

Order. No. 14

16.08.2022

Petitioner along with counsel present. Respondent present through counsel.

Through this order, I am going to dispose of petition in hand filed by petitioner namely Said Habib against respondent namely Saifoor Khan for final decree. Arguments already heard and record perused.

Brief facts of the case are that petitioner Said Habib approached the court of Assistant Political Agent, Lower Orakzai through a written application dated 14.07.2017 wherein it was alleged that respondents Saifoor Khan and others (Ismail, Muslim Badshah, Sultan Badshah) have illegally occupied the land of petitioner. Jirga was convened. As per Jirga decision, 10 persons from the family of petitioner were to take oath on the Holy Quran to establish their claim. Petitioner and his family members were ready to take oath but respondents did not come and fled from the Jirga. Sorat Shah and Ameen Badshah were the guarantors.

After merger of erst-while FATA into Khyber Pakhtunkhwa, case file was received and entrusted to the court of ZAHIR KHAN learned Civil Judge-II, Orakzai vide order dated 25.06.2019. On 02.07.2019, parties appeared before the said court. Plaintiff sought time to file proper plaint. Time was given accordingly. On 17.07.2019, parties recorded their joint statement to the effect that they agree with the Jirga decision dated 23.02.2017 and accept the same. The court of learned CJ-II, Orakzai, vide order dated 17.07.2019 held that the Jirga verdict was scribed between the

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parties according to the prevailing laws/rules of erst-while Political Administration which comes within the ambit of past and closed transaction and it needs no interference. Case was disposed of accordingly.

Counsel for petitioner contended that suit of petitioner/plaintiff was decreed vide order dated 17.07.2019 by the court of learned CJ-II, Orakzai. That order dated 17.07.2019 amounts to a preliminary decree, therefore, final decree be passed in favour of petitioner against the respondent accordingly. On the other hand, counsel for respondents argued that order dated 17.07.2019 does not amount to a preliminary or consent decree, therefore, requested for dismissal of petition being not maintainable.

The question before the court is that whether order dated 17.07.2019 amounts to a preliminary decree and on the strength of the alleged preliminary decree, final decree could be passed or not and that order dated 17.07.2019 is an executable order or not?

Section 2(2) CPC defines decree as:

“Decree” means the formal expression of an adjudication which, so far as regard the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint [the determination of any question within section 144, and an



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order under rule 60, 98, 99, 101 or 103 or Order XXI] but shall not include- -

- (a) Any adjudication from which an appeal lies as an appeal from an order, or*
- (b) Any order of dismissal for default.*

Explanation:

A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit. It may be partly preliminary and partly final:

Similarly, Section 2(3) CPC defines Decree-holder as:

“Decree-holder” means any person in whose favour decree has been passed or any order capable of execution has been made:

Through petition in hand, petitioner is seeking final decree to the effect that parties are cousins inter-se and respondent has refused to accept and execute preliminary decree dated 17.07.2019 by denying to hand over share of petitioner in the suit property, therefore, preliminary decree be passed in favour of petitioner. As mentioned above, case file was received

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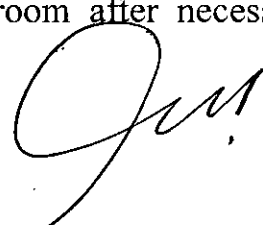
from the court of APA, Lower Orakzai. Parties were noticed. They appeared before the court. On 02.07.2019, plaintiff sought time to submit proper plaint. Time was granted. But instead of receiving proper plaint/fresh pleadings, application/suit of petitioner/plaintiff was disposed of as per joint statement of the

parties whereby Jirga decision was agreed upon and accepted. However, it was ordered that the Jirga decision comes within the ambit of *passed and closed transaction which needs no interference*. Jirga decision was not exhibited. It was an unofficial Jirga decision. There is no specification/description of the disputed property in the application filed before the court of APA, Lower Orakzai, joint statement of the parties recorded before the court and Jirga decision. Rights of the parties were not conclusively determined in order dated 17.07.2019. There is no decree sheet placed on file. There is nothing in order dated 17.07.2019 which could show that preliminary decree was passed in favour of petitioner. There is nothing in the order to the effect that what further proceedings are to be taken before the suit can be completely disposed of. Order dated 17.07.2019 does not fulfil the essential requirements/ingredients of a preliminary decree per law.

Resultantly, petition in hand is dismissed being not maintainable. No order as to cost.

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

Announced:
16.08.2022


(Zahir Khan)
Civil Judge-I,
Tehsil Kalaya, Orakzai

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