

IN THE COURT OF SYED OBAIDULLAH SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

MISC. CIVIL APPEAL NO. : 7/14 OF 2023
DATE OF INSTITUTION : 18.10.2023
DATE OF DECISION : 11.01.2024

1. SAIF UR REHMAN S/O SARWAR KHAN
2. ABDUL BADSHAH THROUGH LEGAL HEIRS
 - a. QUDRAT ULLAH
 - b. ABDUL WAHAB
 - c. ZAMIN ULLAH, ALL SONS OF ABDUL BADSHAH
 - d. MST. BULBUL BIBI WIDOW OF ABDUL BADSHAH
3. MUSHARAF KHAN S/O SULTAN SHAH, R/O CASTE MISHTI KANDI MAMA KHEL, TAPA HAIDER KHEL, TEHSIL CENTRAL, DISTRICT ORAKZAI
4. FAROOQ S/O DILAWAR KHAN
5. MUHAMMAD YOUSAF S/O ABDUL MALIK
6. HABIB UR REHMAN S/O JANAN R/O CASTE MISHTI KANDI DAD KHEL, TAPA HAIDER KHEL, TEHSIL CENTRAL, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. HAJI GUL HABIB S/O HAJI KHIAL BADSHAH
2. HAJI WILAYAT SHAH S/O HAJI MALANG
3. KHAN WADA S/O KHAN
4. PIR BADSHAH S/O LAL BADSHAH
5. JALAL KHAN S/O KHANAYE
7. ALL RESIDENTS KANDI CASTE MISHTI, IBRAHIMZONA, TAPA HAIDER KHEL, TEHSIL CENTRAL, DISTRICT ORAKZAI

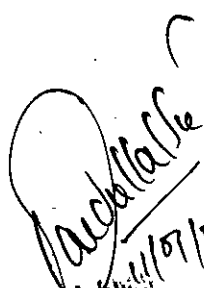
..... (RESPONDENTS)

Present: Mudassir Ijaz Advocate, the counsel for appellants.
: Lal Habib Khan Advocate, the counsel for respondents.

JUDGEMENT
11.01.2024

Impugned herein is the order dated 21.09.2023 of learned Civil Judge-II, Tehsil Kalaya, vide which the application of respondents/plaintiffs for grant of temporary injunction has been allowed.

- (2). The respondents/plaintiffs through a suit before the learned trial court sought declaration-cum-perpetual injunction to the effect that they and the appellants/defendants are co-owners and co-sharers in the suit property situated at Central Orakzai, as detailed in the headnote of the plaint. It is also claimed by the



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respondents/plaintiffs that the appellants/defendants are interfering in the suit property by cutting trees for their personal use and that they be restrained from doing the same. The appellants/defendants were summoned who appeared before the learned trial court and submitted written statement wherein they raised various legal and factual objections.

The plaint was accompanied by application for grant of temporary injunctions wherein the respondents/plaintiffs have sought the appellants/defendants to be restrained from making interference in the suit property and cutting the trees grown over the same. The application was contested by the appellants/defendants through submission of written reply. The learned trial court, after having heard the arguments, allowed the application of respondents/plaintiffs and temporary injunction for the statutory period of 06 months or till disposal of the instant suit, whichever is earlier, was granted in their favour. The appellants/defendants, considering themselves aggrieved of the impugned order, filed the instant appeal.

Arguments heard and record gone through.

Perusal of the case file reveals that the respondents/plaintiffs claim that both parties are co-owners and co-sharers of the suit property wherefrom the


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appellants/defendants are cutting trees for their personal use. On the other hand, the appellants/defendants have come with the contention that they are the rightful owners in possession of the property, tracing their ownership back to their forefathers while asserting that the respondent/plaintiffs have got no concern with the same. The appellants/defendants also claim that the respondents/plaintiffs reside in a distant area unrelated to the suit property.

As per averments of the plaint, around eighty families of the respondent/plaintiffs and 80/85 families of the appellants/defendants have their due shares in the suit property wherein the loss and profit are divided amongst them as per their shares. But the appellants/defendants claimed the ownership of the suit property regarding which it is noteworthy that none of the parties have yet produced their evidence supporting their assertions. The geographical distance of the respondents/plaintiffs from the suit property is deemed insufficient ground for disowning their stake in the suit property. The record also shows that a dispute was adjudicated by the then Assistant Political Agent (APA) in favour of the respondents/plaintiffs. The appellants/defendants, feeling aggrieved of the impugned order, filed an appeal before the then Commissioner FCR, Kohat Division who overturned the order of APA and remanded the case but no

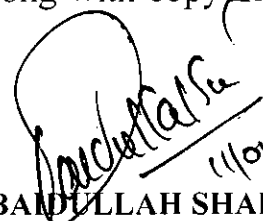

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record is available on file on the proceedings following the remand. Furthermore, cutting of trees by the appellants/defendants would cause irreparable loss to the respondents/plaintiffs in case of a decree in their favour. The determination of the true owner of the suit property remains pending, owing to the presentation and examination of evidence from both sides; however, the respondents/plaintiffs have preponderance of evidence on the basis of available record lean in their favour to establish prima facie case, balance of convenience and irreparable loss.

- (5). In these circumstances, it is held that the order of the learned trial court is based on proper appreciation of evidence available on file and needs no interference from this court; therefore, the appeal, being devoid of merits, is dismissed.

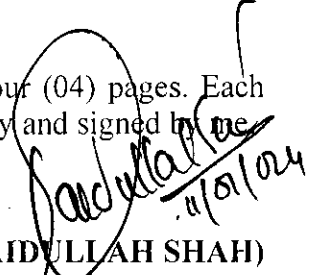
Judgment announced. File of this court be consigned to record room after its necessary completion and compilation while record returned along with copy of this judgment for information.

Dated: 11.01.2024


(SYED OBAYDULLAH SHAH)
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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: 11.01.2024


(SYED OBAYDULLAH SHAH)
District Judge, Orakzai
at Baber Mela

