

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

MISC. CIVIL APPEAL NO. : 20/14 OF 2021
DATE OF INSTITUTION : 30.10.2021
DATE OF DECISION : 11.11.2021

QABIL HUSSAIN S/O GHULAM NABI, R/O MANI KHEL DARA,
TEHSIL LOWER, DISTRICT ORAKZAI AND ANOTHER

.....(APPELLANTS)

-VERSUS-

IJAD ALI S/O AJAB ALI, R/O MANI KHEL DARA, TEHSIL LOWER,
DISTRICT ORAKZAI AND THREE OTHERS

..... (RESPONDENTS)

Present: Jabir Hussain Advocate for appellants
: Abid Ali Advocate for respondents

JUDGEMENT
11.11.2021

Impugned herein is the order dated 26.10.2021 of the learned Civil Judge-I, Orakzai vide which application of the appellants/plaintiffs for grant of temporary injunction has been turned down.


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2. In a suit before the learned trial court appellants/plaintiffs seek declaration and permanent injunctions to the fact that appellants/plaintiffs are owners in possession of the eastern part of a land situated at Mani Khel Dara detailed in a site plan annexed with the plaint of the suit while the respondents/defendants despite having got no concern with the suit property, have installed a crush machine in the suit property excavating raw material from a mountain

adjacent to the suit property owned by the appellants/plaintiffs. The respondent/defendant vide their written statement contends that they have purchased the suit property vide a sale deed dated 31.01.1957 while the crush machine has been purchased by him from its original owner Syed Amar Abbas vide a deed dated 22.03.2012.

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 excavation and operating the crush machine which was contested by respondents/defendants and the learned trial court after hearing arguments turned down the application, hence the present appeal.


4. I heard arguments and perused the record. Perusal of record shows that appellants/plaintiffs claimed the suit property as their ancestral property which has not been denied by the respondents/defendants in their written statements. While on the other hand the respondents/defendants claimed that they have purchased the suit property from the predecessors of appellants/plaintiffs vide sale deed dated 31.01.1957 with possession over the suit property. Though the authenticity of sale deed dated 31.01.1957 is yet to be determined after recording pro and contra evidence, but the factum of actual possession of the suit property tilt the preponderance of prima facie case, balance of convenience

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and irreparable loss in favour of respondents/defendants. So far the question of nuisance of the crush machine to the houses of appellants/plaintiffs, is concerned, as per headnote of the plaint, appellants/plaintiffs are the residents of Gare Star Sam Kurez Mani Khel while the suit property is located in Mani Khel Dara which are two different places; however, to cover the lacuna appellants/plaintiffs as per memorandum of appeal have shown themselves residents of Mani Khel Dara.

5. Hence, in view of what is discussed above, it is held that the impugned order of the learned trial court is based on proper appreciation of material available on file and nothing exists to justify interference of this court. The appeal in hand resultantly stands dismissed being meritless. Parties to bear their own costs. File be consigned to record room after its necessary completion and compilation.


Pronounced
11.11.2021


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CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 11.11.2021


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

