

IN THE COURT OF SHAUKAT AHMAD KHAN
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

MISC. CIVIL APPEAL NO. : 14/14 OF 2021
 DATE OF INSTITUTION : 22.05.2021
 DATE OF DECISION : 16.06.2021

MUHAMMAD KAMAL S/O SARWAR KHAN, CASTE MAMOZAI,
 TAPA ADO KHEL, TEHSIL UPPER, DISTRICT ORAKZAI AND TWO
 OTHERS

.....(APPELLANTS)

-VERSUS-

WILAYAT KHAN S/O SARDAR KHAN, CASTE MAMOZAI, TEHSIL
 UPPER, DISTRICT ORAKZAI AND TWO OTHERS

..... (RESPONDENTS)

Present: Sana Ullah Khan Advocate for appellants
 : Haroon Khan Advocate for respondents

JUDGEMENT

16.06.2021

Impugned herein is the order dated 17.04.2021 of the learned Civil Judge-I, Orakzai vide which application of the appellants/plaintiffs for grant of temporary injunction has been turned down.

2. In a suit before the learned trial court appellants/plaintiffs seek declaration, permanent injunction and possession of the suit houses and adjacent land named as "Chane Patey" on the ground that they are owners in possession of the suit property aboded by the respondents/defendants with the consent of appellants/plaintiffs, however the respondents/defendants have started raising construction thereon without the consent

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of appellants/plaintiffs at which the respondents/defendants were asked to vacate the houses but they refused, hence the subject suit.

3. The suit was accompanied by application for grant of temporary injunctions which was replied by the respondents/defendants and the learned trial court after hearing arguments turned down the application, hence the present appeal.

4. I heard arguments and perused the record. Perusal of record shows that the appellants/plaintiffs claim the ownership of the suit property being let to the respondents/defendants for residential purposes about 20 years prior but not a single document either regarding the factum of ownership or that of leasing it out to the respondents/defendants for residential purposes, is available

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on file. In these circumstances, the factum of ownership of the appellants/plaintiffs and that of leasing it out to the respondents/defendants, are yet to be determined during the trial. On the other hand, the respondents/defendants as per version of the appellants/plaintiffs are in possession of the suit property for 20 years and as such prima facia the preponderance of evidence in the light of available record tilt in the favour of respondents/defendants. Similarly, the balance of convenience and irreparable loss also tilt in favour

of the respondents/defendants being in possession of the suit property.

5. Hence, in the light of what is discussed above, it is held that the impugned order the learned trial court is based on proper appreciation of material available on file and nothing exists to justify interference of this court. The appeal in hand resultantly stands dismissed being meritless. Parties to bear their own cost. File be consigned to record room after its necessary completion and compilation.

Pronounced
16.06.2021



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CERTIFICATE

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

Dated: 16.06.2021



(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela