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**IN THE COURT OF ADDITIONAL DISTRICT
JUDGE-II, ORAKZAI AT BABER MELA**

Miscellaneous Civil Appeal No.3/14 of 2020

Date of institution: 23.11.2020
Date of decision: 15.12.2020

Laiq Shah & four others r/o Cast: Feroz Khel, Jalaka Mela
Tehsil Lower District Orakzai. **(Appellants)**

Versus

Luqmat Khan s/o Niaz Bat Khan r/o Cast: Feroz Khel,
Jalaka Mela Tehsil Lower District Orakzai
(Respondents)

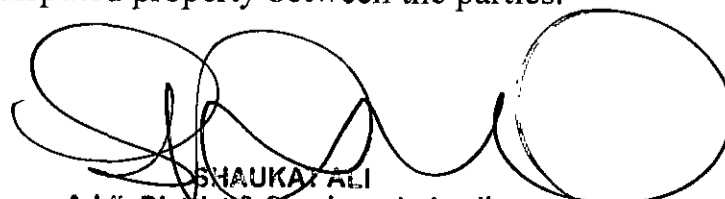
Represented by:

Mr. Sana Ullah Khan Advocate, counsel for appellants
Mr. Shoaib Nasrat Khel Advocate, counsel for respondent

JUDGMENT

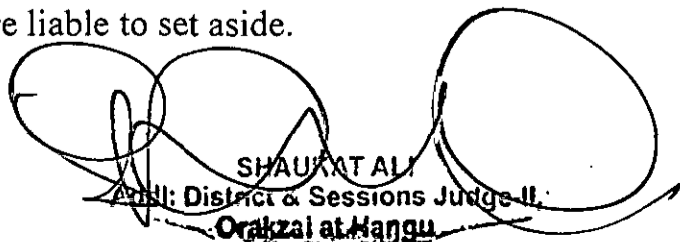
This judgment is intended to dispose of the instant Civil Miscellaneous Appeal filed against the order of Learned Civil Judge, Orakzai dated 23.10.2020, vide which the application for temporary injunction, filed by the respondent, was accepted and temporary injunction was granted for a period of six months or till the disposal of the suit whichever is earlier.

Brief facts of the case are that the respondent instituted suit for declaration along with prayer for permanent and mandatory injunction to the effect that the appellants may be restrained from raising construction on the suit property fully detailed in the heading of the plaint before official partition of the disputed property between the parties.


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The respondent along with his plaint also submitted an application before the Learned Lower Court for temporary injunction to restrain the appellants from construction of house on the disputed property. The learned lower Court, after receiving written statement and reply of application for temporary injunction, heard arguments on the said application and after hearing the arguments, the application for temporary injunction was allowed vide order dated 23.10.2020 and temporary injunction was granted. Feeling aggrieved from the impugned order, the instant appeal was preferred.

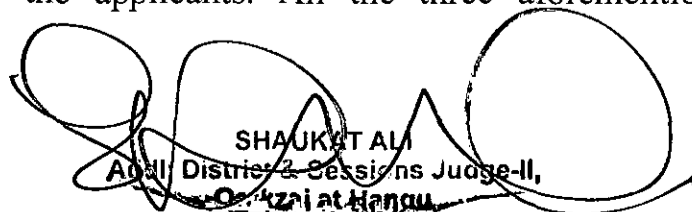
Learned counsel for the appellants argued that the disputed property has been privately partitioned since their forefathers and the appellants are in possession of their share after private partition and are raising construction on the property in their possession after private partition, that after the private partition every owner is enjoying his ownership and possession and the respondent have no right to restrain the appellants from raising construction, that the respondent have no prima facie case in his favor and if injunction is granted the appellants would be deprived to enjoy their rights over the property which will cause inconvenience and irreparable loss to the appellants. Learned counsel for the appellants argued that the order of the learned lower court is illegal and against the facts and circumstances of the case therefore liable to set aside.


