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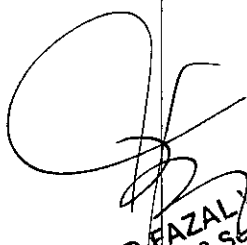
**IN THE COURT OF ADDITIONAL DISTRICT JUDGE ORAKZAI, AT BABAR MELA**

Civil Misc. Appeal No. 6/14 of 2023

Date of institution: 18.05.2023

**Shahzad Khan Vs Saad Khan**

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	02/08/2023	<p>Parties present. Arguments 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 dated 29.04.2023, passed by learned Civil Judge-II, Kalaya, Orakzai, in Civil Suit titled "Shahzad Khan vs Saad Khan", whereby; the learned Trial Court has vacated ex-parte status quo order.</p> <p>3. Brief facts of the suit pending trial in the Civil Court are such that plaintiff is claiming ownership and possession of landed property measuring 50 Jerib, situated at Kalaya, Lower Orakzai, on the strength of Sale Deed dated 10-04-2022. Defendant has seized to be owner or possessor on completion of such valid sale transaction. He has been asked time and again not to interfere in peaceful possession and ownership of plaintiff but in vain, which necessitated presentation of suit for declaration and injunction.</p> <p>4. Defendant on appearance negated the stance of the plaintiff and had taken specific plea that the property is inherited by him from forefathers and enjoying its peaceful possession having back of ownership.</p> <p>5. The learned Trial Judge had granted injunctive order as an ex-parte Order dated 29-04-2023; wherein, next date of hearing was fixed as 17-05-2023. On 3<sup>rd</sup> of May, 2023, defendant presented application for early hearing and the injunctive Order of 29-04-2023 was vacated on application. The plaintiff being aggrieved filed instant Misc. Civil Appeal, which is under consideration.</p> <p>6. Mr. Shakeel Khan Ahmed Khel Advocate while opening the appeal has argued that the property in dispute has already been purchased by the plaintiff and defendant</p>

  
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has got no nexus with it. The status quo Order has illegally been vacated relying on the facts which have wrongly been presumed. 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. Learned counsel concluded that non-issuing of notice to the plaintiff while vacating the status quo is alone a sufficient ground to term the impugned order nullity in the eye of law.

7. Sayyed Hamza Gillani Advocate representing respondent/defendant was of the stance that property in dispute is the ancestral property owned and possessed by the defendant. The facts have been concealed by the plaintiff at the time of presentation of suit with mala fide to dispossess the defendant and to sabotage the process of land acquisition. The impugned order is within the four corners of law which is based on proper appreciation of evidence; the learned counsel concluded.

8. It is admitted fact that the case has been fixed by Learned the Trial Judge for maintainability as well as disposal of the question of temporary injunction. Discussing the merits of the case would definitely upset the Judicial Determination of both the questions mentioned above which is neither necessary nor warranted. Therefore, determination of this Court is being confined to the single point of determination in instant appeal that is whether status quo can be vacated without notice to the plaintiff and if done so, its effects?

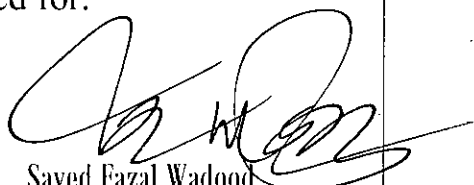
9. Order-39 Rule-4 of Code of Civil Procedure, 1908 is dealing the subject of discharge, variation or set aside of order of injunction. Ordinarily, once a Court has passed an order granting or refusing a temporary injunction, it will not subsequently be interfered by such Court. However, if the order has been passed ex-parte or where subsequent to passing the order, new circumstances have arisen requiring consideration, the Court may discharge, vary or set aside

  
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the Order. Wisdom in this regard can be drawn from case reported as 2007 MLD 118, 1984 SCMR 1764, 1997 SCMR 1473 and 2010 MLD 1460. In light of such procedural law followed by jurisprudence developed in above judgements, the ex-parte status quo order may be set aside or varied without notice to the plaintiff.

10. For what has been discussed above, instant Civil Miscellaneous Appeal is disposed of accordingly. As record has not been requisitioned; therefore, copy of this Judgement be sent to learned Trial Judge for information and compliance. 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**  
**02-08-2023**

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