

**IN THE COURT OF JAMAL SHAH MAHSOOD, ADDITIONAL
DISTRICT JUDGE-I, ORAKZAI**

Civil Appeal (against order) No. 21 of 2020

Date of Institution: 13-03-2020

Date of Decision: 24-09-2020

Haji Zarman Shah s/o Akbar Shah; caste Sheikhan, tapa Umarzai,
District Orakzai.

(Appellant/Plaintiff)

Vs.

1. **Mehboob** s/o Raees Khan,
2. **Haji Rehmat** s/o Azal Jan; both belonging to caste Rabia Khel, tapa Payo Khel, District Orakzai, and
3. **Deputy Commissioner, Orakzai.**

(Respondents/Defendants)

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- Abdul Qayum and Abid Ali Advocates for appellant.
 - Syed Hamza Gillani Advocate for respondents no. 1 & 2
 - Nemo for respondent no. 3
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APPEAL against the order/judgment, dated **11-03-2020** of learned Civil Judge-II, Orakzai, passed in Civil Suit No. 2/1 of year 2020.

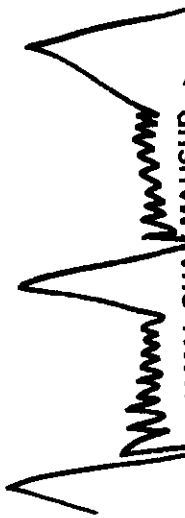
(Impugned Judgment)

Judgment:

1. Through the impugned judgment the application for grant of temporary injunction, filed by present appellant/plaintiff, was dismissed by the learned trial court of CJ-II, Orakzai. Through the application it was prayed that the respondents/defendants may be restrained from interfering in and from stopping work in the suit coal-mine.
2. The present appellant has filed the suit before civil court seeking declaration and perpetual injunction in respect of a coal mine, against respondent no. 1 & 2, who are successors of the late

partner of appellant/plaintiff in the business of coal; and against respondents/defendant no.3 (Deputy Commissioner, Orakzai), who has allegedly ordered the work in said coal-mine to be close down.

3. The facts of the case, as averred in the plaint, are; that Haji Zarman Shah (the appellant/plaintiff) and late Raees Khan (the predecessor-in-interest of respondent no. 1 & 2) started business of coal mine at Gazdara in Orakzai, with appellant/plaintiff having 75% share and predecessor-in-interest of contesting respondents having 25% share. That on death of Raees Khan, respondent no. 1 & 2 joined the partnership with the same share. That in year 2008 mining was stopped due to fire and after stoppage of fire business was restarted in year 2017. That the appellant/plaintiff sent a message to contesting respondents, inviting them to join the partnership - with the same share in profits and loss; that, however, they refused. That the appellant/plaintiff made investment to the tune of 5-6 crore Rupees, to re-start the business. That when the business was restarted successfully the contesting respondents started claiming partnership rights in the mine and started creating hurdles for appellant/plaintiff. That the respondent no. 3 (Deputy Commissioner, Orakzai), at the instance of contesting respondents, ordered stoppage of work in the mine - which was causing daily loss to the appellant/plaintiff. This plaint was accompanied with an application for temporary injunction. Subsequently, the appellant/plaintiff also filed an application for impleadment of officials of Provincial Mining Department as


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defendants and for re-drafting of prayer clause etc. which application is pending adjudication before the trial court.

4. The contesting defendants were summoned by the trial court, who submitted written statement and reply to the application for temporary injunction. They denied the claim of the plaintiff/appellant by raising several legal and factual objections; they also put in a set-off claim. The contesting respondents/defendants admitted the partnership business in respect of mine, however, they alleged that they were not given their share in profits after death of their predecessor-in-interest (Raees Khan).

5. The learned trial court, after hearing arguments, dismissed the application for temporary injunction.

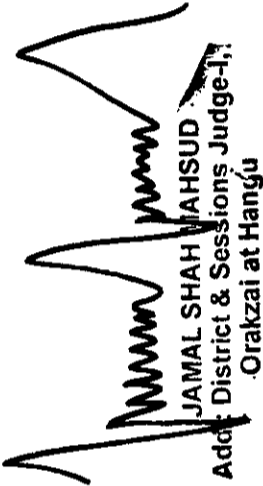
6. The appellant/plaintiff, being aggrieved of dismissal of his application for temporary injunction, has filed the instant appeal.

