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

Civil Misc. Appeal No. 13/14 of 2022

Date of institution: 13.12.2022

Sultan Akbar etc. Vs Zarbat Khan 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	04/02/2023	<p>Parties along with their counsel present. Arguments have already been heard; whereas, this is aimed to dispose of captioned Civil Misc. Appeal.</p> <p>2. This Miscellaneous Civil Appeal calls in question the validity and propriety of the Order dated 02.11.2022, passed by learned Civil Judge, Orakzai, in Civil Suit bearing No.32/1 of 2021; whereby, the learned Trial Court has dismissed application of plaintiff for grant of temporary injunction.</p> <p>3. The brief facts of the suit pending trial in the Civil Court are such that plaintiffs are owners in possession of suit property, measuring 500 to 600 Jareeb detailed in the headnote of the plaint. Plaintiffs contended that the suit property is their ancestral property and the defendants are interfering in the suit property that necessitated presentation of suit for declaration mandatory injunction.</p> <p>4. Defendants on appearance negated the stance of the plaintiffs and had taken specific plea that the suit property is their ancestral property and is in their ownership and possession since long. If injunctive order has been passed, it would cause irreparable loss to them. They prayed for rejection of petition for grant of temporary injunction.</p> <p>5. The learned Trial Judge had dismissed application for grant of temporary injunction vide Order No.07 dated 02-11-2022. The plaintiffs being aggrieved filed instant Misc. Civil Appeal, which is under consideration.</p> <p>6. Muhammad Atlas Khan Advocate while opening the appeal has argued that all the ingredients required for grant of temporary injunction are fully existed and had wrongly been excluded from consideration by learned Trial Judge.</p>


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Addl. District & Sessions Judge
Orakzai at Babar Meli

Documentary evidence is annexed with the plaint reflecting the ownership, possession and earlier dispute over property. He added that the area being Newly Merged District has got no settlements and therefore no document of the revenue department can be presented or annexed with the pleadings by either party and is no ground for refusal of injunction.

7. Mr. Sana Ullah Khan Advocate representing respondents/defendants was of the stance that defendants are owners in possession of the disputed property since long. The suit is presented on mala fide to harass the defendants and is liable to be dismissed with compensatory cost. He concluded that application for temporary injunction has rightly been declined by learned Trial Judge.

8. In the light of above discussed facts and circumstances of the case followed by professional assistance rendered by way of arguments of the counsel representing parties, the matter of withholding of injunction is being determined in following terms.


9. Order-39 of the Code of Civil Procedure, 1908, is dealing the subject of granting or withholding of temporary injunction. The prima facie existence of a right and its infringement, the irreparable damage and balance of inconvenience are prime prerequisites to be considered while determining the question of temporary injunction. The plaintiffs are claiming ownership and possession of disputed land on the score of inheritance and same is the case of defendants as they are also claiming ownership and possession on the same score of inheritance. None of the parties have annexed any title document to their pleadings and it is very common in the litigation prevailing the District Orakzai for being non-availability of settlement of land. When plaint has been perused, the description of property, source of ownership and possession of the plaintiffs, plantation and other allied matters have been clarified. Similarly, documents pertaining resolution of the


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issue by the plaintiffs before the Civil Administration have been annexed to the plaint. On the other hand, the written statement is evasive denial and poorly worded without any proof of the claim and defense plea. One of the object of the injunction is to preserve the status quo and the effect of non-issuance of injunction would be to deprive the plaintiff forever of the right claim of suit it should be granted. The Court need not to closely examine the merits of the case nor is the applicant to be required to establish his legal title. It is sufficient if the applicant is able to establish in arguable case (2001-YLR-132-2012 CLC 1613). Second ingredient is of irreparable damage and third ingredient of irreparable loss being interlinked are taken jointly for consideration. Chir Pine and other species of Pine tree native in the terrain besides fruit trees of apple and walnuts are available in disputed area which are under threat of ruthless cutting if done will cause more inconvenience on withholding of injunction and will obviously follow irreparable injury. All the three conditions required for grant of temporary injunction are available in the case and therefore decline of the petition is not sustainable.

10. For what has been discussed above, instant Civil Miscellaneous Appeal is allowed. Consequently, temporary injunction is granted with the direction not to interfere or alienate the suit property till completion of statutory period or final disposal of the case; whichever, happens earlier. Requisitioned record be returned with the copy of this Order while file of this Court be consigned to the District Record Room Orakzai after completion and compilation, within the span allowed for.

Announced in open Court


 Sayed Fazal Wadood,
 AD&S.J, Orakzai at Baber Mela