

Or-----47
17.10.2022

Both the parties alongwith counsel present.

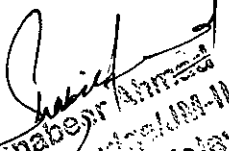
Through my this single order I intend to dispose of an application filed by the plaintiffs. The plaintiffs have filed the application for amended in the plaint. The plaintiffs have also sought withdrawal of the suit with the permission to file a new one is an alternate, if the court did not agree with the amendment in the plaint.

Defendants contested the application by filling replication and forwarding arguments thereto.

Arguments of both the counsel heard and record perused.

The plaintiffs through the instant application seeks impleadment of certain plaintiffs that since fathers of plaintiff no. 1 and 5 are alive and not made party in the suit. They have also stated that certain documents dated 02.10.1989, 09.12.2019 and 01.01.2006 were also not made base/part of the plaint without which proper relief will not be given to the plaintiffs. That in case if the court did not agree with the amendment of plaint, the plaintiffs be allowed to withdraw the instant suit with the permission to file a fresh one as there is formal defect in the suit.

Defendants filed reply to the application and contended that when father is alive, his children cannot file any suit regarding inherited property as property is inherited to the


Shahbaz Ahmed
Civil Judge (M-11)
07/10/2022 (aya)

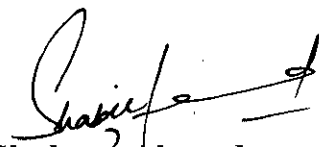
children on the death of the father. That since there is a formal defect in the suit, it cannot be cured with amendment.

In these circumstances, the application to the extent of amendment in the plaint is hereby **dismissed**, however, Order XXIII, Rule 1 CPC empowers the plaintiffs to withdraw their suit at any time after the institution of the suit with permission to file a fresh one subject to formal defects and subject to satisfaction of the Court. Father of the plaintiff no. 1 and 5 are alive but they are not made party in the suit. There are formal defects in the suit and suit of plaintiffs will ultimately fail by reasons of this formal defects.

Keeping in view formal defects in suit, application to the extent of withdrawal of the suit with permission to file a fresh one is hereby **accepted** with cost of Rs: 8000/-. Resultantly suit in hand is dismissed as withdrawn with permission to file fresh suit subject to all legal limitations within 30 days.

File be consigned to District Record Room, Orakzai, after its necessary completion and compilation.

Announced
17.10.2022



Shabeer Ahmad,
Civil Judge-II,
Tehsil Courts Kalaya, Orakzai