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

Civil Revision No. 01/12 of 2024

Date of institution: 15.02.2024

Date of decision: 01.04.2024

Date of consignment:

The Deputy Commissioner, Orakzai (petitioner/defendant no. 2)

Versus

Liaquat Ali son of Khan Muhammad resident of Barmad Khel, Tappa Alat Khel, Sarobi Garhi, Tehsil Lower Orakzai and two others (respondents no. 1 to 3)

**THE CIVIL REVISION PETITION
U/S 115 OF THE CIVIL PROCEDURE CODE, 1908**

JUDGMENT

Through this judgment I shall decide civil revision petition filed by petitioner against respondents under section 115 of The Civil Procedure Code, 1908 challenging therein the judgment and order dated 17.01.2024 of the Court of learned Civil Judge-I, Orakzai, whereby, he has dismissed his application aimed at rejection of plaint being barred by law under Order VII Rule 11 of The Civil Procedure Code, 1908.

Concise facts of the case are that respondent no. 1/plaintiff has filed suit against the petitioner and respondents no. 2 & 3/defendants, wherein, alleged that a cabin constructed between area of District Courts Orakzai and male/female waiting area, the suit cabin, had been allotted to him through a regular meeting of The Cabin Committee Orakzai through allotment order no. 6/SCJ/ORK/C-C dated 29.05.2023 of the learned Senior Civil Judge, Orakzai, the letter, for a period of two years on payment of fixed rent of Rs. 3,000/- per month; that respondent no. 1/

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plaintiff has started the stationery business in suit cabin in July 2023, which was not interrupted by anyone since the time of its establishment; that on 03.11.2023, the petitioner and respondent no. 3 have sealed the suit cabin without any legal justification and forcibly evicted him from there; that this act of petitioner & respondents no. 2 & 3 is illegal, against the law and in contravention to the allotment order of learned Senior Civil Judge, Orakzai, which apprehends irreparable loss to him; that petitioner and respondents no. 2 & 3 have no right to issue notice and seal the suit cabin; therefore, prayed for decree to declare this act of petitioner and respondents no. 2 & 3 to be illegal, against the law coupled with prayer for possession on breaking open the seal of suit cabin; that he has also prayed for decree for the permanent and mandatory injunctions to restrain them from making any sort of interference in the suit cabin without any lawful authority, hence, the suit.

Respondents were summoned by learned trial court. They appeared and filed a joint written statement, wherein, raised various legal and factual objections *inter-alia* with facts that since the building/property over which the District Courts Orakzai are established was the property of the district administration, which was temporarily provided for functioning of courts; therefore, the learned Senior Civil Judge, Orakzai had no authority to allot the suit cabin, which is also situated outside the limits of courts premises, to respondent no. 1/plaintiff; that respondent no. 1/plaintiff has been given notice under The Encroachment Act, thus, the jurisdiction of civil court is also barred under section 11 of The Encroachment Act; that the suit cabin erected at place is the ownership of government and a State property, which can only be allotted by the Estate

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Officer i.e. Deputy Commissioner/ District Collector; that the petitioner and respondents no. 2 & 3 have not allotted the suit cabin to respondent no. 1/plaintiff; therefore, he has no legal status to occupy the same and prayed for dismissal of suit.

With written statement, petitioner and respondents no. 2 & 3 have also filed an application for the rejection of plaint under Order VII Rule 11 of The Civil Procedure Code, 1908, to which respondent no. 1/plaintiff has filed the written reply and parties contested the application vehemently. The learned trial court heard the arguments and finally dismissed the petition. The petitioner being dissatisfied with the verdict has impugned herein the judgment and order dated 17.01.2024 of the learned trial court with assertions raised in written statement coupled with fact that judgment and order of the learned trial court is illegal, without jurisdiction, against the law, arbitrary, unfounded. The learned counsel for petitioner argued that since Akseer Ali, brother of respondent no. 1 has made encroachments by constructing suit cabin, who was given notice under the Encroachment Act; thus, the civil court has no jurisdiction to entertain the suit in hands within the meaning of section 11 of the Encroachment Act; therefore, he has prayed that on acceptance of the instant civil revision petition, the impugned judgment and order of the learned trial court may be set-aside and plaint of respondent no. 1/plaintiff may be rejected.

The learned counsel for respondent no. 1/plaintiff has refuted the arguments of learned counsel for petitioner and contended the civil court has got the jurisdiction; that learned trial court has exercised the powers vested in it in accordance with law, which does not warrant interference of this court; therefore, prayed for dismissal of the petition.

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Arguments heard and record perused.

Viewing valuable arguments advanced by learned counsel for parties and record before the court, it is held that respondent no. 1/plaintiff claims the possession of suit cabin on strength of allotment order/letter of the learned Senior Civil Judge, Orakzai dated 29.05.2023, while, petitioner denies the competence of learned Senior Civil Judge, Orakzai to pass the allotment order in favour of respondent no. 1/plaintiff on sole ground that the building over which the District Courts, Orakzai are functioning is actually State property under the administrative control of petitioner and only petitioner is competent to allot it. Be that as it may, I agree with the petitioner on point that the District Courts, Orakzai are currently running its official business from building allotted to them at Baber Mela, which is the part of District Hangu in absence of any contrary record; therefore, this is yet to be determined by the learned trial court that as to whether the petitioner was also competent to refrain respondent no. 1/plaintiff from running his business or seal the suit cabin having same standing like the Senior Civil Judge, Orakzai because petitioner is also running its official business from Baber Mela, District Hangu and legally speaking the building should have been under the administrative control of district Hangu unless any rebuttable record is brought on file.

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Besides above, if it is admitted that the petitioner had provided the property to District Courts, Orakzai on temporary basis, even then, this is to be determined by the learned trial court after recording of pro and contra evidence that whether the suit cabin was constructed within the area provided to the District Courts Orakzai for running its official business or not. So much so, the suit cabin was allotted to respondent no. 1/plaintiff by

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the learned Senior Civil Judge, Orakzai through letter no. 06/SCJ/ORK/C-C dated 29.05.2023, whereas, the petitioner has allegedly issued notice to Akseer Ali and not to respondent no. 1/plaintiff; therefore, the contention of petitioner that civil court lacks the jurisdiction to entertain the suit in hands is not worth merit as neither respondent no. 1 has been given/issued any notice under the Encroachment Act nor he has challenged the notice dated 18.10.2023 before the court of learned civil judge; thus, there arises no question that suit of respondent no. 1/plaintiff is barred by law, hence, it is held that civil court has got the jurisdiction to entertain the suit.

In the wake of above discussion, it is held that learned trial court has properly appreciated the record and has not erred in arriving to a just conclusion, hence, impugned judgment and order of the learned trial court dated 17.01.2024 is upheld and civil revision petition **dismissed**.

Copy of this order placed on record of learned trial court and the requisitioned record, if any, be returned. Parties have to bear costs of their proceedings because none of the parties has specifically proved the cost incurred on the case.

Case file consigned to record room after completion & compilation.



Announced
01.04.2024

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CERTIFICATE

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



Announced
01.04.2024

Abdul Basit
Addl. District Judge-I, Orakzai