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

MISC. CIVIL APPEAL NO. : 25/14 OF 2021
DATE OF INSTITUTION : 27.11.2021
DATE OF DECISION : 13.12.2021

RAZIM SHAH S/O KHAISTA ALI SHAH, R/O DABORI, DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

RAFIQ KHAN S/O MIRZA ALI SHAH, R/O CASTE MALA KHEL, TAPA AZIZ KHEL, DABORI, DISTRICT ORAKZAI AND TWO OTHERS

..... (RESPONDENTS)

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

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 being defendant No.2 in the suit as well as application of the respondents No.1 being plaintiff in the suit for making construction over the suit property, have been dismissed.

Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Baber Mela

13/12/21(2)

Through a suit before the trial court, respondent/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 defendants have got no concern with the suit property. As per averments of plaint, predecessor of the defendants had transferred the suit property to Kandi Langar Khel as compensation for the murder. That Bahadar Khan, the

predecessor of respondent/plaintiff had purchased the suit property from Kandi Langar Khel. That respondent/plaintiff with a huge cost has turned the suit property cultivable. That the defendants are bent upon for making illegal interference in the suit property.

The appellant/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, appellant/defendant no. 2 submitted application for grant of temporary injunctions, seeking permission of the court to raise construction over the suit property. The respondent/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 appellant/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 in the suit property till disposal of the suit.

Being aggrieved of the impugned order, the appellant/defendant No. 2 submitted the instant appeal.

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

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(4). Perusal of case file shows that the impugned order has been passed on 02.10.2021 while the instant appeal has been filed on 27.11.2021 with a delay of about 25 days. The appellant seeks condonation of delay on the grounds that he had applied for attested copies of record but inadvertently copies of some other case file were issued to him, therefore he submitted fresh application for obtaining attested copies; hence, could not presented the appeal within time. The appellant further seeks condonation of delay u/s 30 of The Khyber Pakhtunkhwa Epidemic Control and Emergency Relief Act, 2020 vide which the limitation period provided under various laws has frozen from 1st March, 2020 till the culmination of the emergency period.

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13/12/21

Keeping in view the aforementioned contention of the appellant, perusal of the available record shows that the impugned order has been passed on 02.10.2021 while the appellant has applied for attested copy of the same on 22.10.2021 and on the same day inadvertently copies of some other cases have been issued to him. Thereafter, the appellant has again applied for attested copies on 27.11.2021 on the day of presentation of the instant appeal and the copies have been issued to him on 29.11.2021. In these circumstances even if the day of 22.10.2021 is excluded from computation of the period of limitation, the appeal is still time barred. So far, section 30 of Khyber Pakhtunkhwa Epidemic Control and Emergency Relief

Act, 2020 is concerned, though vide the ibid provision the period of limitation provided under various laws has frozen from 01st March, 2020 till the culmination of emergency period; however, the appellant could not produce any “declaration” of the emergency made under section 3 of ibid Act from which it could be ascertain that the period of emergency has not yet culminated. Even otherwise, the appellant has regularly attended the trial court in connection of the trial of the suit despite emergency of Covid-19, if any; therefore, he cannot take the shelter of the ibid provision of law.

(5). Hence, in view of what is discussed above, the appeal in hand time barred; therefore, dismissed in limini. 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


(SHAUKAT AHMAD KHAN)
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