

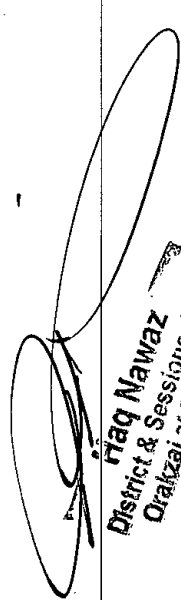
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IN THE COURT OF DISTRICT JUDGE, ORAKZAI AT BABER MELA

Case Title: Haji Ashraf Khan etc vs Khizar Hayat Etc

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 No.11	15.10.2025	<p>Counsel for the parties present. Reply to application for amended plaint submitted; however, the appellants submitted another application for withdrawal of the case with permission to file afresh suit. Counsel for the respondent relied upon the reply submitted against a similar application in Civil Appeal No. 30/13. Arguments heard and record perused.</p> <p>This civil appeal was preferred against the order dated 06.03.2025 whereby Civil Suit No. 54/1 of 2022 was rejected under Order 7 Rule 11 CPC.</p> <p>The suit was brought by the appellants for declaration of their shares in the legacy of Ali Akbar Khan in respect of about 2,000 Kanals of land situated at different villages of sub-division Lower Orakzai, mentioned in the headnote of the plaint. The appellants also prayed for issuance of permanent and mandatory injunctions to restrain the respondents/defendants from refusing the rights of appellants/plaintiffs. They also sought recovery of possession of the suit properties through official partition with the recovery of mesne profit.</p> <p>The suits were contested by the respondents by submitting their written statement. They also submitted an application under Order 7 Rule 11 CPC for rejection of the plaints. The appellants contesting their application by submitting their written reply. The learned trial Court, after hearing both the parties, accepted the application and rejected</p>

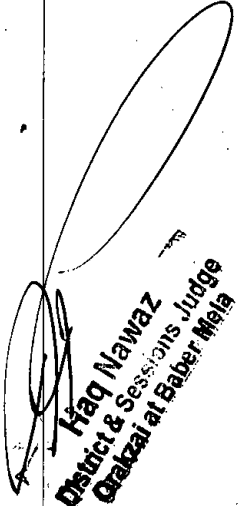

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

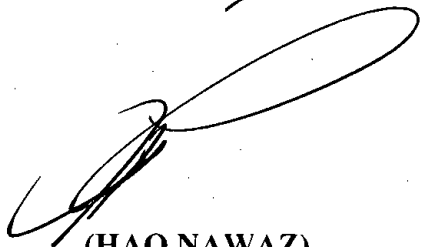
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	 Haq Nawaz District & Sessions Judge Orakzai at Bader Mela	<p>the plaint under Order 7 Rule 11 CPC. Hence, this appeal was preferred.</p> <p>The learned trial Court, while accepting the application under Order 7 Rule 11 CPC, observed that the plaint is silent about the measurement, nature and other descriptions of the suit properties and vague about mesne profit. It was further observed that the appellants have no legal standing as none of their predecessors have claimed their ownership in respect of the suit properties in their lifetimes nor the title documents were annexed with the plaints which do not disclose as to when the cause of action was arisen. Further that there is no likelihood of production of evidence by the appellants to elaborate about the facts passed about three centuries back as the claim is based upon the grant of Mughal Emperor to the alleged predecessor of the parties.</p> <p>During the pendency of appeal, the appellants submitted an application for withdrawal of the case with permission to file a fresh suit. It was alleged that the plaint has formal defects with regard to details and measurement of the properties, the details of parties interested in the suit properties and nature of the suit properties.</p> <p>The application was contested by the respondents by submitting their written reply. I have heard learned counsel for the parties and perused the record.</p> <p>According to Order 23 CPC, the plaintiff may, at any</p>

time after the institution of a suit, withdraw his suit if he

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	 Haq Nawaz District & Sessions Judge Orakzai at Baber Mela	<p>satisfies the Court that the suit must fail by reason of some formal defect. Needless to mention that appeal is continuation of the suit and the Hon'ble Lahore High Court in its judgment reported in 2023 CLC 2042 has defined the formal defects to be, (i) Misjoinder of parties or causes of action which will result in the failure of the suit, (ii) erroneous valuation of the subject matter; (iii) insufficient description of the property involved in the suit; (iv) failure to disclose a cause of action; (v) material document not properly stamped; (vi) non-impleading of necessary party and (vii) form of suit.</p> <p>Though the application for withdrawal was dismissed in the said reported judgment by allowing the petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, for the reason that the application for permission to withdraw the suit was bereft of any content disclosing formal defect in the plaint. But the present application by the appellants differentiates their case as the formal defects, as defined by the Hon'ble Lahore High Court in the said judgment, have been pointed out in the present application as well as in the impugned order. The suit in question must fail for the said defects as pointed out in the application.</p> <p>So far, the other observations of the learned trial Court in the impugned order with regard to legal standing of the appellants and other matters, are concerned, the same require pro and contra evidence for its adjudication. Needless to</p> <p>[HAJI ASHRAF KHAN ETC. VS KHIZAR HAYAT ETC.]</p>

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		<p>mention that being newly merged district of FATA, the District Orakzai has no settlement of land under the Land Revenue Act, 1967; therefore, the title documents are mostly not available in the area. Similarly, no time limit was provided under the repugnant Frontier Crime Regulations, 1901, for institution of a fresh suit whereas the law of limitation was extended to the area with the merger of FATA in the province of Khyber Pakhtunkhwa in the year 2018 and the suit was filed in the year 2022. Even otherwise, the question of limitation is a mixed question of law and fact which could only be adjudicated upon after recording evidence.</p> <p>In view of the above, the application is accepted. The suit is dismissed as withdrawn and the appellants are allowed to institute afresh suits subject to all legal and factual objections. The appeal is disposed of accordingly. File of this Court be consigned to record room after its necessary completion and compilation.</p> <p><u>Announced:</u> 15.10.2025</p> <p style="text-align: right;">  (HAQ NAWAZ) District Judge, Orakzai at Baber Mela </p>