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

Civil Misc Application No. 14/14 of 2023

Date of institution: 01.08.2023

Askar Ali Vs Khiyal Zaman

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	09/08/2023	<p>Parties along with their counsel present. Arguments heard; whereas, this is aimed to dispose of captioned Civil Misc. Appeal.</p> <p>2. This Civil Misc. Petition calls in question the validity and propriety of the Order dated 24.07.2023, passed by learned Civil Judge-I, Kalaya, Orakzai, in Civil Suit titled "Khiyal Zaman vs Askar Ali etc."; whereby, the learned Trial Court has ordered pull to bits the construction raised during the existence of status quo order.</p> <p>3. The brief facts of the suit pending trial in the Civil Court are such that he has prescriptive right of easement over the property in dispute. The defendants had intended to raise construction of wall in such common passage that necessitated presentation of suit for right of easement.</p> <p>4. Defendants on appearance negated the stance of the plaintiffs and had taken specific plea that the suit property is their ancestral property and is in their exclusive ownership and possession since long and is not a common passage.</p> <p>5. The learned Trial Judge has granted status quo order on petition for temporary injunction. The dismantlement of the construction allegedly carried out during existence of such status quo has been passed vide Order No. 6 dated 24-07-2023. The defendants being aggrieved filed instant Civil Misc Appeal, which is under consideration.</p> <p>6. Mr. Abid Ali Advocate while opening the Civil Misc. Appeal has argued the fact of disobedience of Court Order has not been established. Mere report of process server; that too, without examination on oath followed by cross examination, is no ground for passing impugned</p>



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order. It was added that the case was fixed for written statement and was requisitioned before date fixed on mala fide on part of the plaintiff to misguide the honorable court.

7. Mr. Insaf Ali Advocate representing respondent/plaintiff was of the stance that plaintiff is enjoying the prescriptive right of easement in the property since long. The injunctive order by way of status quo was duly served on defendants. They have violated the order by raising construction and thus the impugned order has passed well in accordance with the law.

8. In the light of above discussed facts and circumstances of the case followed by professional assistance rendered by way of arguments of the counsel representing parties, the matter in issue of pending proceedings before this Court is being determined in following terms.

9. Order-39 of the Code of Civil Procedure, 1908, is dealing the subject of granting or withholding of temporary injunction. The prima facie existence of a right and its infringement, the irreparable damage and balance of inconvenience are prime prerequisites to be considered while determining the question of temporary injunction. The Order-39 Rule-2 Sub Rule-3 of Code of Civil Procedure, 1908 is dealing the subject of disobedience of injunction. The impugned order has been passed by attracting such provisions against which, instant civil Misc. appeal has been preferred. There is no second opinion to the fact that no legal sanctity can be attached to any action done during pendency of the suit and against the Court orders in act entailing punishment under law would be in unlawful act and the same could not be valid. Such acts and omissions are invalid for all intents and purposes. Ordinarily, if temporary injunction issued by Court is violated, action as contemplated in order 39 Rule 2(3)(4) Code of Civil Procedure, 1908 can be resorted to. But before punishing a person for disobedience status quo

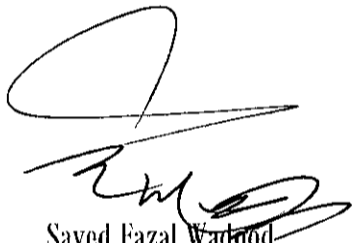

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order, the Court has to find in fact such disobedience has taken place for which inquiry or evidence is necessary. Reliance can be placed on a Judgement reported as 2009 YLR 780.

10. For what has been discussed above, instant Civil Misc. Application is allowed. Consequently, the impugned order bearing No. 6 dated 24-07-2023 is set aside being based on mere report of Process Server without his examination on oath followed by affording opportunity of cross examination to the aggrieved person. Copy of this Judgement be sent to learned Trial Judge with the direction to separately register such application for disobedience or breach of Court Order, obtain reply, frame issues or charge to be followed by procurement of evidence and decide afresh. File of this Court be consigned to the District Record Room Orakzai after completion and compilation, within the span allowed for.

11. **Announced in open Court**


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