

Case title: Zikar Khan etc VS Haider Ghulam etc.

Or-----15  
14.02.2020

*Plaintiff No.01 present.*  
*Defendant No. 01, 02 and 05 present*

1. During the Course of proceedings under order IX-A CPC for schedule conference, Court find it necessary to hear the learned counsel for the parties on the following issue:

***Issue: - Whether suit of the plaintiff is defective and liable to be dismissed being non-maintainable?***

On the previous date I heard the learned counsel for the parties on the above issue in detail. Today is the date fixed for order on the same.

2. Perusal of the file reveals that Plaintiffs have filed Suit against the defendants for **Declaration, Possession and Perpetual-cum-Mandatory Injunction**. But perusing the Plaint in detail and particularly **para No.03 and 04** of the Plaint from its substance it appears that Plaintiffs are also seeking partition and also seeking and asserting their right of Jobs in Govt. Middle School situated in the disputed land. Nothing has been mentioned regarding partition and right of Jobs or shown to be a relief flowing directly and necessarily from the declaration sought and a relief appropriate to and necessarily consequent on the right or title asserted. It makes the suit of the plaintiffs to fall within the ambit of barring provision of S.42 of S.R.A 1877 where Court shall not make any such declaration if Plaintiff/s being able to seek further relief than a mere declaration of title, omits to do so.
3. The description, measurement and nature of property which is important for proceedings, has not been mentioned clearly. Although it is within the Judicial Notice of this Court that there is no revenue record of land in District Orakzai. But still for the purpose of Jurisdiction and to protect the rights of third party it is important to give proper description, measurement and nature of suit property.
4. The suit is also bad for Mis-Joinder and Non-Joinder of the parties. For the reason that it is clear from the wordings of the

***Continued.....***

Muhammad Ijaz  
City Judge  
Orakzai (Babar Mela)

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plaint that plaintiffs are asserting their rights of ownership upon un-partitioned ancestral property of Qom(قوْم) Bar Muhammad Kheil.

Let all the proper and necessary parties be included in the Suit on both sides (Plaintiffs and Defendants).

5. For aforementioned reasons if we continue with the present Suit it will serve no purpose and petitioner will get no relief. The law on the subject is very much clear, which provides that the legal defects may be corrected at any stage of the proceedings. Further, natural justice demands that equal opportunities may be given to the parties to correct their pleadings.
6. Hence, in present circumstances, the instant Suit in hand is hereby **disposed of** accordingly **with permission to the** parties to submit their respective pleadings as per Code of Civil Procedure 1908 within the time prescribe by the law. Case file be consigned to record room after necessary completion and compilation.

Announced  
14/02/2020

Muhammad Imtiaz,  
Civil Judge/JM-II,  
Orakzai (Babar Mela)  
(M. Imtiaz)  
Civil Judge-II, Orakzai