

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

MISC. CIVIL APPEAL NO. : 22/14 OF 2021
DATE OF INSTITUTION : 12.12.2021
DATE OF DECISION : 24.01.2022

1. SUBIDAR JAMEEL S/O LALBAT KHAN
2. PIR BADSHAH S/O LALBAT KHAN
3. ZIRMAT KHAN S/O LALBAT KHAN
4. TALIB JAAN S/O LALBAT KHAN
5. ILYAS KHAN S/O SARBAT KHAN
6. MAWEEZ KHAN S/O SARBAT KHAN
R/O VILLAGE IBRAHIM ZONA TAPA HAIDER KHEL, CASTE
MISHTI, TEHSIL LOWER, DISTRICT ORAKZAI
.....(APPELLANTS)

-VERSUS-

1. KASHMIR KHAN S/O HAJI NIAZBAT KHAN
2. RAEES KHAN S/O HAJI NIAZBAT KHAN
3. EID BADSHAH S/O SAMANDAR KHAN
4. MUHAMMAD YOUNIS S/O MUZAFAR KHAN
5. FAZAL SUBHAN S/O SUBIDAR AKHTAR JAAN
6. ABDUL QAYYUM S/O MIR MAT ULLAH
7. GUL HABIB S/O KHIAL
R/O VILLAGE IBRAHIM ZONA TAPA HAIDER KHEL, CASTE
MISHTI, TEHSIL LOWER, DISTRICT ORAKZAI
..... (RESPONDENTS)

Present: Mr. Abdul Qayyum and Abid Ali Advocates for appellants
: Mr. Sana Ullah Khan Advocate for respondents

JUDGEMENT
24.01.2021

Impugned herein is the order dated 26.10.2021 of the learned Civil Judge-I, Orakzai vide which the restraining order passed on the application of the appellants/plaintiffs for grant of temporary injunction has been restricted to the extent of restraining the respondents/defendants for making constructions on the suit property and further alienation of the same.

2. In a suit before the learned trial court, appellants/plaintiffs seek declaration and permanent


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injunctions to the fact that appellants/plaintiffs are owners in possession of the suit property detailed in the headnote of the plaint while the respondents/defendants have got no concern with the same. As per contents of plaint, appellants/plaintiffs are owners in possession of the suit property since their forefathers. A dispute between the parties over the suit property has been resolved in favour of the appellants/plaintiffs through oath on Holy Quran. That the respondents/defendants have got no concern with the suit property and that they have got no right to alienate the same through exchange or make interference in the suit property. The respondents/defendants no. 1 to 4 contested the suit vide their written statements wherein they contended that they are owners in possession of the suit property vide a family partition between the parties in 2002, that they have exchanged the same with respondents/defendants no. 5 & 7 vide a deed dated 02.05.2019 and that a portion of the suit property has also been donated for construction of a veterinary hospital in 2016.

3. The suit was accompanied by application for grant of temporary injunctions on behalf of appellants/plaintiffs seeking the respondents/defendants to restrain from making construction over the suit property, alienation of the same through exchange or making interference over there. The application was contested by respondents/defendants. The

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learned trial court, after hearing arguments, held that appellants/plaintiffs have got a prima facie case, the factums of balance of convenience and irreparable loss tilt in favour of the appellants/plaintiffs and allowed the application of the appellants/plaintiffs to the extent of restraining the respondents/defendants from construction upon and alienation of the suit property. Through the instant appeal, the appellants/plaintiffs have challenged the impugned order to the extent that the respondents/defendants have not been restrained from making interference in the suit property.


4. I heard arguments and perused the record. Perusal of record shows that appellants/plaintiffs claim themselves as exclusive owners of the suit property with possession of the same while the respondents/defendants no. 1 to 4 have contended that they are owners in possession of the suit property as a result of private partition between the parties. The learned trial court have held that the appellants/plaintiffs have got a prima facie case with balance of convenience and irreparable loss tilt in their favour. The findings of the learned trial court are not disputed by the respondents/defendants no. 1 to 4 through any appeal or revision. The learned trial court despite having held that all the three ingredients for grant of temporary injunctions co-exist in favour of the appellants/plaintiffs, has not given any findings as to why the

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restraining order should be limited only to the extent of construction upon and alienation of the suit property.

5. Hence, in view of what is discussed above, it is held that the learned trial court has erred while restricting the restraining order passed in favour of the appellants/plaintiffs to the extent of further alienation and construction over the suit property; therefore, the impugned order 26.10.2021 of the learned Civil Judge-I, Orakzai is hereby modified to the extent that the respondents/defendants besides being restrained from further alienation and making construction over the suit property are also restrained from making interference in the suit property. The appeal in hand resultantly stands accepted with costs. Requisitioned record be returned. Copy of this order be sent to trial court. File be consigned to record room after its necessary completion and compilation.


Pronounced
24.01.2021


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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.

Dated: 24.01.2021


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

