

6


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

Civil Misc. Appeal No. 9/14 of 2023

Date of institution: 04.07.2023

Asghar Khan Vs Siyal Muhammad

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 No. 7	16/11/2023	<p>Appellants through his nephew namely Bilal along with counsel present. Respondent along with counsel present. Arguments heard; whereas, this is the disposal of captioned Civil Misc. Appeal.</p> <p>2. This Miscellaneous Civil Appeal calls in question the validity and propriety of the Order dated 26.05.2023, passed by learned Civil Judge, Headquarter Orakzai, in Civil Suit titled "Asghar Khan vs Siyal Muhammad; whereby, the learned Trial Court has dismissed application of plaintiffs for grant of temporary injunction.</p> <p>3. The brief facts of the suit pending trial in the Civil Court are such that ownership and possession of landed property measuring 30 Kanal, situated at Qaum Mula Khel, Tappa Aziz Khel, District Orakzai is apple of discard between the parties. The petition for grant of injunction has been dismissed against which plaintiffs as appellants is before this Court in Civil Misc Appeal.</p> <p>4. Mr. Noor Karim Orakzai Advocate representing appellants has argued that plaintiffs have established the case with reference to all ingredients prerequisites for grant of injunction which have not been considered in accordance with law. The respondents are cultivating the land which resulted into registration of Criminal Case under Section 324 of the Pakistan Panel Code, 1860. It was requested that they may be restrained from any kind of interference in the land including cultivation use and change of the nature of property.</p> <p>5. Mr. Abid Ali Advocate representing the Respondents opposed the stance of opponent by stating that plaintiffs are influential taking law into their own</p>


SAYED FAZAL WADOOD
Advt. District & Sessions Judge
Orakzai at Hangu

2

hands. Parties have recorded their statement and mutually agreed before this Court that defendants will neither alienate nor transfer the disputed land till final determination of the matter in issue; however, their possession and utilization will continue. On the basis of such mutual agreement, Civil Misc Appeal bearing No. 3/14 of the year 2022 was disposed of vide Order No. 6 dated 10/05/2022. Neither respondents are transferring the ownership nor raising any type of construction in the suit land. It was mere continued cultivation which was illegally interrupted by the plaintiffs that resulted into registration of criminal case against them. The appeal in hand is just prolongation of the case with mala fide.

6. During course of the arguments, both the counsel representing parties have been asked regarding their current view of the matter earlier agreed. They jointly stated at the bar that we are owning our previous stance articulated in disposal of Civil Misc. Appeal bearing No. 3/14 of 2022. It was jointly agreed therein by the parties and their counsel that respondents will not sale out the landed property; however, their utilization of property will continue. The Order of this Court dated 10-05-2022, passed in above stated earlier round of litigation is very much clear on the matter of injunction which also operates as estoppel by matter of record. It has categorically been determined in a Case reported as PLD 2015 Page.41 that someone would be stopped from saying something or other, doing something of other or contesting something or other. The principle of estoppel by matter of record alone is sufficient to discard instant Misc Appeal; however, both parties agreed to dispose of the instant appeal on terms earlier finalized; therefore, joint request is allowed.

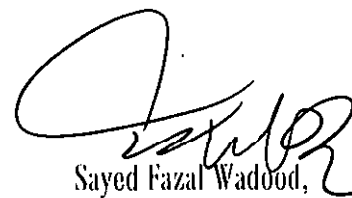
7. In the light of above discussed facts and circumstances of the case, the matter agitated in Civil Misc Appeal under adjudication stands disposed of on its

SAYED FAZAL WADOOD
Additional District & Sessions Judge
Guzistan, Hangu

8

terms of mutual agreement. Cost shall follow the events. File be consigned to the District Record Room after necessary completion and compilation with the span allowed for; whereas, copy of the Order be sent to learned Trial Judge for information as no record has been requisitioned.

Announced in open Court



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