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IN THE COURT OF ADDITIONAL DISTRICT JUDGE ORAKZAI, AT BABAR MELA

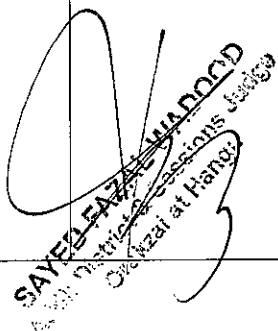
Civil Misc. Appeal No. 9/14 of 2022

Date of institution: 07.09.2022

Date of decision: 15.10.2022

Muhammad Saeed Vs Khanzadeen

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	15.10.2022	<p>Mr. Abid Ali Advocate for appellant and Mr. Sana Ullah Khan Advocate for respondent are in attendance. Arguments heard; whereas, this is the disposal of captioned Civil Misc. Appeal.</p> <p>2. Instant CM Appeal has been preferred by the appellant against the Order dated 23.08.2022 passed by learned Civil Judge Kalaya, Orakzai in Suit bearing No.1/1 of 2019; whereby, the Court has dismissed the application submitted by the Plaintiff/Appellant for amendment in the plaint.</p> <p>3. Facts are such that the plaintiff (appellant herein) has instituted a suit for declaration and mandatory injunction regarding landed property described in the plaint on the score of being owner in possession. The defendant (respondent herein) contended in written statement that he is owner in possession of the property and cultivating the same since long; whereas, plaintiff has got no nexus with it.</p> <p>4. Material prepositions of law and fact asserted by one party and denied by other have separately been put into issues by the learned Trial Judge and plaintiff was asked to produce evidence. Plaintiff produced four witnesses and thereafter presented application for amendment in plaint. The petition was turned down vide impugned single Order No. 15 dated 23.08.2022. Feelings aggrieved, the plaintiff/appellant has filed instant appeal which was contested by the respondent.</p> <p>5. Learned counsel for appellant argued that material facts necessary for reaching to the just conclusion of the matter have inadvertently been excluded while drafting the plaint. The proposed amendments are</p>


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Additional District Sessions Judge
Orakzai at Babar Mela

necessary for determining the real question in controversy.

6. Learned counsel representing respondent opposed by stating that the proposed amendment serve no purpose except prolongation. He added that issues have been framed in year 2019 and so far, only 04 out of total 14 persons have been able to record their statements.

7. The matter under adjudication is amendment in plaint. Order-7 Rule-17 of the Code of Civil Procedure, 1908 is dealing the subject of amendment of pleadings. The Law has prescribed the following principles for allowing or declining the amendment in the pleadings.

i. Amendment can be allowed at any stage of the proceedings.

ii. Amendment shall be allowed where it is necessary for the purpose of determining the real question in controversy.

iii. Amendment would be allowed at any stage of case if it did not change the cause of action of suit or nature of suit.


iv. Amendment would be allowed to seek consequential relief arising from the cause of action originally impleaded in the plaint.

v. Amendment would also be allowed to add relief available to the plaintiff even before higher Court of jurisdiction.

vi. Amendment would also be allowed for converting a suit from one relief to another i.e, if suit was filed for declaration, same could be converted into possession, etc.

8. In this legal background, the mentioning of facts of tenancy, the chain of possession, previously conducted Jirgas and further specification of property in dispute are being considered by this Court necessary for the purpose of determining the real question in controversy. The reason is that the Court is required under the Law to construe the procedural provisions with liberal meaning for the purpose of dispensing complete justice; especially, where there is


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 Addl: District & Sessions Judge
 Orakzai at Harigu

Order Continue...	31.05.2022	<p>no chance of altering the nature of suit. Similarly, allowing amendment is necessary for factual clarity that will ultimately help in fair adjudication of the matter in issue.</p> <p>9. For what has been discussed above, instant CM Appeal is accepted with cost of Rs: Ten Thousand (10,000) to compensate the respondent for litigation being protracted without justifiable reason. Resultantly, the impugned Judgment and Order dated 23.08.2022 of the learned Trial Court is set aside and appellant as plaintiff shall submit the proposed amended plaint before the learned Trial Court before or on the date fixed therein. It is not out of the place to mention here that the conduct of plaintiff shall reconsider his conduct in proceedings with special reference to early disposal of the case being falling within the ambit of backlog category. File of this Court be consigned to the District Record Room after necessary completion and compilation with the span allowed for; whereas, record to be returned with copy of this Order.</p> <p>10. <u>Announced in open Court.</u> 15.10.2022</p> <p> Sayed Fazal Wadood, AD&SJ, Orakzai at Baber Mela</p>
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