

64

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

MISC. CIVIL APPEAL NO. : 15/14 OF 2021  
DATE OF INSTITUTION : 01.09.2021  
DATE OF DECISION : 12.10.2021

AYUB KHAN S/O MIANDAD KHAN, R/O BEZOT, TAPA QAMBAR KHEL,  
CHOWAR KHEL, DISTRICT ORAKZAI  
.....(APPELLANT)

-VERSUS-

MALANG JAAN S/O SHAH WALI, R/O KARGHAN, TAPA MIR KOLI KHEL,  
BHU HOSPITAL, HEADQUARTER KALAYA AND EIGHT OTHERS  
..... (RESPONDENTS)

**Present:** Syed Bakhtiar Hussain Bukhari Advocate for appellants  
: Muhammad Irfan Khattak Advocate for respondents

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**JUDGEMENT**  
12.10.2021

Impugned herein is the order dated 26.08.2021 of learned CJ-I, Orakzai vide which application for temporary injunction of the appellant/plaintiff has been dismissed.

(2). Through a suit before the trial court, appellant/plaintiff claimed declaration alongwith perpetual injunctions with possession to the effect that the appellant/plaintiff and respondents/defendants no. 3 to 6 are owners in possession of the suit property detailed in the headnote of the plaint while deceased Muhammad Akbar, the father of respondent/defendant no. 2. That respondents/defendants no. 3 to 6 have sold the suit property to respondent/defendant no. 1 who is making construction over the valuable and commercial part of the suit property. During pendency of the suit, with the permission of the Court the plaint was amended by impleadment of respondents/defendants 7 to 9, the brothers of respondent/defendant no. 1. Similarly, during pendency of the suit one, Talha Muhammad

Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai at Baber Mela  
14/10/21

was also impleaded in the panel of respondents/defendants as defendants no. 10.

The respondent/defendant no. 2, the successor of deceased Muhammad Akbar, the alleged tenant of the suit property submitted a cognovit while the respondents/defendants no. 1 and 3 to 6 submitted a joint written statement contested the suit on various legal and factual grounds and claimed that respondent/defendant no. 1 and his brothers are making construction of a hospital over their ancestral property while the adjacent land has been purchased by respondent/defendant no. 1 and his brothers from respondents/defendants no. 3 to 6. The newly impleaded respondents/defendants no. 7 to 9 also relied upon the written statements submitted by respondents/defendants no. 1 and 3 to 6.

The plaint was accompanied by application for grant of temporary injunctions vide which the appellant/plaintiff sought the respondents/defendants no. 1 and 2 to restrain from making construction over the suit property which was dismissed vide order dated 05.10.2020 of learned SCJ, Orakzai and the respondents/defendants were allowed to raise construction at their own risk and cost. Being aggrieved, the appellant/plaintiff filed a Civil Misc. Appeal before this court which was also turned down vide order 20.01.2021 of my learned predecessor judge.

Shahid Akbar Khan  
District Judge  
Orakzai  
14/10/21

During the pendency of suit the plaint was amended and besides declaration-cum-perpetual injunctions, appellant/plaintiff sought possession through partition of the suit property with fresh application for grant of temporary injunctions, to which respondents/defendants no. 2 and 10 submitted a cognovit while

respondents/defendants no. 1 and 3 to 9 relied upon their previous written statement and opted not to file amended written statement as evident from order dated 31.07.2021 of the learned trial court. The application for grant of temporary injunctions was contested by the respondents/defendants and the learned trial Court after hearing arguments turned down the application vide order dated 26.08.2021 of learned trial Court.

Being aggrieved of the impugned order, the appellant/plaintiff submitted the instant appeal.

(3). I heard arguments and perused the record.

(4). Admittedly, the previous application of the appellant/plaintiff for grant of temporary injunctions, seeking to restrain the respondents/defendants to restrain from making construction over the suit property has been turned down for the lack of irreparable loss to the appellant/plaintiff and the balance of convenience being tilted in favour of respondents/defendants, the ingredients being sine quo non for grant of temporary injunctions. In these circumstances the only argument of the learned counsel for appellant/plaintiff was, that after submission of amended plaint with additional relief of seeking possession through partition, to which the contesting respondents/defendants have not submitted amended written statement, amounting to admission of the claim of appellant/plaintiff. The appellant/plaintiff has got a prima facia case.

Shaukat Ahmad Khan  
District & Sessions Judge  
Okara at Bahawalpur  
10/8/21

Keeping in view the aforementioned argument of the learned counsel for appellant/plaintiff, perusal of case file shows that in previous written statement the contesting respondents/defendants have not specifically denied the status of the appellant/plaintiff as co-sharer but

at the same time it is evident from the case file that appellant/plaintiff is not in possession of any share of the suit property which is yet to be determined, if any, after formal partition of the suit property; therefore, the admission on behalf of contesting respondents/defendants to the extent of relief of partition of the suit property, neither makes the balance of convenience tilt in favour of appellant/plaintiff nor accrues the probability of any irreparable loss to him. The respondents/defendants have already been allowed to raise construction over the suit property at their own risk and cost which is sufficient to compensate the appellant/plaintiff in case of a decree in his favour.

(5). In the light of above discussion, it is held that the impugned order of the Court of learned trial Court needs no interference from this Court and the appeal in hand resultantly stands dismissed being devoid of force. File of this court be consigned to Record Room while record be returned. Copy of this judgement be sent to trial Court for information.

**Pronounced**  
12.10.2021



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

**CERTIFICATE**

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

Dated: 12.10.2021



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