

**IN THE COURT OF SAMI ULLAH, CIVIL JUDGE-I,  
ORAKZAI (AT BABER MELA).**

Original Civil suit No	9/6 of 2022
Date of institution	15.10.2022
Date of decision	30.03.2023

**1. Rayat Khan S/O Ameen Khan**

Resident of Qoam Akhel, Tappa Mohsin Khel, Tehsil Upper, District Orakzai.

.....(Petitioner)

**Versus**

1. Qalandar Shah S/o Noorzali Shah
2. Khameen Gul S/o Noorzali Shah
3. Habib Ullah Khan S/o Noorzali Shah
4. Younas S/O Habib Ullah Khan
5. Sardar Khan S/o Dooranai

All residents of Taali, Qoam Akhel, Tappa Mohsin Khel, Tehsil Upper District Orakzai.

.....(Respondents)

**PETITION FOR CONTEMPT OF COURT.**

**JUDGMENT:**

1. Brief facts of the instant petition are that the Ad-interim temporary injunction was granted in favour of petitioner by this court in the suit No. 12/1 of 2022 by which respondents of the instant petition were stopped from raising construction over the suit property. That despite Ad-interim injunction, the respondents have kept on raising construction, hereby violated the status quo orders of the court. Feeling aggrieved the petitioner has filled the instant contempt of court petition.

*L. Ullah*  
*30.03.2023*

2. After due process of summons the respondents appeared in person and contested the petition by submitting written reply in which contention of the petitioners were resisted on many legal as well as factual grounds.

3. After arguments on maintainability and acceptance of the instant petition for hearing, the court framed the following issues.

**ISSUES.**

1. *Whether the respondents have violated the status quo orders of the courts?*
2. *Whether the constructed house is situated in the disputed property?*
3. *Whether the respondent No.04 namely Younas S/o Habib Ullah Khan has restrained the bailiff of the court to make sketch of the disputed property on court orders?*
4. *Relief.*

4. Petitioner was afforded with ample opportunity to adduce evidence. Petitioner in support of his stance and contention produced 03 Witnesses. Detail of the petitioner's witnesses and exhibited documents are as under; -

	WITNESSES	EXHIBITIS
PW-1	Najeeb Uldeen S/o Khayal Deen Resident of Mohsin Khel, Dorri Bandha P.O. Kahe District Hangu	Copy of CNIC is Ex.PW-1/1
PW-2	Rayat Khan S/o Ameen Khan Resident of Dorri Bandha P.O. Kahe District Hangu	Nil
CW-1	Mubarak Ali S/o. Ghafoor Ali Bailiff/Process Server of District Court Orakzai.	Report of Bailiff is Ex.PW-3/1. Pictures of disputed property is Ex.PW-3/2

*Samir Ullah  
20.03.2023*

5. Learned counsel for the petitioner Mr. Noor Karim Khan Advocate argued that the respondents were constructing a house on the disputed property and plaintiff filed an application for grant of temporary injunction. This court on the said application granted Ad-interim temporary injunction in favour of plaintiff on 01.07.2022 and directed the respondents to maintain status quo. That despite proper notice and attendance of the respondents in case No.12/1 of 2022, they did not stop raising construction over the suit property. Due to this clear violation of the court order, the instant petition was filed. The court directed bailiff to file report on present description of suit property on two counts. Bailiff of the court submitted reports which are part of the main case and according to those two reports, improvement in construction of the said house is evident.

6. Learned counsel for the respondents Mr. Shaheen Muhammad Advocate argued that the evidence produced in the instant petition is not sufficient to announce punishment. Further stated that the respondents have stopped construction over the said house after issuance of Ad-interim temporary injunction by this court. Moreover, the petitioner has failed to point out in evidence that who amongst the respondents have allegedly violated the status quo order.

7. After completion of evidence, arguments of the learned counsels for the parties were heard and record of the case file was gone through.

8. After hearing arguments and after gone through the record of the case with valuable assistance of learned Counsels for both the parties, my issue-wise findings are as under:

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 20.03.2023

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ISSUE NO.1&2:

*Whether the respondents have violated the status quo orders of the courts?*

*Whether the constructed house is situated in the disputed property?*

9. Both the issues are interlinked, therefore, decided together. The onus of proving the issues were on petitioner. Petitioner in support of his stance produced three witnesses.
10. PW-1 in his statement recorded that the respondents had started interference in the suit property by raising construction. Upon the knowledge of the said interference, the petitioner filed a civil suit alongwith an application for temporary injunction. That despite issuance of Ad-interim temporary injunction by this court, the respondents had completed construction over the disputed house. PW-01 in his cross examination has admitted the fact that while issuance of status quo order, Habib Ullah was not a party in the main suit.
11. Petitioner himself appeared before the court as PW-02 and reproduced the contents of the petition. PW-02 in his cross examination admitted that he had not made Habib Ullah a party in the main case until he was impleaded in the same in October, 2022.
12. Bailiff of the court was produced CW-1 in the instant case recorded in his statement that he visited the spot on 22.10.2022 and submitted report which is Ex.PW-3/1. CW-01 in his cross examination recorded that the report don't bear any date. Further stated that he had visited the spot even before 22.10.2022. Further stated that he had not mentioned Habib Ullah and Qalandar Shah

Handwritten note: Habib Ullah 30.03.2023

in his report. Further stated that the disputed house might have been constructed 3/4 month ago.

13. Statement of the plaintiff witnesses brought the facts before the court, mentioned hereinafter, which provided reason for deciding the issues. Firstly, respondent No.3 namely Habib Ullah as well as respondent No.4 namely Muhammad Younas were admittedly not party to the main suit at the time of issuance of status quo order and hence, notice of the same was not given to them. Secondly, it has not been established in the evidence that who has constructed the house amongst the respondents and who is presently residing in the same. Thirdly, it has not been established that the said house was constructed on the disputed property. Fourthly, CW-1 in his statement recorded that at the time of his visit to the spot, people were residing in the said house. It is pertinent to mention here that as per stance of the petitioner, construction over the said house was started at the time of institution of the main case 22.06.2022 and bailiff report was submitted on 01.07.2022, then how come construction of the house was completed in such short duration of time. Moreover, CW-01 in his statement has recorded that by the appearance of the house it can presumed that the same has been constructed 3/4 months ago.

14. Keeping in view the above discussion, it is held that petitioner failed to produced cogent, convincing and reliable oral and documentary evidence in support of their claim, therefore, issue No.01 & 2 is decided in negative.

Lawyer  
Ullah  
30.03.2023

ISSUE NO. 3:

*Whether the respondent No.04 namely Younas S/o Habib Ullah Khan has restrained the bailiff of the court to make sketch of the disputed property on court orders?*


15. The onus of proving the issue was on petitioner but the issue was remained unaddressed in the evidence of the petitioner hence, redundant.

RELIEF:

16. Crux of my issue wise discussion is that petitioner has failed to prove his case against the respondents. Hence, the petition in hand is hereby **Dismissed**. Costs to follow the events.


17. File be consigned to record room after its necessary completion and compilation.

Announced  
30.03.2023

  
**Sami Ullah**  
Civil Judge/JM-I,  
Orakzai (At Baber Mela)

CERTIFICATE: -

Certified that this judgment consists of six (06) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

  
**Sami Ullah**  
Civil Judge/JM-I,  
Orakzai (At Baber Mela)