

4

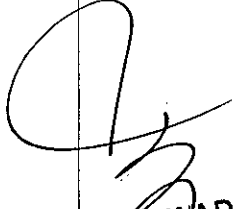
IN THE COURT OF ADDITIONAL DISTRICT JUDGE ORAKZAI, AT BABAR MELA

Civil Revision No. 03/12 of 2023

Date of institution: 25.07.2023

**Muhammad Yousaf Vs Syed Raziq 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	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 Revision 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 "Syed Raziq etc vs Muhammad Yousaf 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 property in dispute is joint ownership of the parties which remained apple of discard between the parties since long. The matter was dragged to the then forum of adjudication, the Assistant Political Agent, Orakzai in the year 2016 but was not resolved so far. The defendants are raising construction that necessitated presentation of suit for declaration, mandatory injunction and possession through partition. Defendants on appearance,</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 ownership and possession since long. The matter has already been decided by competent Court of Assistant Political Agent, Orakzai and cannot be re-opened.</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</p>

  
**SAYED FAZAL WADDOO**  
Addl. District & Sessions Judge  
Orakzai at Hangu

5


Civil Revision, which is under consideration.

6. Mr. Jamshid Alam Advocate while opening the revision has argued that defendants have not been served any notice. Neither service of notice has been ensured nor has the fact of disobedience of Court Order been established. Mere report of process server; that too, without examination on oath followed by cross examination, is no ground for passing impugned order.

7. Mr. Abid Ali Advocate representing respondents/plaintiffs was of the stance that plaintiffs are joint owners in possession of the disputed 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 form of pending proceedings before this Court is being determined in following terms.

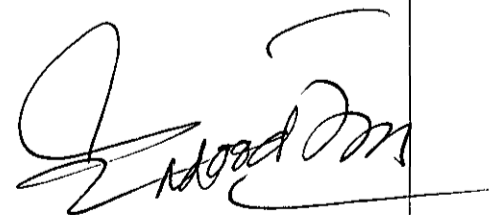
9. Order-39 of the Code of Civil Procedure, 1908, is dealing the subject of granting or withholding of temporary injunction. The prima facie existence of a right and its infringement, the irreparable damage and balance of inconvenience are prime prerequisites to be considered while determining the question 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, appeal is lying. The petitioner has moved the Court with Civil Revision which is not maintainable for being the Order appealable. The Court has got power to convert revision into appeal in certain circumstances which is not attracted to the facts of present case. A Judgement reported as 2018 CLC 615 is very much relevant for drawing inference and wisdom

  
**SAYED FAZAL WADOOD**  
Addl. District & Sessions Judge  
Orakzai Chhargu

which is reproduced herein below: "*Temporary injunction was granted in favor of plaintiff but defendants continued their construction. Order passed while entertaining an application under O. XXXIX, R.2(3), C.P.C was an appealable order. Defendants filed revision petition against the order passed by the Trial Court which was not competent. No revision would lie where an appeal lay. Revision could only be converted into appeal when there was a specific application moved for the purpose. No such application was moved by the defendants in the present case. Revisional Court could not convert said revision into appeal as no notice under O. XXXIX, R.3 C.P.C was given by the defendants which was a mandatory requirement. Revisional Court had wrongly entertained the revision in circumstances. Demarcation through local commission was yet to be finalized and report was to be considered by the Trial Court. Trial Court was perfect court to pass an appropriate order after examining the local commission report and of any objections if so filed by the parties*".

10. For what has been discussed above, instant Civil Revision is dismissed on the score of being not maintainable in its present form and frame. Copy of this Judgement be sent to learned Trial Judge for information as no record has been requisitioned in the case. 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