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

Order---02

23.12.2023

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Appeal in hands received from the court of hon'ble
District & Sessions Judge, Orakzai.

It be entered in the relevant register.

Arguments heard and record perused.

Brief facts of the case are that Abdul Aziz, predecessor of parties at dispute, belonged to sub-tribe Dolatzai Khans of Orakzai Tribe, who was owner in possession of suit property, fully detailed in the headnote of the plaint, measuring around 50,000 kanal and on his demise, parties at dispute have stepped into his shoes to the extent of their share being his successors, however, respondents are in possession of the suit property and deny their co-ownership rights; therefore, appellants have prayed for declaration of their co-ownership rights in the suit property to the extent of their shares with assertion that respondents have no right or authority to claim the exclusive ownership of the suit property; that appellants have also prayed for possession of their shares in the suit property on regular partition, recovery of mense profits from 2000 to till possession of suit property and decree for directory and mandatory injunctions against respondents so that they may not refuse their rights in the suit property.

On 16.12.2023, appellants have filed three applications; first for temporary injunction so that respondents may be restrained from raising constructions and handing over the possession of the suit property to any other person till final disposal of the case; second application to implead Commissioner Kohat Division and Deputy Commissioner, Orakzai being necessary parties to the suit and third to restrain deputy commissioner/ land acquisition collector from release of acquisition amount of suit property to respondents or any other person till decision of case and to issue them direction to deposit the said amount along with enhanced amount from time to time in the court. In this regard they prayed for grant of ad-interim relief, however, the learned trial court instead of granting ad-interim relief issued notice of the application of temporary injunctions to respondents,

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ask respondents for filing written reply to second application and put on the maintainability of the third application and fixed the case for 13.01.2024.

Appellant feeling aggrieved impugned the order dated: 16.12.2023 of learned Civil Judge-I, Orakzai with request to set-aside the judgment and order of the learned trial court and to grant status quo against respondents to restrain them from raising constructions in the suit property; to implead Commissioner Kohat Division and Deputy Commissioner, Orakzai being necessary parties to the suit and third to restrain deputy commissioner/ land acquisition collector from release of acquisition amount of suit property to respondents or any other person till decision of case and to issue them direction to deposit the said amount along with enhanced amount from time to time in the court. As appellant is seeking ad-interim injunction and also intend impleadment of intervening parties, thus, there is no need to summon respondents.

The above facts of the case provide that

Before parting with my findings and the assistance furnished by learned counsel for appellants, I would like to mention that there is admittedly no land settlement or revenue record of district Orakzai and the disputes between the parties are resolved on basis of oral evidence, possession over lands or agreement deeds, if any, brought before the *jirga* and now the courts; therefore, while deciding this appeal, the court has to base its findings on pleadings of the parties and any documentary proof, if any, brought on file. In the instant case, appellants just claim the co-ownership rights in the suit property and admit that respondents are in possession of suit property; however, at present they are not in possession of any documentary evidence or other proof of ownership, which could prima facie establish an arguable case in their favour to grant status quo. It is, however, directed that let the notice be issued to respondents again with direction that any constructions they had made till disposal of the applications

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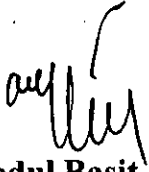
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shall be at their own risks and costs and in case of decree of suit in favour of appellants, the suit property shall be partitioned as per law. So far the other two applications are related, it is held that the learned trial court has already fixed the second application for written reply of respondents and third for maintainability, which are yet to be decided on merits after hearing the parties; therefor, no findings as such can be passed on it. My order is tentative in nature and will not prejudice the mind of learned trial court. The learned trial court is directed to decide all the applications on its own merits after hearing the parties as earlier as possible. No order as to costs.

Copy of this order be sent to learned trial court and file of this court consigned to record room after its necessary completion and compilation.

Announced
23.12.2023


Abdul Basit
Addl. District Judge-II, Orakzai