at Baber Mela 11/10/22</p>	<p>being co-owner to the extent of 10 kanals of land, is bent upon occupying the land of appellant/plaintiff. In alternative the appellant/plaintiff had also sought possession through partition of the suit property. The respondent/defendant through a written statement denied the claim of appellant/plaintiff and submitted application for rejection of plaint under Order 7 Rule 11 of the CPC. The learned trial court on acceptance of the application, rejected the suit mainly on the grounds; that the appellant/plaintiff, during lifetime of his father, cannot claim title to the suit property as his ancestral property and that the suit is incompetent to the extent of relief of possession through partition. Appellant/plaintiff, being aggrieved of the impugned order dated 28.09.2022, filed the present appeal.</p> <p>Learned counsel for the appellant/plaintiff argued that though the appellant/plaintiff, during lifetime of his father, cannot claim the suit property as inherited by him but as the suit property was gifted by father of the appellant/plaintiff to the appellant/plaintiff and that the form of suit in absence of other legal heirs of his deceased grandfather, was also incompetent but to that extent he had already submitted application for amendment of plaint.</p>

IN THE COURT OF DISTRICT JUDGE, ORAKZAI AT BABER MELA

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Case Title: Bilal Khan vs Sial Muhammad

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
<p>Contin. Order No.02</p>		<p>Keeping in view the aforementioned lacunas in the plaint and the settled principle of law that rejection of plaint under Order 7 Rule 11 CPC does not bar a fresh suit, when the learned counsel for the appellant/plaintiff was confronted with the fact that instead of amendment of the plaint with a limited scope, why the appellant/plaintiff is not going to file a fresh suit?, he submitted that he would not press the instant appeal if this court allows the appellant/plaintiff to file a fresh suit.</p> <p>Hence, in view of what is discussed above, keeping in view the settled principle of law that rejection of plaint under Order 7 Rule 11 CPC does not bar a fresh suit on the same subject matter and the request of learned counsel for the appellant/plaintiff for permission to file a fresh suit, the instant appeal is dismissed in limini being not pressed. However, the appellant/plaintiff is allowed to file a fresh suit subject to any bar, if any, of the law. Consign.</p> <p>Pronounced: 11.10.2022</p> <p style="text-align: right;"> (SHAUKAT AHMAD KHAN) District Judge, Orakzai at Baber Mela</p>

