

Manzoor Ali and one other Vs Asal Badshah and others

Order...08

14.04.2023

Present:

Petitioners through attorney.

Respondent No.02 in person.

Today the case was fixed for arguments on the instant petition but counsel for the respondents requested for adjournment. Adjourned.

File to come up for arguments on the instant petition on **27.04.2023**.

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

Order...09

27.04.2023

Present:

Plaintiffs through attorney along with counsel.

Defendant No.1 & 2 in person along with counsel.

1. This order is intended to dispose of an application for grant of temporary injunction filed by the plaintiff against the defendants.
2. Argument by counsels for both the parties heard today.
3. Brief facts of the case are that the plaintiffs have filed the instant suit for declaration and permanent injunction to the effect that the plaintiffs/petitioners (here in after referred as plaintiffs) are owners in possession of the suit property fully detailed in the head note of the plaint. The plaintiffs contended that the suit property is their ancestral property. That a portion of suit property is extended toward the river, on which the defendants have levelled the ground for the purpose of making a playground on the said portion. The plaintiff prayed through the instant application that the defendants be restrained to use the said portion of the suit property as a playground. (Continued...)

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 Civil Judge/JM-I
 Orakzai (at Baber Mela)


Order...09

Continued.

27.04.2023

4. The defendants/respondents contested the suit by filing written statement and reply of the application for grant of temporary injunction. In the written statement the defendants/respondents contended that the portion of suit property on which the plaintiffs claimed construction of a playground, is a river bed and is not part of suit property belonging to plaintiffs.
5. Detailed arguments on application for grant of temporary injunction heard and record perused.
6. Learned counsel for the plaintiffs/petitioners argued that plaintiffs/petitioners have got a prima facie case. Balance of convenience also lies in their favor and that if temporary injunction is not granted, they would suffer irreparable loss and lastly prayed for the acceptance of the application.
7. The other side fully resisted the application through arguments.
8. 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 his favor and in case injunction is not granted, he would suffer irreparable loss. Insofar, as the instant case is concerned, plaintiffs are claiming that the suit property by the name of 'Sardar Rauez' is their ancestral property and is in their possession. The portion of the said property which is extended towards the river bed was laying idle and defendants have levelled its ground and is using for the purpose of a playground. Plaintiffs have not annexed with their plaint any reliable documentary proof in support of their claim and contention.

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Sami Ullah
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Orakzai at (Babar Mela)


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On the other hand, the defendants totally denied the claim of the plaintiffs, rather claimed the same as a part of the river bed and is not a part of 'Sardar Rauez'. There is nothing in the shape of any relevant document from which, it could be presumed that tentatively that the plaintiffs are owners of the said portion of the suit property. Also, there is no admission in the written statement in favor of the plaintiff rather there is a straight denial. Furthermore, the description of suit property is not clear and the temporary injunction cannot be granted when the same has not been specified and fully detailed.

9. Therefore, as a result of above discussion, the plaintiffs failed to establish their claim prima facie, what to say of the balance of convenience and irreparable loss.
10. Thus, the three necessary ingredients for the grant of temporary injunction do not exist in favor of the plaintiffs, therefore, the application in hand is hereby **Dismissed**. Costs to follow the event. The status quo already granted stands **Vacated**.

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

Announced
27.04.2023.


Sami Ullah
Civil Judge-I,
Orakzai at Baber Mela.