

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

CIVIL MISC. APPEAL NO. : 12/14 OF 2021
DATE OF INSTITUTION : 31.03.2021
DATE OF DECISION : 12.06.2021

GOVERNMENT OF KHYBER PAKHTUNKHWA AND SEVEN OTHERS
.....(APPELLANTS)

-VERSUS-

HASHMAT ULLAH S/O YOUSAF KHAN, R/O CASTE FERAZ KHEL, SUB-
TRIBE GHAI RAT KHEL, TEHSIL LOWER DISTRICT ORAKZAI AND SIX
OTHERS
..... (RESPONDENTS)

Present: Ali Gohar Advocate for appellant
: Abid Ali Advocate for appellants no. 1, 2, 3 and 9
: Akbar Ali, Government Pleader
: District Attorney for respondent no.

JUDGEMENT
24.06.2021

Impugned herein is the order dated: 17/03/2021 passed by the learned Civil Judge-1 Orakzai, vide which on acceptance of the application for grant of temporary injunctions appellants/defendants have restrained from raising construction over the suit property.

(2). In a suit before the trial court, the respondents No.1 to 3 being plaintiffs in the suit as representative of the caste of Feroz Khel, sought declaration and permanent injunctions to the fact that a playground measuring 15 Kanals situated near Government High School, Jalaka Mela Feroz Khel, detailed in the headnote of the plaint, was owned by the tribe of Feroz Khel which has been made waqf of for the playground since 1973 while the defendants No.1 to 3, the present appellants having got no concern with the suit playground, are bent upon raising construction over there. It was alleged in the plaint that the property of the suit playground was owned and possessed by

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the tribe of Feroz Khel, a waqf of which has been made for the playground since 1973 and since then the youth of the locality used to play over there. That in 2016 a proper boundary wall of the playground has been raised by the then C&W FATA Division Orakzai. That the defendants No. 1 and 2, the present appellant No. 1 and 2 having got no concern whatsoever with the suit playground are bent upon raising boundary wall of the same by its inclusion in the Government Polytechnic Institute Jalaka Mela, Orakzai. The defendants/appellants No.1 and 2 submitted written statement contested the suit mainly on the ground that the area of playground is the part of the land of Polytechnic Institute measuring about 54 Kanals donated by the Tribe of Feroz Khel and that the respondents No.1 to 3/Plaintiffs have got no concern with the suit land.

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(3). The plaint was accompanied by application for grant of temporary injunctions for restraining the appellants/defendants to raise construction over the suit property which was contested by the appellants/defendants by submission of reply. The learned Trial Court after having heard the arguments accepted the application and passed the injunctive order. The appellants/defendants being aggrieved of the order filed the instant appeal.

(4). I heard arguments of the learned counsels for parties, arguments of the learned District Attorney and perused the record.

Perusal of the case file shows that the respondents/plaintiffs have sued the appellants/defendants in representative capacity, however as per requirements of order-1 Rule-8 CPC neither a list of ascertainable members of the Tribe of Feroz Khel is annexed with the plaint nor permission of the Court for institution of representative suit


has been obtained so far. The suit property is alleged to be owned by the tribe of Feroz Khel being donated for the playground in 1973. To that extent both the parties are agree that the suit land was owned by the tribe of Feroz Khel, however the claim of the respondents/plaintiffs regarding making of waqf of the same for the playground by the tribe in 1973 is bald in nature and it is yet to be determined during the course of trial, while on the other hand the claim of appellants/defendants is supported by an application jointly submitted by 38 persons of the tribe of Feroz Khel to Assistant Commissioner, Lower Orakzai wherein they have confirmed the suit land was donated to the Technical Institute. It has also been alleged that in 2016 C&W FATA Division, Orakzai had raised boundary wall of the playground under the head "Football Ground in GHS Jalaka Mela" by awarding contract of the same to M/S Musaver Khan vide work order dated: 19/01/2016. However, the contention of the respondents/plaintiffs regarding raising of boundary wall of the suit property as playground of Government High School Jalaka Mela, in 2016, on one hand contradicts the contention of the respondents/plaintiffs while on the other hand none of the official of education department is party to the suit. In these circumstances, the respondents/plaintiffs have got no prima facie case in their favour. Similarly, learned counsel for the respondents/plaintiffs during the course of arguments failed to point out the tilting of any irreparable loss or balance of inconvenience in their favour.

(5). Hence, in view of what is discussed above, it is held that the impugned order of learned Trial Court is based on surmises and conjectures. It seems that the learned trial court while passing the

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impugned order has failed to appreciate the available record before it. Therefore, on acceptance of the instant appeal, the impugned order dated 17.03.2021 of learned Civil Judge, Orakzai is set aside. No order as to cost. File of the trial court be returned while file of this court be consigned to Record Room after its completion and compilation.

Pronounced
24.06.2021


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CERTIFICATE

Certified that this judgment consists of four (04) pages. Each page has been read, corrected wherever necessary and signed by me.


(Shaukat Ahmad Khan)
District Judge, Orakzai
at Baber Mela