

IN THE COURT OF ZAHIR KHAN
Civil Judge-I, Kalaya, Orakzai

Petition No.....14/6 of 2023.
Date of Institution.....30.10.2023.
Date of Decision.....20.12.2023.

Order No.08
20.12.2023

Clerk of counsel for plaintiffs present. Special attorney Istikhar Ali for defendants present. Arguments on application for grant of temporary injunction already heard and record perused.

Through this order, I intend to dispose of application for temporary injunction filed by petitioners/plaintiffs. Pertinent to mention that on the date of institution of the suit, ad-interim order dated 30.10.2023 was passed whereby, ad-interim injunction to the extent of alienation of suit property was granted which was challenged before the court of sessions and the court of Worthy District & Sessions Judge granted status quo vide order dated 03.11.2023, till date fixed i.e 06.11.2023 with directions to requisition the case file on aforementioned date, fixe the same for early hearing and decide the application of plaintiffs on the basis of merits after submission of written statement and reply. At present, another civil appeal is pending against the order of this court dated 07.11.2023 before the court of learned ADJ, Orakzai at Baber Mela



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but there is no stay on the proceedings/disposal of the application in hand.

Brief facts of the case are that petitioners/plaintiffs are seeking declaration with permanent injunction to the effect that predecessor of respondents/defendants was a tenant/jobber/slave of predecessor of petitioners/plaintiffs who was permitted to construct a residential house on some portion of the suit property detailed through boundaries in the head note of the plaint through a written deed dated 26.05.1931. Now, respondents/defendants are bent upon further construction on the suit land without permission of petitioners/plaintiffs which is a violation of the terms and conditions of deed dated 26.05.1931 as petitioners/plaintiffs are the lawful owners of the suit property and status of respondents/defendants is only that of tenants/jobbers, therefore, respondents/defendants have no right to claim ownership of the suit property and raise further construction. That respondents/defendants were asked time and again to admit the legal claim of petitioners/plaintiffs but in vain.

Respondents/defendants were summoned who contested the suit by submitting written statement and reply.

In the written statement, respondents/defendants have averred that suit of petitioners/plaintiffs is time barred, claim of petitioners/plaintiffs is baseless, deed dated 25.06.1931 is fake,


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bogus and factious and petitioners/plaintiffs have got no valid cause of action.

It is established principle of law that a party seeking temporary injunction is required to make out a prima facie case, which would mean arguable case, likelihood of irreparable loss or injury for no-grant of temporary injunction; and balance of convenience tilts in his favor and all ingredients must co-exist. Absence of any one of these essentials would be fatal to the plea for the issuance of the injunction. In the present case, petitioners/plaintiffs have based their claim on a deed pertaining to the year 1931. Whether the suit property is the ownership of petitioners/plaintiffs by virtue of inheritance, this fact would be seen after recording of evidence of petitioners/plaintiffs. The question of prima facie case in favor of petitioners/plaintiffs would be seen after scanning the evidence of the parties. Where evidence is required to establish the claim of petitioners/plaintiffs, it cannot be said that they have got a prima facie case in their favour. Petitioners/plaintiffs failed to establish a prima facie case in their favour. Per record, respondents/defendants are in possession of the suit property since 1931, therefore, balance of convenience does not tilt in favor of petitioners/plaintiffs. Petitioners/plaintiffs failed to establish that they would suffer irreparable loss if stay is not granted, resultantly, application for grant of temporary injunction is dismissed. No order



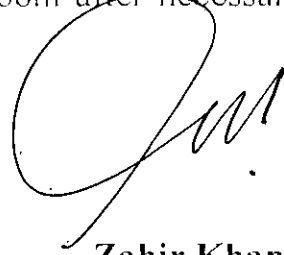
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as to cost. This order of mine is tentative in nature and shall not affect merits of the case. Copy of this order be placed on main file.

File be consigned to record room after necessary completion and compilation.

Announced
20.12.2023



Zahir Khan
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