

IN THE COURT OF ASGHAR SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

MISC. CIVIL APPEAL NO. : 6/14 OF 2021
DATE OF INSTITUTION : 24.11.2020
DATE OF TRANSFER IN : 16.01.2021
DATE OF DECISION : 03.02.2021

AJMIR S/O ASLAM KHAN, CASTE FERAZ KHEL, TEHSIL
KALAYA DISTRICT ORAKZAI AND ONE ANOTHER

.....(APPELLANTS)

-VERSUS-


SHEHZAD S/O HASHIM KHAN, R/O SULTAN ZAI, DISTRICT
ORAKZAI AND SEVENTEEN OTHERS

..... (RESPONDENTS)

Present: Muhammad Irfan Khattak Advocate for appellants.
: Syed Hamza Gilani Advocate for respondents.

JUDGEMENT
03.02.2021

In the suit before the trial court, the appellants/plaintiffs claimed that they are owners of the suit property consist of 25 Jareeb as detailed in the heading of the plaint, which property was claimed to have been given to the respondents/defendants no.1 to 4 temporarily for the purpose of cultivation but now they are claiming the ownership of the suit property, hence requested for the return of the suit property besides through application for temporary injunction requested for restraining of respondents/defendants from cultivation, construction and changing the nature of the suit property by any means whatsoever. The learned trial court after due process dismissed the application through impugned


(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela

order dated 21.10.2020, hence aggrieved from the same, appellants/plaintiffs submitted the appeal in hand.

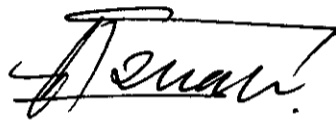
2. Arguments heard and record perused.
3. From the arguments and record available on file, it reveals that for the grant of temporary injunction it is essential that three of its basic ingredients i.e., prima facie case, balance of inconvenience and irreparable loss must co-exist side by side and even if a single ingredient is missing, no temporary injunction could be granted in such a case. In the instant case, the claim of appellants/plaintiffs regarding ownership of the suit property is subject to proof, which proof at the moment is neither available in oral nor in documentary form besides anything which is subject to proof no temporary injunction can be granted in such a case. Moreover, the appellants/plaintiffs have themselves admitted the possession of the suit property with respondents/defendants, thus the same has created very good prima facie case not in favour of appellants/plaintiffs but respondents/defendants and any restraining order to the respondents/defendants would amount to deprive them from the enjoyment of their property in their possession as such the balance of inconvenience tilt towards the respondents/defendants and certainly they would suffer irreparable loss if the injunctive order as requested is passed against them.



(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela

4. Thus, the trial court after considering the case from all the four corners was justified in dismissing the application of appellants/plaintiffs submitted for temporary injunction through impugned order dated 21.10.2020. No illegality or legal infirmity in the impugned order of the trial court was pointed out. Therefore, the impugned order of the trial court stands upheld and the appeal in hand resultantly stand dismissed with no order as to cost. File be consigned to Session Record Room after its completion and compilation.

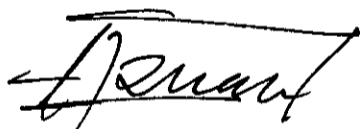
Announced
03.02.2021


(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 03.02.2021


(ASGHAR SHAH)
District Judge, Orakzai
at Baber Mela