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IN THE COURT OF SHAUKAT ALI; ADDITIONAL SESSIONS
JUDGE-II, ORAKZAI AT BABER MELA

Criminal Revision No: 03/10

Date of Institution: 26.11.2019

Date of Decision: 10.12.2019

Ilyas Khan S/o Lal Bad Khan R/o Ibrahim Zona Mishti Mela District
Central Orakzai

.....(*Appellant*)

VERSUS

Talib Jan S/o Lal Bad Shah R/o Ibrahim Zona Mishti Mela District Central
Orakzai

.....(*Respondent*)

Represented By:

Mr. Abid Ali Advocate, counsel, for Appellant,

Mr. Shaheen Muhammad Advocate, counsel, for Respondent.

JUDGMENT

The appellant on 29/10/2019 filed complaint u/s 145 Cr.P.C against the respondent before the Illaqa Judicial Magistrate wherein the appellant contended that the disputed house fully detailed in Para No.1 of the compliant is his inherited and purchased property and in exchange of the disputed house the appellant has transferred an agricultural ancestral property measuring 30 Marla to the respondent situated on the road side at Ibrahim Zona; that the responded have no concern with the ownership of the disputed property/house; that the appellant spent huge amount on the construction over the disputed property and has also made improvements in the house; that the appellant intends further construction but the respondent

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is restraining the appellant from the construction due to which there is apprehension of breach of peace; that the respondent previously extended threats to the appellant against whom FIR was registered; that Jirga was also convened in the year 2016 vide which decision was made about the disputed house which was duly signed by the respondent but despite that the respondent extended threats which can cause breach of peace. The appellant through his complaint u/s 145 Cr.P.C has requested for necessary legal action against the respondent and restraining him from any sort of interference in the peaceful possession and ownership of the appellant in the disputed house.

After the institution of the complainant report from SHO concern was requisitioned. On 05/11/2019 the police submitted report. The respondent also submitted reply of the compliant u/s 145 Cr.P.C on 15/11/2019 and the case was fixed for arguments on the point of maintainability. The Learned Judicial Magistrate-II Orakzai after hearing arguments dismissed the compliant vide order dated 22/11/2019 and the parties were directed to approach proper forum for redressal of their grievance, if so advised. The appellant feeling aggrieved from the impugn order preferred the instant appeal. The impugn order is not appealable and that can only be assailed in revision therefore the appeal in hand is converted into revision.

Arguments of learned counsels for the parties already heard and record perused.

The object of section 145 Cr.P.C is to regulate the possession of landed property and to restore the possession to the person in actual possession, illegally and forcefully deprived from the right to possess his

landed property. Furthermore, in case of apprehension of breach of peace over the possession of such property the Magistrate has to pass appropriate orders in order to avoid such breach of peace.

The record reflects that the appellant who instituted the complaint u/s 145 Cr.P.C is enjoying the possession of disputed property and there is no allegation of dispossession against the respondent. The respondent has also not denied the possession of the appellant over the disputed house, therefore there is no question of any illegal dispossession and the appellant is still enjoying the possession of disputed house, therefore, there is no such issue to pass an order to make declaration of possession of a party or to restore the possession of the party wrongfully and forcefully dispossessed. The main issue between the parties is over the improper private partition of disputed landed property and separation of share. The appellant is neither dispossessed nor the dispute is with regard to the possession of the property but the dispute between the parties is partition of share of the property in possession of appellant. In the present facts and circumstances, the case falls outside the jurisdiction of Magistrate u/s 145 Cr.P.C and such dispute squarely falls within the jurisdiction of civil court for which the parties may approach civil court, if so advised.

So far as apprehension of breach of peace is concerned the report of SHO available on file submitted after inquiry does not speak about the existence of apprehension of breach of peace between the parties over the disputed house. Beside there is nothing on record that the case is one of emergency and there is imminent breach of peace, therefore in the absence

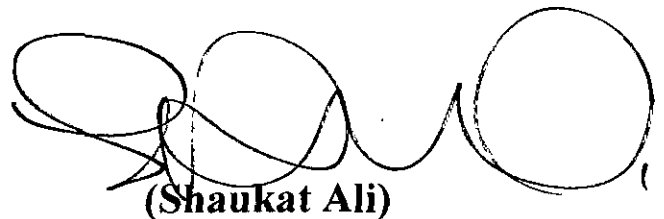
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of any report regarding apprehension of breach of peace the complaint u/s 145 Cr.P.C was not maintainable. Furthermore, preventive measure for keeping peace between the parties are initiated and during the course of arguments the parties and their counsels submitted at the bar that parties are already bound down u/s 107 Cr.P.C which is sufficient to maintain peace between the parties, therefore, there are no reasonable grounds to proceed with the complaint u/s 145 Cr.P.C.

As sequel to the above discussion, no illegality or irregularity has been pointed out in the impugned order dated 22.11.2019 of Judicial Magistrate-II Orakzai, which is upheld. The instant revision petition, being devoid of merits, stands dismissed.

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

Announced
10 December, 2019



(Shaukat Ali)
Additional Sessions Judge-II,
Orakzai at Baber Mela
SHAUKAT ALI
Addl: District & Sessions Judge-II,
Orakzai at Hangu

CERTIFICATE

Certified that this judgment consists of 04 pages. Each page has been read corrected and signed by me wherever, necessary.



Additional Sessions Judge-II,
Orakzai at Baber Mela
SHAUKAT ALI
Addl: District & Sessions Judge-II,
Orakzai at Hangu