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COURT OF SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Case Title: Babo Khan etc. vs Ali Sar Jan 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. 38	05.09.2026	Plaintiffs though special attorney present. Defendants through special attorney. This order decides instant application filed by the plaintiff's seeking withdrawal of the suit with permission to institute a fresh suit. Written reply on behalf of the defendants has already been filed. Arguments have been heard and the record has been perused. Learned counsel for the plaintiffs submitted that there are certain incorrect and incomplete averments in the plaint and that some necessary departments have not been impleaded as parties. It was contended that the aforesaid defects constitute formal defects in the suit and, if allowed to remain unrectified, the suit would ultimately fail on account thereof. Hence, withdrawal of the suit with permission to file a fresh suit has been sought. Perusal of the record reveals that certain necessary departments have not been arrayed as parties and that the plaint contains incomplete averments requiring rectification. Further, the subject matter contains both exclusively owned land, and shamilaat property. It is settled principle that remedies available in respect of privately-owned

Senior Civil Judge
Orakzai
05 SEP 2026

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Order No.38 Continued.	05.09.2026	properties are not applicable to shamilaat, therefore, both kinds of proprietary claims cannot be joined in the same suit. Moreover, parties necessary for a shamilaat claim are different from a suit for declaration of title. The Court is, therefore, satisfied that the suit suffers from a formal defect within the contemplation of Order XXIII Rule 1 of the Code of Civil Procedure. In view of the above, the instant application is allowed. Consequently, the suit is dismissed as withdrawn with permission to the plaintiffs to institute a fresh suit on the same cause of action, subject to all legal limitations and in accordance with law. File be consigned to record room after necessary completion and compilation. <u>Announced.</u> 05.09.2026  <u>Ijaz Mahsood</u> Senior Civil Judge, Orakzai at Baber Mela
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