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**IN THE COURT OF ABDUL BASIT,
ADDITIONAL DISTRICT JUDGE-II, ORAKZAI**

Civil Miscellaneous Appeal No. 16/14 of 2023

Date of institution: 01.11.2023

Date of decision: 23.12.2023

Date of consignment:

Rafique Khan son of Mirza Ali Shah Caste Mula Khel Tapa Aziz Khel
resident of Dabori, District Orakzai (appellant/plaintiff)

Versus

Walayat Shah son of Nawab Shah resident of Dabori, District Orakzai
and 20 others (respondents/defendants)

JUDGMENT

This civil miscellaneous appeal has been preferred against the
judgment and order dated 20.10.2023 whereby the learned Civil Judge-
I, Orakzai has refused to grant temporary injunction to appellant.

Concise facts of the case are that landed property as per site plan
bounded from east *algada*, west lands of Muhammad Nazeer etc., north
central mosque & vacant area and north market Ismail Khel & lands of
Muhammad Omar etc., the suit property, was ownership in possession
of appellant and respondents no. 4-21 from the time of their ancestor &
respondents no. 1-3 have no concern with it; that respondents no. 1-3
were oppressive persons, who were not afraid of law and without any
legal right were restraining him from raising constructions in the suit
property; that he has convened many jirga with respondents no. 1-3 but
they have no documentary proof nor did produce any witness before
jirga; therefore, appellant has prayed for decree of declaration that suit
property is ownership in possession of appellant and respondents no. 4-
21 and respondents no. 1-3 have no concern with it; that they have also
prayed for decree for permanent and mandatory injunctions.

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Respondents were summoned by the court. Respondent no. 1 submitted that he has no concern with the suit property and endorsed no objection on decree of suit; respondents no. 4-21 submitted cognovits and respondents no. 2-3 contested the suit by submitting joint written statement and also filed reply to the application for grant of temporary injunction. The learned trial court after hearing the parties dismissed the application for temporary injunction on 20.10.2023. Appellants being aggrieved of the verdict have filed this appeal.

Arguments heard and record perused.

Before parting with my findings and the assistance furnished by learned counsel for parties, I would like to mention that they admit that there is no land settlement or revenue record of district Orakzai and the disputes were resolved on the basis of oral evidence, possession over lands or agreement deeds, if any, brought before the *jirga* and now the courts; therefore, while deciding the instant issue, the court has to base its findings on pleadings of the parties and any documentary proof, if any, brought on record/file. Coming to facts of this case, it is held that appellant in para no. 1 of the plaint specifically mentioned that he and respondents no. 4-21 were owners in possession of the suit property since the time of their ancestor, to which respondents no. 2-3 while submitting reply to the corresponding para only denied the ownership and possessory rights of respondents no. 4-21 but did not deny the ownership and possessory rights of appellant. Likewise, learned counsel for appellant has also referred copy of *jirga* allegedly convened between son of appellant and respondents no. 2-3, where the latter failed to produce any oral or documentary proof of his ownership and

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possession before the *jirga* and left the *jirga* proceedings, which facts above show that appellant has prima facie case against respondents. No doubt, both the parties claim adverse ownership rights against each other but since the stance of appellant appears to be more stronger than respondents no. 2 & 3; thus, this would be more appropriate to refrain them from entering the suit property in possession of appellant until any party to the proceedings succeed to prove their ownership and possessory rights in the suit property by producing pro and contra evidence on file. On the other hand, balance of convenience also tilts in favour of appellant and in case he is refused the temporary injunctions, there is likelihood of irreparable loss to him by way of losing the possession over suit property.

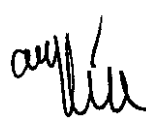
In view of the above, it is held that the learned trial court has not properly looked into the available pleadings and record on file, hence, the appeal in hands is allowed, judgment and order dated: 20.10.2023 of the learned trial court is set-aside and temporary injunction is granted to the extent that respondents no. 2 & 3 be refrained from making any interference in the suit property till disposal of case or for statutory period, whichever, accrues earlier subject to any order of the superior courts, if any. It is, however, added that any constructions rose by appellant or respondents no. 1 and 4 to 21 in the suit property till final disposal of the suit shall be purely at their own risks and costs and they shall not be entitled for any compensation for said, if any claimed.

Parties have to bear costs of their proceedings because none of the parties has specifically produce any evidence not proved the cost incurred on the appeal.

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Copy of this order be placed on record of learned lower court, where after, the requisitioned record be returned and file of this court consigned to record room after necessary completion and compilation.



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CERTIFICATE

Certified that this judgment consists of four (04) pages, those are signed by me after necessary corrections.



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