7. The defendants/respondents were noticed; respondents no. 1 & 2 appeared to contest the instant appeal. Arguments of the counsels for the parties were heard and available record perused.

8. The counsel for contesting respondents, at the very outset, raised the question of pecuniary jurisdiction of this court and of the barring provision of section 69 of The Partnership Act, 1932 – in respect of non-registered firm. As far as the question of pecuniary jurisdiction is concerned, suffice it to say that the suit has been valued at Rs. 20,000 in plaint. Although this valuation has been made in a vague manner; yet it is a question to be determined by trial court. At present the valuation made in plaint can be take into account only. In respect of question on non-

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maintainability of suit by partners of a non-registered firm against each other, it is observed that section 74 of the Partnership Act, 1932 saves any right, title, interest, obligation or liability already acquired, accrued or incurred before the commencement of the Act. The Partnership Act was extended to the Newly Merged Districts of K-P Province in the year 2018, and thus it must be presumed that the Act commenced in this region after merger of FATA into KP Province in 2008. The disputed mine is allegedly located in Orakzai District, which is one of the NMDs. Thus, non-registration of firm, in present case, would not affect the rights and obligations of the partners, which pertain to time period before commencement of the Act.


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9. For the purpose of grant of temporary injunction, generally, three ingredients are required to be proved by the petitioners in their favour, viz. prima facie case, balance of inconvenience and irreparable loss.
10. In the present case the appellant/plaintiff has based his case on the strength of a partnership deed, dated 13-01-2003. This agreement was made by late Mohammad Raees (predecessor-in-interest) of the present contesting respondents with the appellant/plaintiff. No partnership agreement in which the present contesting respondents are a party/partners is available on record. The appellant/plaintiff, in these circumstances, has a prima facie strong and arguable case in his favour.
11. As far as balance of inconvenience is concerned, the contesting respondents/defendants admit that all expenditures after reopening of mine were borne by the appellant/plaintiff, who is

admittedly running the mine at present. In such a situation the stoppage of work in coal-mine would cause inconvenience to the appellant/plaintiff, as the contesting respondents have nothing to lose.

12. Stoppage of work in coal-mine would definitely result in irreparable loss to the party who is operating the mine under a time-bound lease/permit. In the present case stoppage of work is, according to the plaint verified on oath, causing loss of thousands of rupees to the appellant/plaintiff. There would be no means to determine the pecuniary loss in case the work remains stopped. On the other hand, if the respondents/defendants are successful in proving their entitlement in any share, they would be able to demand their share in profits. Whereas, in case of work in coal mine is stopped, it will be a case of irreparable loss to all involved. Thus, point of irreparable loss is also resolved in favour of appellant/plaintiff.

13. In light of the above discussion, the impugned judgement is held to have been passed without taking the peculiar circumstances of the case into consideration. Resultantly, the instant appeal is accepted and the impugned judgment is set aside. The respondents are restrained from illegally interfering in the working of suit coal-mine. This order shall remain operative for 06 months or till disposal of suit, whichever is earlier. Parties to bear their own costs.

14. It must be mentioned here that the business of mining is regulated by provincial government through a special mining department. In the present case, which pertains to a Newly


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Merged District, it seems that the coal-mining business is being carried out according to old local customs and without fulfilling the requirements of latest regulations. Therefore, the above order shall operate strictly between the parties to the present suit. The counsel for appellant/plaintiff has already filed an application, before trial court, for impleading the Mining Department of KP government as party to the suit. This judgment shall, therefore, not have any effect upon the legal status of mine in question.

15. Let a copy of this order be placed on record, and the same be returned to the learned trial court. Let this file be consigned to record room after its necessary completion and compilation.

Announced
24-09-2020



Jamal Shah Mansood
ADJ-I, Orakzai

CERTIFICATE

Certified this judgment consists of 06 pages. Each page has been signed by me.



ADJ-I, Orakzai.