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Conversely learned counsel for the respondent strongly opposed the arguments of learned counsel for the appellants and argued that the disputed property is joint property between the parties and neither any private nor official partition has been taken place between the parties, that the appellants are raising construction on the valuable portion of the joint property which will affect the rights of the respondent at the time of partition in the joint property, that the record shows that both the parties are joint owners in the disputed property, therefore prima facie case exist in favor of the respondent, that if the appellants are not restrained from raising construction that will cause inconvenience to the respondent and will result irreparable loss to him. Learned counsel for the respondent argued that the appellants may be restrained from raising construction till the partition of the joint property.

Arguments of learned counsel for the parties heard and record perused.

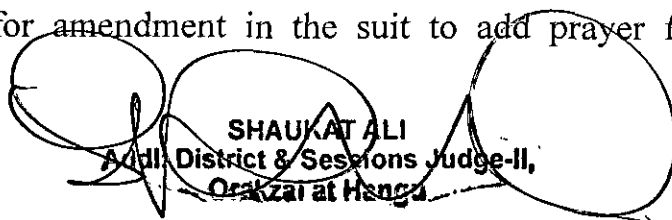
Whilst determining the question of granting temporary injunction, factors that are to be considered; firstly that the applicant seeking injunction has to show a prima facie existence of his right and its violation by the respondents, secondly that the applicants will suffer more inconvenience than the respondents if injunction is refused and lastly that in case of refusal of injunction irreparable loss or injury may accrue to the applicants. All the three aforementioned


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essential ingredients must co-exist in favor of the applicant seeking injunctive relief against the respondent.

The respondent instituted for declaration cum perpetual and mandatory injunction against the appellants along with application for temporary injunction with prayer to restrain the appellants from raising construction in the disputed property which is yet to be partitioned. The record shows that the disputed property was joint between the parties and no private or official partition has been carried out between the parties till date. The appellants allege private partition however no document of private partition is annexed with the plaint to show a prima facie case in their favor. The fact that whether any private partition has taken place regarding the disputed property is yet to be determined after recording of evidence. In cases of joint property each and every co-sharer have right in each and every inch of the joint property and one co-sharer cannot raise construction without the permission of the other co-sharer before partition and if one co-sharer is allowed to raise construction before partition it will affect the right of other co-sharer. Similarly in the instant case if the appellants are allowed to raise construction on the valuable part of the property as alleged by the respondent it will affect the rights of the respondent in the suit property and will cause inconvenience and irreparable loss to the respondent. The respondent have sought the partition of the suit property by submitting an application for amendment in the suit to add prayer for

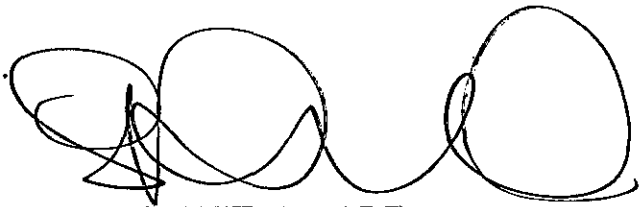

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partition in the suit, therefore, before raising any construction or changing the nature of the suit property the appellants has to wait till the partition of the suit property and separation of their share. The essential ingredients for the grant of temporary injunction co-exist in favor of respondent, therefore it is necessary that the appellants may be restrained from construction of house on the suit property and from changing the nature of the suit property till partition.

As sequel to the above discussion, the impugned order dated 23-10-2020 passed by Civil Judge Orakzai is upheld and the instant appeal being devoid of merits stands dismissed. The parties shall bear their own costs.

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

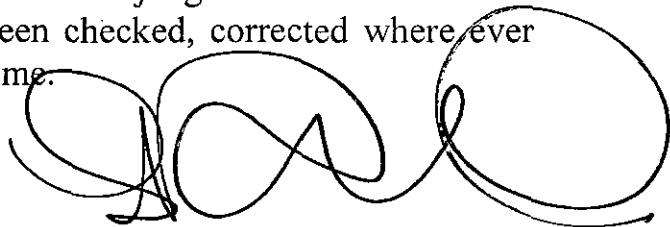
Announced
15-12-2020



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CERTIFICATE

Certified that this judgment consists of 05 pages. Each page has been checked, corrected where ever necessary and signed by me.



(SHAUKAT ALI)
Additional District Judge-II,
Orakzai at Baber Mela Hangu