

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

MISC. CIVIL APPEAL NO. : 1/14 OF 2023
DATE OF ORIGINAL INSTITUTION : 20.12.2022
DATE OF TRANSFER-IN : 08.03.2023
DATE OF DECISION : 31.03.2023

1. RAST KHAN S/O ZARIF KHAN
 2. MIRAJ KHAN S/O AJMIR KHAN
 3. FAZAL KHALIQ S/O ABDUL KHALIQ
 4. ABDUL MALIK S/O ALI AKBAR
 5. HALEEM GUL S/O SEEN AKBAR
 6. BANARAS KHAN S/O ZARIF KHAN
 7. ABDUL KHALIQ S/O YAR MUHAMMAD
 8. MUHAMMAD TAHIR S/O ZARIF KHAN
 9. NOOR SHAHID S/O AJMIR KHAN
- ALL RESIDENTS OF CASTE MISHTI, TAPA HAIDER KHEL,
TEHSIL CENTRAL, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. HAJI RAHEEM KHAN S/O SHER AFZAL
 2. SHEW KHAN S/O MIR SHAH
 3. LAIQ KHAN S/O MUHAMMAD AFZAL
 4. HABIB SHAH S/O ISLAM SHAH
 5. AQAL SHAH S/O ISLAM SHAH
 6. ZARIF KHAN S/O MUHAMMAD AKBAR
 7. ABDUL REHMAN S/O AZRAM KHAN
 8. AJMAL KHAN S/O BARANG KHAN
 9. KARAMAT ULLAH S/O AKRAM KHAN
 10. KHWAIDAD KHAN S/O WAZIR KHAN
 11. SHAH AKBAR S/O SPEEN AKBAR
 12. SHAH MUHAMMAD S/O PIAYO GUL
 13. ABDUL SHAHID S/O NOOR JALIL KHAN
 14. SHARID S/O MUHAMMAD AKBAR
 15. AMEEN AJAB KHAN S/O GUL AKBAR
 16. SAJID S/O SHER AFZAL
 17. REHMAN GUL S/O SEEN AKBAR
 18. MUKHTIAR KHAN S/O REHMAN GUL
 19. INJEER GUL S/O ZARIF KHAN
- ALL RESIDENTS OF CASTE MISHTI, TAPA HAIDER KHEL,
TEHSIL CENTRAL, DISTRICT ORAKZAI
20. SHO POLICE STATION MISHTI MELA

..... (RESPONDENTS)

Present: Basit Hafeez Advocate for appellants.
: Mr. Mudassir Ijaz Advocate for respondents.

JUDGEMENT

31.03.2023

Impugned herein is the order dated 30.11.2022 of learned Civil Judge-II, Tehsil Kalaya, District Orakzai vide which application of plaintiffs/respondents for grant of temporary injunction has been accepted.

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(2). In a suit before the learned trial court, the appellants/defendants claimed the suit pathway as their ownership leading to their fields and village while the plaintiffs/respondents having got no concern with the same are allegedly making illegal interference by blocking the suit pathway. The plaintiffs/defendants contested the suit on the ground, that they are owners in possession of the suit pathway.

(3). The plaint was accompanied by application for grant of temporary injunction seeking the appellants/defendants to restrain from blocking the suit pathway. The appellants/defendants contested the same by submission of reply. The learned trial court, after having heard the arguments, accepted the application by directing the appellants/defendants to maintain status quo for a period of six months or till final disposal of the suit.

The appellants/defendants, being aggrieved of the impugned order, filed the present appeal.

(4). I heard arguments and perused the record.

(5). Perusal of case file shows that as per pleadings of the parties, the plaintiffs/respondents claim the suit pathway as their ownership but at the same time they have alleged the property in the form of markets on both sides of pathway as the ownership of Injeer Gul, the defendant no. 11 in the plaint and impleaded as respondent no. 19 in memorandum of appeal. On the other hand, the appellants/defendants claim the suit pathway as their ownership; however, they have not denied the existence of

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pathway rather they are claiming the right of blockage of the suit pathway as a counterblast to the violation of agreement deed dated 20.04.2015 by respondents/plaintiffs where the appellants/defendants have denied their approach to the mountain decided to be commonly used by the parties in view of the afore-mentioned verdict. Hence, the existence of pathway used by the respondents/plaintiffs for their approach to their houses and fields having no alternate access, tilt the factum of prima facie case in favour of respondents/plaintiffs. Blockage of the suit pathway by the appellants/defendants may also cause inconvenience and irreparable loss to the respondents/plaintiffs.

(6). In view of what is discussed above, it is held that the impugned order dated 30.11.2022 of the learned Civil Judge-II, Tehsil Kalaya, District Orakzai does not suffer from any illegality or irregularity and need no interference by this court. Hence, the instant appeal is dismissed. File of this court be consigned to Record Room. Copy of this judgment be sent to the trial court for information.

Pronounced
31.03.2023



(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 31.03.2023

(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela