

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

MISC. CIVIL APPEAL NO. : 24/14 OF 2021
DATE OF INSTITUTION : 17.11.2021
DATE OF DECISION : 30.11.2021

MUHAMMAD DIN SHAH S/O SAID AKBAR, R/O CASTE MAMOZAI,
TAPA ABDUL RAHIM KHEL, ESSARAK, TEHSIL UPPER, DISTRICT
ORAKZAI AND TWO OTHERS
.....(APPELLANTS)

-VERSUS-

ZARBAT KHAN S/O ZAIN KHAN, R/O CASTE MAMOZAI, ABDUL RAHIM
KHEL, ESSARAK, TEHSIL UPPER, DISTRICT ORAKZAI
..... (RESPONDENT)

Present: Muhammad Atlas Khan & Saeed Marwat Advocates for appellants
: Sana Ullah Khan Advocate for respondent

JUDGEMENT
30.11.2021

Impugned herein is the order dated 09.10.2021 of the learned Senior Civil Judge, Orakzai vide which application of the respondent/plaintiff for grant of temporary injunction has been accepted.

2. In a suit before the learned trial court respondent/plaintiff seeks declaration cum perpetual injunctions to the fact that he is owner in possession of the suit property detailed in the headnote of the plaint and that the appellants/defendants have got no concern with the suit property. He also seeks possession through eviction of the appellants/defendants from the suit property, in alternative. In a plaint he alleges that the parties are second cousins (relatives), that he is in possession of the suit property as his ancestor property while the appellants/defendants have got no concern with the suit property. The appellants/defendants vide

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their written statement contend that the parties being close relatives have inherited the suit property as a joint property, that they (appellants/defendants) are in possession of their own share and that the respondent/plaintiff is bent upon forcefully occupying the suit property.

3. The suit was accompanied by application for grant of temporary injunctions on behalf of respondent/plaintiff seeking the appellants/defendants to restrain from making construction over the suit property or further alienation of the same. The appellants/defendants contested the application and the learned trial court after hearing arguments allowed the same vide impugned order dated 23.10.2021, hence the present appeal.

4. I heard arguments and perused the record. Perusal of record shows that as per averments of plaintiff respondent/plaintiff claims the suit property as his ancestral property with exclusive possession over the same. But at the same time, he also admits that the appellants/defendants are his second cousins which lends support to the version of the appellants/defendants that the parties are joint owners of the suit property. So far, possession of the suit property is concerned, both the parties claim themselves as in actual possession of the same. The appellants/defendants have annexed copies of various applications submitted to different departments wherein they have claimed their abandoned houses available on the suit property which lends support to the contention of appellants/defendants regarding possession over the suit property. In these circumstances when prima facie parties are co-sharers with their respective possession in the joint property,


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the law on the point is - that every co-sharer in a joint property is entitled to retain the possession till proper partition and no restraining order against a co-sharer could be issued on the basis of application of other co-sharer.

5. Hence, in view of what is discussed above, it is held that the impugned order of the learned trial court is not maintainable in the eyes of law; therefore, on acceptance of the instant appeal, the order dated 09.10.2021 of the learned trial court is set aside. The application of the respondent/plaintiff for grant of temporary injunctions is turned down. File of this court be consigned to record room after its necessary completion and compilation. Record of the learned trial court with copy of order.


Pronounced
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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: 30.11.2021


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at Baber Mela