

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

C.A. Miscellaneous No. 26 of 2020

Date of Institution: 18-09-2020
Date of Decision: 14-10-2020

(1) Wazir Khan, (2) Jamil Khan, (3) Rasool Khan, (4) Ayub Khan,
(5) Ms. Mema Jan and (6) Ms. Feroza; all children of Raza Khan;
caste Sheikhan; r/o tappa Bazid Khel, Sour Baghal, Orakzai;
presently, Shaho Khel, Mohalla Shaho Wam, Hangu.

(Appellants/Plaintiffs)

Vs

(1) Muhammad Azam Khan, (2) Qabil Shah, (3) Shafiq Ullah,
(4) Mohabat Shah and (5) Qowat Shah; all residents of Mishti
Bazar, Aakhel Kandai, Orakzai.

(Respondents/Defendants)

-
- Khalid Mehmood Advocate for appellants.
 - Muhammad Rehman Zeb Khan and Jamshid Alam Advocates for respondents.
-

APPEAL against the Order/Judgment, dated **12-09-2020** of learned
Civil Judge-I, Orakzai, passed in Civil Suit No. 55/1 of year 2019.

(Impugned Judgment)

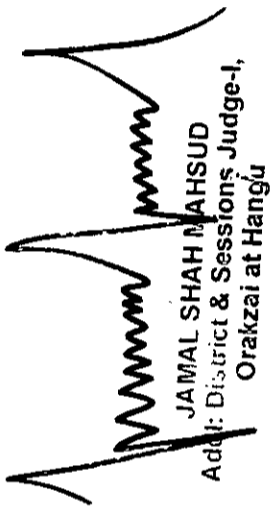
Judgment:

1. Through the impugned judgment the application for grant of temporary injunction, filed by present appellants/plaintiffs, was dismissed by the learned trial court.
2. The appellants have filed a suit seeking declaration and perpetual injunction in respect of property, consisting of 15 jerib land and a one storey house constructed over 40 marlas (as

described in plaint), situated in Mishti Bazar, Orakzai. The appellants claim that the suit property was ownership and in possession of their predecessor-in-interest, late Raza Khan; that the respondents had no right over this suit property and that they were forcefully occupying the same. They further prayed for possession of suit property. Further down in their plaint, the appellants alleged that the respondents/defendants were in possession of suit property, in capacity of *neemkara* (tenancy in return for half produce) and that the respondents have refused to pay the *neemkara*, after death of father of appellants/plaintiffs. An application for temporary injunction was filed with this plaint.

3. The defendants were summoned by trial court, who submitted written statement and reply to application. They denied the claim of the appellants and also filed an application under order 7 rule 11 of CPC. The application for temporary injunction was taken up by the learned trial court and dismissed through the impugned judgment.

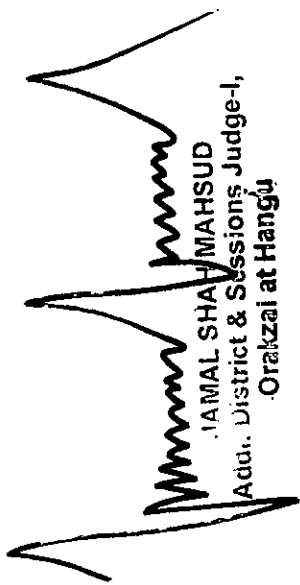
4. The appellants/plaintiffs, being aggrieved of dismissal of their application for temporary injunction, have filed the instant appeal. The application for temporary injunction was dismissed by the learned trial court, on the ground that the plaintiffs could not establish a prima facie case for the purpose of grant of temporary injunction. The instant appeal has been filed on the grounds that the impugned judgment was passed against the law on point and facts of the case.


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

5. The defendants/respondents were noticed; they appeared to contest the instant appeal. Arguments of the counsels for the parties were heard and available record perused.

6. For the purpose of grant of temporary injunction, generally, three ingredients are required to be proved by petitioner in its favour, viz. prima facie case, balance of inconvenience and irreparable loss.

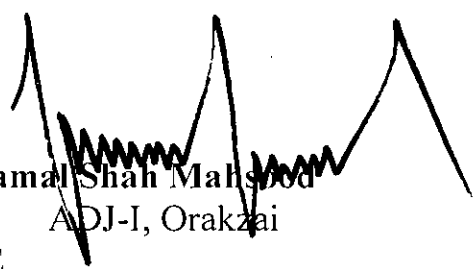
- In the present case the appellants/plaintiffs have raised a mere verbal claim in respect of suit property. They admit that the respondents/defendants are in possession of the suit property (even as *neemkara*) and that the respondents/defendants have remained in the possession of the same since before the death of predecessor-in-interest of appellants/plaintiffs. Thus, at present, the party in possession would be considered as having a prima facie case in respect of ownership. The stance of appellants/plaintiffs that the property was in possession of respondents/defendants in capacity of *neemkara* can only be proved after recording of evidence.
- Since the respondents/defendants, are admittedly in possession of suit property, therefore, the balance of convenience would also lie in favour of maintaining status quo.
- As far irreparable loss is concerned, the appellants/plaintiffs can claim mesne profits in respect of suit property; and the same shall be granted to them - if they succeed in proving their case before the trial court. The present case is not such


 JAMAL SHAH MAHSUD
 Addl. District & Sessions Judge-I,
 Orakzai at Hangū

where the alleged loss could not be determined in monetary value.

7. The counsel for appellant/plaintiffs, during arguments on appeal, greatly stressed on the preliminary objection no. 10 of written statement and argued that the respondents/defendants had admitted the claim of the plaintiffs, and that as such his case was strong. However, a party must prove its case on its own strength and not just on the basis of a lacuna, or a flaw in drafting, of the other party. A document is to be considered as a whole. The respondents/defendants have completely denied the suit of the plaintiffs in their written statement, and one confusing sentence cannot be considered as admission of whole suit.
8. In light of the above discussion, the instant appeal is found to be without merit. No infirmity could be pointed in impugned judgement. Resultantly, the instant appeal is **dismissed**. Parties to bear their own costs. Let a copy of this order be placed on record and the same be returned to learned trial court. Let this file be consigned to record room after its necessary completion and compilation.

Announced
14-10-2020



Jamal Shah Mahsood
ADJ-I, Orakzai

CERTIFICATE

Certified this judgment consists of 04 pages; each page has been signed by me.



ADJ-I, Orakzai