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IN THE COURT OF ADDITIONAL DISTRICT JUDGE ORAKZAI, AT BABAR MELA

Civil Misc. Appeal No. 4/14 of 2023

Date of institution: 11.05.2023

Manzoor Ali etc. Vs Asal Badshah etc.

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	13/07/2023	<p>Parties present. Arguments have already been heard; whereas, this is aimed to dispose of captioned Civil Misc. Appeal.</p> <p>2. This Miscellaneous Civil Appeal calls in question the validity and propriety of the Order No.9 dated 27.04.2023, passed by learned Civil Judge-I, District Courts, Orakzai, in Civil Misc. Petition bearing No.3/6 of 2023; whereby, application of plaintiff for grant of temporary injunction has been dismissed.</p> <p>3. The brief facts of the suit pending trial in the Civil Court are such that plaintiffs are owners in possession of landed property measuring, about 10 to 12, situated at Khanki Toye, Upper Orakzai. Defendants without any legal authority being strangers in the area have established playground in the disputed land without permission of the plaintiffs with ulterior motive of grabbing the possession of property that will likely be based for claiming ownership. They have been asked time and again not to interfere in peaceful possession and ownership of plaintiffs but in vain, which necessitated presentation of suit for declaration and possession.</p> <p>4. Defendants on appearance negated the stance of the plaintiffs and had taken specific plea that the property is river bed and jointly owned by inhabitants of the locality. The adjacent property owned by the plaintiffs have already been guarded through protection walls. The playground has been established beyond the protection walls which is in the river bed; where, the youth of the area are playing Cricket.</p>


SAYED AZAL WADOOD
Addl. District & Sessions Judge
Orakzai at Hanou

5. The learned Trial Judge had dismissed application for grant of temporary injunction vide Order No.9 dated 27-04-2023. The plaintiffs being aggrieved filed instant Misc. Civil Appeal, which is under consideration.

6. Mr. Khursheed Alam Advocate while opening the appeal has argued that the property in dispute is ancestral property of the appellants/plaintiffs and they are enjoying peaceful possession and title since long. The establishment of playground through leveling by tractor is a designed move to grab the possession of property for basing it to claim ownership later on. He added that defendants have banned other players of the area and had allowed the players of their own village. He added that all the ingredients required for grant of injunction are being met out and therefore withholding of injunction was against law, facts and material available on record.

7. Mr. Abid Ali Advocate representing respondents/defendants was of the stance that property is river bed and is being utilized by the youth of the area for playing Cricket. The property is neither agricultural nor can be used for commercial purposes being river bed and such utilization of land for purpose of playground is in the interest of all the inhabitants of the area including youth of the plaintiffs' village.


8. Learned the Trial Judge has examined the pleadings and record annexed thereto with special reference to prescribed ingredients of prima facie case, balance of inconvenience and irreparable loss. It has been concluded therein that prerequisites for grant of injunction have not been fulfilled and thus petition has been dismissed. The matter under adjudication is being looked by this Court in a different prospective for being demand of peculiar circumstances of the case. District Orakzai has been suffered in the recent past for crises of Talibanization followed by collateral unavoidable damage in Military Operation. The mental health adversity had given birth to

the physical health issues being co-related and proportional to each other. Playgrounds are necessary and the prevailing circumstances has definitely enhanced its importance for public health in the locality. This is the base that led the Court to consider the pending matter of injunctive order apart from the provisions of Order-39 Rule-I of the Code of Civil Procedure, 1908 while attracting inherent jurisdiction as *ex debito justitiae*. Consequently, the following conditions have been imposed while withholding grant of temporary injunction.

- i. None of the parties can ban anyone from playing in the disputed area.
- ii. Defendants shall not be allowed to claim ownership on mere basis of such permission of playing games in disputed area.
- iii. No further leveling through tractor or any other machinery shall be carried out in the disputed property.

9. For what has been discussed above, instant Civil Miscellaneous Appeal is disposed of accordingly. Requisitioned record be returned back with the copy of this Order while file of this Court be consigned to the District Record Room Orakzai after completion and compilation, within the span allowed for.

Announced in open Court
13-07-2023


Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela