

## Shabeer Ahmad Vs Naimat Ullah and others

**Order...09**

15.04.2023

**Present:**

Petitioner in person along with counsel.

Respondents through clerk of counsel.

Today the case was fixed for arguments on the instant petition. Arguments heard of the counsel for the petitioner while clerk of counsel for the respondents sought time. Granted.

File to come up for arguments on the instant petition by the counsel for the respondents on **29.04.2023**.

*Sami Ullah*  
**Sami Ullah**  
 Civil Judge-I,  
 Orakzai (at Baber Mela)

**Order...10**

29.04.2023

**Present:**

Petitioner in person alongwith counsel.

Respondents through attorney along with counsel.

This order is directed to dispose of application for grant of temporary injunction filed by plaintiff.

Arguments on application for grant of temporary injunction heard and record perused.

Brief facts of the case are that the petitioner has filed the instant suit for permanent injunction to the effect that the plaintiff/petitioner are using non-constructed pathway which leads to their house from time immemorial. That the respondents have no right to deny the right of way of the petitioner which they have enjoyed from the time of their predecessors. That the defendants are bent upon to stop the petitioner from using the said pathway. That the respondents are trying to block the said pathway and they were asked time and again to admit the legal claim of the plaintiff but of no avail, hence the present suit.

Defendants/respondents were summoned, who appeared before the court and submitted their written statement and reply. They denied the claim of plaintiff, contended that they have never blocked the said pathway for the use of the petitioner, however, the petitioner is trying to construct the pathway so that their house may be able to be approached  
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*Sami Ullah*  
**Sami Ullah**  
 Civil Judge/JM-I  
 Orakzai at (Babar Mela)

Order...10Continued.

29.04.2023

by vehicles. They further contended that the said pathway is not wide enough for moving of vehicle on same and is only used by petitioner to approach his house on foot.

Detailed arguments on application were heard and record perused and submissions of the parties were considered.

Learned counsel for the plaintiff/petitioner argued that plaintiff/petitioner has got a prima facie case. Balance of convenience also lies in his favor and that if temporary injunction is not granted, he would suffer irreparable loss and lastly prayed for the acceptance of the application.

The other side fully resisted the application through arguments.

It is well settled law that for grant of temporary injunction, a party has to prove three essential ingredients i.e., prima facie case in his favor, balance of convenience tilts in their favor and in case injunction is not granted, they would suffer irreparable loss. Insofar, as the instant case is concerned, the petitioner claimed the right of way on the pathway in question which is admitted by the respondents. However, respondents claimed that the petitioner is trying to construct the pathway which is not feasible and will cause irreparable loss to the respondents.

Prima facie, the petitioner has right of way over the said pathway but as objected by the respondents, the petitioner can't be allowed to construct the pathway in question at that stage. Keeping in view balance of convenience till disposal of the suit, both the parties are restrained from interference in shape of changing the nature of the said pathway and the petitioner is allowed to use the same as it is.


Therefore, keeping in view prima facie case which exists in favor of plaintiff and balance of convenience and irreparable loss for both the parties of the instant suit, the application for temporary injunction is **Accepted** for six months or till final disposal of the instant case, which ever came earlier. No order as to cost. This order of mine is tentative in nature and shall not affect the merits of the case.

Moharrir of the court is directed to place copy of this order in its original file.

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

Announced

29.04.2023

  
**Sami Ullah**  
Civil Judge/JM-I  
Orakzai at (Babar Mela)