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

MISC. CIVIL APPEAL NO. : 21/14 OF 2021  
DATE OF INSTITUTION : 01.11.2021  
DATE OF DECISION : 13.12.2021

RAFIQ KHAN S/O MIRZA ALI SHAH, R/O CASTE MALA KHEL,  
TAPA AZIZ KHEL, DABORI, DISTRICT ORAKZAI  
.....(APPELLANT)

-VERSUS-


WILAYAT SHAH S/O NAWAB SHAH, R/O DABORI, DISTRICT  
ORAKZAI AND TWO OTHERS  
..... (RESPONDENTS)

**Present:** Momina Bangash Advocate for appellant  
: Gul Nazir Azam Advocate for respondents

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**JUDGEMENT**  
13.12.2021

Impugned herein is the order dated 02.10.2021 of learned Senior Civil Judge, Orakzai vide which application for grant of temporary injunctions of the appellant/plaintiff as well as application of the respondents/defendants for making construction over the suit property, have been dismissed.

  
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(2). Through a suit before the trial court, appellant/plaintiff seeks declaration alongwith permanent injunctions with possession to the fact that he is owner in possession of the suit property detailed in the headnote of the plaint and the respondents/defendants have got no concern with the suit property. As per averments of the plaint, predecessor of the respondents/defendants had transferred the suit property to Kandi Langar Khel as compensation for the murder. That Bahadar Khan, the predecessor of appellant/plaintiff had purchased the suit property from Kandi Langar Khel. That

appellant/plaintiff with a huge cost has turned the suit property cultivable. That the respondents/defendants are bent upon for making illegal interference in the suit property.

The respondent/defendant no. 2 submitted written statement contesting the suit on various legal and factual grounds while the respondents/defendants no. 1 and 3 were proceeded ex-parte.

During pendency of the suit, respondents/defendants no. 2 submitted application for grant of temporary injunctions and sought permission of the court to raise construction over the suit property. The appellant/plaintiff besides submission of written reply contesting the application of respondent/defendant no. 2, also submitted application for grant of temporary injunctions which was contested by the respondent/defendant no. 2. The learned trial court took both the applications together for disposal and passed the impugned order vide which both the applications were turned down, however it was directed that both the parties should restrain from raising construction, changing the nature and interfering the suit property till disposal of the suit.

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

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

(4). Perusal of case file shows that as per para no. 3 of the plaint, the suit property is not the ancestral property of the appellant/plaintiff rather he claims the same to have purchased

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by Bahadar Khan, the predecessor of appellant/plaintiff from Kandi Langar Khel being transferred to the said Kandi Langar Khel from the predecessor of respondents/defendants in compensation of a murder. This oral assertion of the appellant/plaintiff on one hand is not supported by any documentary proof while on the other hand even if the contention of the appellant/plaintiff to the extent of transfer of the land to Kandi Langar Khel and its purchase by Bahadar Khan is admitted as correct, there is nothing available on file as to show that how amongst other Legal Heirs of Bahadar Khan the suit property has devolved only upon the appellant/plaintiff. As against the aforementioned contention of the appellant/plaintiff, respondent/defendant no. 2 claimed the suit property as his ancestral property which has also been admitted by the appellant/plaintiff in aforementioned para of the plaint. So far, possession of the suit property is concerned, both the parties claim themselves as in actual possession of the suit property and each of the party seeks the other to restrain from making interference in the suit property but none of them has any documentary proof to support their contentions.

(5). Hence, in view of what is discussed above, as the title and possession of both the parties is yet to be determined during trial through pro & contra evidence therefore, the learned trial court has rightly dismissed the applications of both the parties. The restraining order passed by the learned trial court u/s 151 of

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CPC is also seems just and convenient under 94(e) of the CPC.  
Hence, the appeal in hand stands dismissed. 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**  
13.12.2021

  
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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: 13.12.2021

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