

3

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

Civil Misc. Appeal No. 15/14 of 2023

Date of institution: 28.09.2023

**Malak Wahid Ali Vs Afroz Ali 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	30/09/2023	<p>Appellant present. Preliminary arguments have already been 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 23.09.2023, passed by learned Civil Judge-II, Tehsil Kalaya; whereby, the learned Trial Court has refused grant of temporary injunction in favour of defendant/appellant.</p> <p>3. The brief facts of the suit pending trial in the Civil Court are such that plaintiffs are owner in possession of different pieces of land including dwelling house articulated in detail in the heading of the plaint, on the strength of arbitration award dated 20.04.2020. The defendants are interfering in disputed land that necessitated the presentation of suit.</p> <p>4. Defendants on appearance negated the stance of the plaintiffs and had taken specific plea that they are co-owners in the disputed land and the Jirga verdict relied by the plaintiffs has been concluded ex-parte without their approval. Petition for injunctive order on behalf of defendant was allegedly annexed to the plaintiff which has neither been reflected on order sheet nor granted injunctive order.</p> <p>5. The learned Trial Judge had neither mentioned the annexed petition in order sheet nor granted injunctive order in their favour as reflected in impugned Order No.04 dated 23-09-2023. The defendants, being aggrieved filed instant Misc. Civil Appeal, which is under consideration.</p> <p>6. Mr. Fahad Yousaf Advocate assisted by Farman Ullah Advocate while opening the appeal has argued that all the ingredients required for grant of temporary injunction are fully existed and had wrongly been excluded from consideration by learned Trial Judge. The petition for grant of injunction and status quo had neither been honored nor reflected in order sheet which is nullity in the eye of law. The status of the parties with reference to ownership and possession of disputed immoveable properties is admittedly the same for being co-owner and grant of injunction in favour of plaintiffs while refusing to</p>

  
**SAYED FAZAL WAHED**

Addl. District & Sessions Judge  
Orakzai at Hangu.

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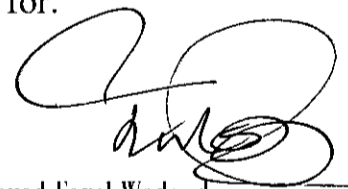
defendants is against the principle of justice.

7. 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 appellant, the matter of withholding of injunction is being determined in following terms.

8. The petition for grant of injunction and request of the appellant for preserving status quo are matters alien to the case file as no such petition has been annexed with instant appeal. Similarly, the placement of such application on file or its presentation before the learned Trial Court is also missing as the Order Sheet No. 3 and 4 are not carrying such detail. There is nothing on file to suggest that such application has been presented and either not reflected or not given effect by the Court. Mere assertion in the contents of appeal cannot be based for judicial determination of the matter in issue. If it is supposed that appellants have presented such application and the learned Trial Judge has not conducted it; even then, the right course of action was to approach to the learned Trial Court with another application with the prayer to consider the pending application. Clutching the impugned Order in appeal seems improper as nothing is available for this Court to examine the same on gadget of the prerequisites of appeal.

9. Instant Civil Miscellaneous Appeal is dismissed with the observation articulated in Paragraph No. 8 of this Order. Copy of this Order be sent to learned Trial Court for information while 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**



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