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**IN THE COURT OF ABDUL BASIT,
ADDITIONAL DISTRICT JUDGE-II, ORAKZAI**

Civil Appeal No. 35/13 of 2023

Date of institution: 20.12.2023

Date of decision: 11.03.2024

Date of consignment:

Miqdad Ali son of Gulfam Hussain and five others in person and as a representative of other co-sharers of Tappa Tirai Zaira, Tehsil Lower, District Orakzai (appellants/plaintiffs)

Versus

Syed Hamid Hussain son of Hussain Jan, Tappa Kandi Khel, resident of Khadezai, Tehsil & District Kohat and 20 others, (respondents/ defendants)

**APPEAL AGAINST JUDGMENT, DECREE & ORDER
OF THE COURT OF LEARNED CIVIL JUDGE-I, ORAKZAI**

JUDGMENT

Through this judgment I shall decide appeal preferred by appellants against respondents challenging the judgment, decree and order dated 27.11.2023 of the Court of learned Civil Judge-I, Orakzai, whereby, he has allowed the application of respondents filed under Order 7 Rule 11 CPC and rejected the plaint of appellants being barred by law.

Concise facts of the case are that appellants have filed representative suit wherein contended that parties at dispute were resident of Zeira area, which was consisted of lands and mountains, fully detailed in the headnote of plaint and to be referred as the suit property; that they had constructed houses there and occupying the suit property along with other inhabitants since the time of their forefathers; that previously many disputes have been arisen between the parties in respect of suit property, which were resolved in 1982 and on 28.01.1983, whereby, not only the rights of the appellants were acknowledged and determined but they were also held equally entitled

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to the extent of 1/3rd share in profit and loss of the produced etc. of suit property; thus, they have prayed for decree of declaration that respondents have no right to breach the terms of jirga decision/written agreement and deny from their precious rights; that they have also prayed for recovery of their share of Rs. 2,200,000/- (2.2 million) out of Rs. 6,600,000/- (6.6 million), the compensation amount, which was received by respondents on account of acquisition of the portion of suit property for FC Forte; that they have also prayed for decree of permanent and mandatory injunctions so that respondents may be refrained from claiming the income of limestone or lease holding rights or cutting the standing trees etc. from suit property in their personal capacity and without their prior permission and consultation; that they have also prayed for the decree of declaration, permanent and mandatory injunctions to the effect that respondents no. 18-21 have no legal and moral justification to grant an illegal lease license of mining to any of the respondents no. 1-17 because it postulates the consent of residents of the locality, hence, the suit.

Respondents were summoned by the learned trial court. They have appeared and filed respective written statements, wherein, raised various legal and factual objections *inter-alia* with facts that FC land has already been returned to owners; that respondents no. 1-16 are recorded owners in possession of the suit property since the time of their forefathers and status of appellants is not more than the neighbors, who have no concern with the suit property; that appellants have made changes in the jirga decision dated 28.01.1983, which now has become forged and fabricated document and cannot be trusted; that mining lease license has been properly granted to Hamid Hussain; therefore, prayed for dismissal of suit.

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This is pertinent to mention that respondents have also filed an application for rejection of plaint under Order VII Rule 11 of the CPC on ground that the matter pertains to the mining lease; therefore, the civil court lacks the jurisdiction to entertain the suit in hands. The appellants have filed written reply and resisted the application vehemently. The learned trial court heard the arguments and while accepting the application, rejected the plaint through judgment, decree and order dated 27.11.2023.

Appellants feeling aggrieved of the order filed the appeal.

Arguments heard and record perused.

While going through the record and arguments advanced by learned counsel for parties, it is held that admittedly section 102 (1) of The Khyber Pakhtunkhwa Mines And Minerals Act, 2017 specifically provides that if a person is aggrieved by an order of the licensing authority, he may, within thirty days of the communication of the impugned order on payment of prescribed fee, prefer an appeal to the appellate authority. Likewise, section 102 (6) of the Act ibid specifically bars the jurisdiction of any court to entertain or to adjudicate upon any matter to which the appellate authority under the Act is empowered to dispose of or to determine the validity of anything done or an order passed by it. The plain meaning of the above two referred citations provide nothing but the fact that where the licensing authority has passed any order under the Act, then, the person against whom the said order is passed has the remedy to approach the appellate authority and challenge the order in an appeal. Similarly, the second above referred provision bars the jurisdiction of any court only when the appellate authority under the Act being empowered has disposed of or determined the validity of anything done or an order passed by it, however, there is no restriction to challenge the question of title to the suit property before the civil court or

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claim the compensation or recovery of money etc. from the co-owners etc. in case the same is denied by the opposite party. In the instant suit, the appellants have nowhere challenged the grant of mining lease license to anyone or the amount of payment of compensation or acquisition of the suit property to anyone rather they have specifically sought declaration of their entitlement to the vested rights established/determined/acknowledged in the suit property on the basis of *jirga* decision dated 28.01.1983 but those have been denied by the respondents. Likewise, they have not challenged the amount of compensation paid to the respondents no. 1-17 but have prayed for recovery of their 1/3rd share in the compensation received by them on basis of very *jirga* decision as well as to restrain them from claiming the income of limestone or lease holding rights or cutting the standing trees etc. from suit property in their personal capacity unless their prior permission is sought or consultation is made, which are purely civil remedies and falls exclusively within the domain of civil court to adjudicate upon.

If, otherwise, the learned trial court had at all reached to a conclusive decision that the suit of appellants was barred by law, even then, the learned trial court was not supposed to reject the plaint but the plaint should have been returned to the appellants for its presentation before the proper forum within the meaning of Order VII Rule 10 of The Civil Procedure Code, 1908; therefore, the learned trial court has erred rejecting the plaint to the extent of reliefs "*alif*" and "*bay*".

As far prayer "*jeem*" of appellants seeking decree for declaration, permanent and mandatory injunctions to the effect that respondents no. 18-21 have no legal and moral justification to grant an illegal lease license of mining to any of the respondents no. 1-17 because it postulates the consent of residents of the locality, it is held that the appellants have prayed for this

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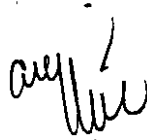
relief purely on apprehensions and there is nothing on record to show that respondents no. 18-21 have illegally granted mining lease license to any of the respondents no. 1-17, which prayer being pre-emptive in nature does not disclose a cause of action; therefore, not sustainable.

The crux of the above discussion leads me to the inference that the learned trial court has erred reaching to the just conclusion of the case and wrongly rejected the plaint, hence, the appeal in hands is **partially allowed**, the impugned judgment, decree and order dated 27.11.2023 of the learned trial court is set-aside to the extent of reliefs "alif" and "bay" and the case in hands is remanded to the learned trial court with direction to decide the case on merits. So far relief "jeem" is related, it is held that since the plaint does not disclose a cause of action to this extent, hence, plaint is rejected to the extent of relief "jeem". Parties before the court are directed to appear before the court of learned Civil Judge-I, Orakzai on **18.03.2024**.

Parties have to bear costs of their proceedings because none of the parties has specifically proved the cost incurred on the case.

Copy of this order be placed on record of learned lower court, where after, the requisitioned record be returned and file of this court consigned to record room after necessary completion and compilation.

Announced
11.03.2024


Abdul Basit
Addl. District Judge-II, Orakzai

CERTIFICATE

Certified that this judgment consists of five (05) pages, those are signed by me after necessary corrections.

Announced
11.03.2024


Abdul Basit
Addl. District Judge-II, Orakzai