

Civil Appeal No. 24/20 of 2020

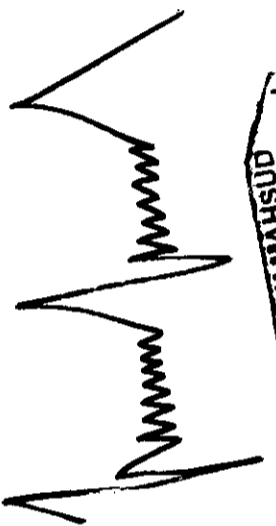
Or 03
26-08-2020

Present:

Muhammad Dawood, appellant no. 1, along with Jabir Hussain Advocate

Fazal Jamil, respondent no. 1, along with Sana Ullah Khan Advocate

1. The instant appeal has been filed against order of learned CJ-I, Orakzai, dated 13-08-2020. Through the impugned judgment the learned lower court has refused to grant interim-status-quo order in favour of plaintiffs.
2. The appellants/plaintiffs filed their suit seeking declaration and permanent injunction in respect of a house and agricultural land situated in village Badgor, Orakzai (as described in plaint). Along with the suit, the appellants/plaintiffs have filed an application for temporary injunction; and several other applications (dated 20-06-2020, 10-06-2020 and 13-08-2020) seeking temporary injunction/status-quo/restrictive-order against the respondents/defendants. The suit was filed on 04-06-2020 and summons of the same was issued to defendants for 13-06-2020; however, so far, written statement and reply to the application for temporary injunction could not be submitted before trial court for one reason or the other.
3. At the time of institution of the suit the learned lower court granted a status-quo order to the effect that "status-quo be maintained only if the plaintiff is doing mining on the spot for 14 days ..." (sic). Thereafter, the appellants/plaintiffs applied for extension of the status-quo order, but the same was refused vide order no. 05 and finally vide order no. 09 (impugned order).


JAMAL SHAH MAHSUD
Addl: District & Sessions Judge-I,
Orakzai at Hangu

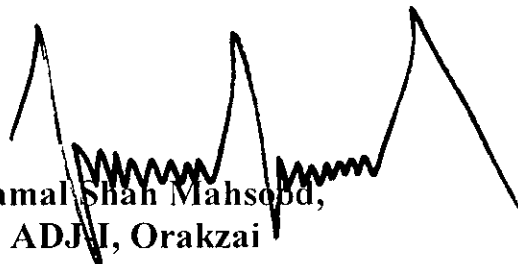
- 4. The appellants/plaintiffs, being aggrieved, have filed the instant appeal. Notice of appeal was given to respondents; arguments were heard and available record perused.
- 5. The purpose of grant of interim status-quo order is to preserve the rights of a party, in an urgent matter, who is seeking a temporary relief, till appearance of the opposite party before court, where after, the case may be heard on merits.
- 6. In the present case appellants/plaintiffs have averred in their plaint that the defendant no. 1 was not allowing them to carry-on with the work on their under-construction house and was restraining them from cultivating and harvesting in the agricultural land.
- 7. For deciding of interim status-quo application the learned trial court should have perused the available record of the case and considered the averments made in plaint and application, in order to arrive at an interim order, by keeping in view the points of prima facie case, balance of convenience and irreparable loss. Instead, the learned trial court, through the impugned judgment, held that status-quo/restraining-order could not be passed against the defendants as it would defy the very object of the suit by depriving the defendants of their right to proper defense. The learned trial court held this despite the fact that initially it had granted status-quo order for 14 days (vide order no. 03).
- 8. In the present case the active dispute is related to an under-construction house. The counsel for appellants/plaintiffs produced pictures of the said house during arguments, which shows that roof has been laid and boundary wall of the house is also raised. The pictures are not disputed by the contesting respondent and the same are placed on file. Keeping in view this situation it is clear that the appellants/plaintiffs have a prima facie case; the balance of inconvenience also lies in favour of appellants, as it is monsoon season and the mud

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construction needs special care during such period; moreover, the chances of irreparable loss are to the appellants/plaintiffs and no such chances of loss appear, at this stage, to be to the defendant. During arguments the appellant submitted an affidavit to the effect that he will continue construction on his own risk and cost. The affidavit is placed on file. The appellants/plaintiffs have thus established that the matter was of urgent nature. In these circumstances, the instant appeal is **accepted** and the impugned order is set aside.

9. This order has been made on the tentative assessment of available record in a case in which written statement and reply to application for temporary injunction have not been submitted by the defendants. Therefore, this order shall not influence the trial court while deciding the application of temporary injunction on its own merits, after considering the written statement and replies of defendants.
10. Let a copy of this order be sent to the trial court and this file be consigned to the record room after its necessary completion and compilation.

Announced
26-08-2020



Jamal Shah Mahsood,
ADJI, Orakzai