

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

MISC. CIVIL APPEAL NO. : 8/14 OF 2022
DATE OF INSTITUTION : 13.10.2022
DATE OF DECISION : 19.10.2022

TAJA KHAN S/O REHMAT KHAN, R/O CASTE MALA KHEL, TAPA AZIZ
KHEL, TEHSIL UPPER, DISTRICT ORAKZAI
.....(APPELLANT)

-VERSUS-

1. TAWEEZ KHAN
2. ABDUL HAQ
3. ALAF KHAN
ALL SONS OF SAADAT KHAN, ALL RESIDENTS OF CASTE MALA
KHEL, TAPA AZIZ KHEL, TEHSIL UPPER, DISTRICT ORAKZAI
.....(RESPONDENTS)

Present: Mr. Sana Ullah Khan Advocate for appellant
: Mr. Abid Ali Advocate for respondents

JUDGEMENT
19.10.2022

Impugned herein is the order dated 06.10.2022 of learned
CJ-I/JM, Orakzai vide which application of the
appellant/plaintiff for amendment of the plaint has been turned
down.

(2) Taja Khan (now dead) brought a suit for declaration-cum-
perpetual injunctions against the respondents/defendants
contending therein that the suit property detailed in the headnote
of the plaint being ancestral property of plaintiff is owned and
possessed by him as a result of private partition, that the
respondents/defendants have got no concern whatsoever with the
suit property. The suit was contested by respondents/defendants
by submitting written statement. After framing of issues, the
parties led pro and contra evidence and the case was fixed for
final arguments; however, the appellant/plaintiff submitted
application for amendment of the plaint seeking permission of

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the court to add prayer in the headnote of the plaint for possession through partition of the suit property which was contested by respondents/defendants and the learned trial court after having heard the arguments turned down the application on the ground, that as the appellant/plaintiff has sought exclusive ownership of the suit property on the basis of private partition and the proposed amendment in the form of possession through partition being amounting to alteration in the relief would change the nature of the suit. Appellant/plaintiff, being aggrieved of the impugned order, filed the present appeal.

- (3) I heard arguments of learned counsels for the parties and perused the record. It is evident from the record that the base of the claim of appellant/plaintiff is, that the suit property being his ancestral property is owned by and possessed by him as a result of private partition between the parties regarding which the issues have already been framed as;

- i. Whether plaintiff is owner in possession of disputed property on the basis of private partition?
- ii. Whether disputed property is jointly owned and possessed by both the parties?

Keeping in view the aforementioned controversy between the parties and the factum of parties being co-sharers, failure of appellant/plaintiff to prove the private partition would lead to multiplicity of proceedings by filling a subsequent suit for partition of the suit property which can be taken care of by addition of a relief of possession through partition in the present suit. Moreover, the proposed amendment would neither change

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the subject matter of the suit nor the character of the suit. Furthermore, by now it is a well settled principle of law that where the amendment of pleadings is sought in good faith and in order to reach the just conclusion of the case, even alternative and inconsistency plea may be allowed to be raised by way of amendment.

(4). Hence, in view of what is discussed above, it is held that the learned trial Court has fallen into error while interpreting the law on the point; hence, on acceptance of the instant appeal the impugned order dated 06.10.2022 of learned Civil Judge-I, Orakzai is set aside and the application of the appellant/plaintiff for amendment of plaint is accepted. File of this court be consigned. Copy of this order/judgment be placed on record. Parties are directed to appear before the court of learned CJ/-I, Orakzai on 26.10.2022.




Pronounced
19.10.2022


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 19.10.2022


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela