

Or-----13
07.09.2022

Parties along with counsel present.

Through this single order I intend to dispose of 02 applications, (i) for rejection of plaint under Order 7 Rule 11 CPC filed by the defendants and (ii) for withdrawal of the suit with permission to file fresh suit filed by the plaintiff.

Arguments already heard and record perused.

Brief facts of the case are that plaintiff has filed an application to the effect that plaintiff is owner in possession of a mountain known as Kasha Seri mountain/Kasha jaranda on the strength of agreement dated 1990 entered into elders/owners of the Darvi Khel and Haider Khel and defendant has got no concern what so ever with the same. Plaintiff has also sought permanent injunction to the effect that defendant be restrained from any kind of interference, construction etc in the mining area. Plaintiff has also sought possession as alternate if he failed to establish his possession over the Seri Mountain or dispossessed forcibly by the defendant during pendency of the suit.

Defendant was summoned who contested the suit by filing written statement and reply to the application for grant of temporary injunction. Defendant also filed an application under Order 7 Rule 11 CPC, contended that plaintiff should approach the department concerned under the relevant provisions of Khyber Pakhtun Khwa Minerals Sector Governance Act, 2017 and this court lacks jurisdiction to proceed with the case.

i. Application for rejection of plaint under Order 7 Rule 11 CPC

This application was filed by defendant and contended that the plaintiff has no cause of action to file the instant suit and that plaintiff is seeking relief/declaration in respect of mines and mineral which is not the domain of this court in view of

Government of KPK Minerals and Mines Governance Act, 2017. The application was contested by defendant through written reply.

The 25th Constitutional (Amendment) Act, 2018 omitted the article 247 of the constitution of Islamic Republic of Pakistan, 1973, resultantly all federal and provincial laws stood extended to the newly merged districts. The KPK Minerals Sector Governance (amendment) Act, 2019 is therefore, extended to the newly merged districts. As per the Act *ibid*, merged districts means and sub divisions means the area merged with the province of Khyber Pakhtun Khwa and duly notified by the Government after the constitutional (25th amendment) Act, 2018.

Section 2 (A) says:

“Notwithstanding anything to the contrary contained any other law, or in any order or decree of court or other authority, or in any rule of custom or usage, or in any contract, instrument, deed or other document, all mines and minerals shall be and shall always be deemed to have been the property of the government and government shall have all powers necessary of proper enjoyment of the its right thereto”.

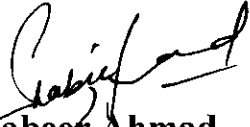
As per Section 2 (A) of the Act ownership of the mines shall be of the government and the plaintiff has sought ownership of the mountain having mines on the strength of an agreement which he has scribed with the elders of the Darvi Khel and Haider Khel. Neither the plaintiff nor elders of Darvi Khel and Haider Khel be called owners of mineral area, therefore, the suit in hand is barred by law. Hence, on the acceptance of the application plaint stands rejected. No order as to costs.

ii. Application for withdrawal with permission to file a fresh one filed by the plaintiff

As application under Order 7 Rule 11 CPC is accepted and plaint is rejected, therefore, application for withdrawal with permission to file a fresh one becomes infructuous. Hence, disposed of accordingly. No order as to costs.

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

Announced
07.09.2022



Shabeer Ahmad,

Civil Judge-II,
Tehsil Courts, Kalaya, Orakzai