

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

Civil Misc. Appeal No. 2/14 of 2021

Date of institution: 06.09.2021

Nasir Orakzai Vs Janab Ali

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	29/10/2021	<p>Mr. Abid Ali Advocate and Mr. Abdul Qayum Advocate for appellants; Mr. Sana Ullah Khan Advocate, Mr. Shoaib Nasrat Khel Advocate and District Attorney for all sets of 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 09.08.2021, passed by learned Senior Civil Judge, Orakzai, in Civil Suit bearing No.39/1 of 2021; whereby, the learned Trial Court has dismissed the application of appellants/plaintiffs for the grant of temporary injunction.</p> <p>3. Facts of the case are such that landed property measuring 6 Kanal 5 Marla, situated at Daboori Bazar, upper Orakzai is ancestral ownership of the appellants/plaintiffs. The said property has been delivered to respondents/defendants against mortgage money of PKRs. 75,000/-. They have been asked to redeem the property but was refused and obliged plaintiffs to file Civil Suit for declaration with consequential relief of possession. Petition for temporary injunction was annexed to the plaint which was dismissed that has given birth to presentation of present appeal.</p> <p>4. On procurement of attendance, written statement was submitted and plaint was objected with some legal and factual objections. It was specifically pleaded therein that the property is their ownership and they are utilizing the same for the purpose of raising construction over it. The plaintiffs had earlier objected the ownership of defendants wherein a Jirga was constituted for resolution of the matter</p>

  
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 Addl: District & Sessions Judge  
 Orakzai at Hangu

in issue. Special oath was administered to the defendants by plaintiffs and thus the plea of ownership of the appellants/plaintiffs was discarded on Holy Quran in front of Jirga members which has been reduced into writing available on file.


5. Record was requisitioned and examined with the professional assistance rendered by counsel representing parties at contest.

6. The alleged mortgage is oral and no documentary proof thereof is so far available on file. The affidavits of witnesses of such oral mortgage are also not available that may be inferred for confirmation of mortgage of disputed property. Law on the subject of temporary injunction prescribes that one has to establish three requirements of law regarding interim injunction; a prima facie case, balance of convenience and irreparable loss. If any of the said three ingredients are missing, the plaintiff was not entitled for temporary injunction. In present case, there was no establishment of right and its infringement on the face of it and therefore no prima facie case was existing and thus the learned Trial Court has properly and correctly declined the exercise of discretion in favor of appellants/plaintiffs.

7. For what has been discussed above, this Court holds the opinion that the ingredient of establishing prima facie case was missing and the learned Trial Court by properly and correctly appreciating the pleadings and material available on file, declined the grant of injunction. However, to avoid future complications arising out of construction on disputed property and to prevent ends of justice from being defeated, this Court direct the defendants/respondents to submit undertaking to the effect that they will claim no improvements for such construction in case where the court finally decides the disputed property in favor of the plaintiffs/appellants (2010 SCMR 594).

  
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8. Resultantly, instant Miscellaneous Civil Appeal, is

Order Continue...	29.10.2021	<p>partially allowed to the extent of obtaining undertaking in the above terms for continuing construction by the respondents/defendants. The parties are left to bear their own cost for being matter of peculiar circumstances. Requisitioned record be returned to the quarter concerned and file of this Court be consigned to District Record Room after its completion and compilation within span allowed for.</p> <p style="text-align: right;"> Sayed Fazal Wadood, AD&amp;SJ, Orakzai at Baber Mela</p>
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