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

Civil Misc. Appeal No. 3/14 of 2021

Date of institution: 04.12.2021

Sher Muhammad etc. Vs Syed Hakeem 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-06	26/02/2022	<p>Mr. Javid Muhammad Panji for appellants and Malik Muhammad Farooq Khattak Advocate for respondents, are in attendance. Arguments have already been 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 20.11.2021, passed by learned Civil Judge, Orakzai, in Civil Suit bearing No.34/1 of 2020; whereby, the learned Trial Court has accepted application for grant of temporary injunction of plaintiffs and dismissed that of appellants/defendants.</p> <p>3. The brief facts of the representative suit pending trial in the Civil Court are such that plaintiffs are owners in possession of Moza Khadizai. They being owners are utilizing the land for cultivation, permissible cutting of trees, the water sources and other benefits since long. The defendants being resident owners and possessors of the adjacent Mozajaat Ghotak, Eisa Khel and Ali Khel have no nexus with the ownership as well as water resources and forest of Moza Khadizai. Interference of defendants was clutched in Civil Suit for declaration with consequential relief of perpetual injunction and annexed thereto, an application for grant of temporary injunction. Application was accepted by learned trial judge vide Order dated 06-02-2021 and was assailed before next forum in Misc. Civil Appeal No. 7/14 of 2021. The Trial Court was directed therein Judgement dated 20-03-2021 to decide both applications of plaintiffs and defendants being presented for same relief of grant of injunction. The Trial Judge had clubbed both the applications for grant of temporary</p>


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injunction and disposed of the same vide Order No.11 dated 20-11-2021. As application of the plaintiffs was accepted and that of defendants was declined; therefore, the defendants being aggrieved filed instant Misc. Civil Appeal, which is under consideration.

4. Defendants in their written statement have contended that water resources with the name of Neeka Chasma and Nikawar Khan as well as the forest of Mahdoorhi Ghar are the exclusive ownership of all of the three tribes of defendants and the claim of the plaintiffs is baseless. They also prayed in a separate application for grant of injunction that plaintiffs may temporarily be restrained from interference in the water resources and utilization of forest.

5. This Court has considered the rival contentions of the learned counsel for the parties and have gone through the record carefully.

6. While deciding application for interim injunction, the law has settled some gadgets for applying on the facts of the case. These standards include establishing prima facie existence of the right, irreparable damage or injury and balance of inconvenience. The claim of plaintiffs is based on the sale purchase documents pertaining to disputed water resources; the petition before Political Administration and decisions of the Jirga specifically constituted for resolving matter in issue of the present suit and other necessary documents which is establishing the existence of right on its face. The defendants had not annexed documents or other proofs with the written statement and such mere assertion without proof is not sustainable for judicial determination. Similarly, the Court is required to balance the inconvenience and see whether the applicant will suffer more inconvenience by the withholding of injunction than that which the respondent would by the granting of it. Normally, the balance lies in favour of continuation of a state of things; which in present case, favors the plaintiffs. Irreparable loss or injury refers



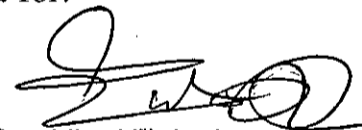
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to such material injury that cannot be adequately compensated in terms of money. The alleged pipeline of defendants is admittedly a new assignment where question of irreparable injury or loss does not arise at all.

7. In the light of above discussed facts and circumstances of the case, this Court holds the view that the learned Trial Court has properly and correctly appreciated the pleadings and available evidence of the parties and has passed a speaking order which could reflect the judicial mind of the Court and the plaintiffs have been correctly granted temporary injunction; whereas, the petition for grant of injunction filed by the defendants has rightly been declined. Consequently, it is held that the impugned Order/Judgment of the Trial Court needs no interference of this Court; hence, is maintained and thus, appeal in hand being devoid of any merits stand dismissed. Costs shall follow the event.

8. Requisitioned record be returned with the copy of this Order 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