

62

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

CIVIL APPEAL NO. : 3/13 OF 2022
DATE OF INSTITUTION : 21.03.2022
DATE OF DECISION : 26.04.2022

1. HAJI TOR KHAN S/O HAIDER KHAN, CASTE MALA KHEL, TAPA QUTAB KHEL, GABRI GHILJO, UPPER ORAKZAI
 2. FAZAL KHAN S/O SADA KHAN, CASTE MALA KHEL, TAPA KASKIZAR, UPPER ORAKZAI
 3. AMAN ULLAH S/O SIALBAT SHAH, CASTE MALA KHEL, TAPA AZIZ KHEL, KASKIZAR GHILJO
 4. SIALBAT SHAH S/O HAKIM SHAH, CASTE MALA KHEL, TAPA AZIZ KHEL, KASKIZAR GHILJO
-(APPELLANTS)

-VERSUS-

1. HAJI AKBAR S/O ALI ASGHAR, CASTE MALA KHEL, TAPA QUTAB KHEL, MAZARI GARHI, ORAKZAI
 2. MUSLIMEEN S/O HAIDER JAAN, CASTE MALA KHEL, TAPA AZIZ KHEL, MAZARI GARHI
 3. GHAFOOR KHAN S/O FAQIR KHAN, TAPA QUTAB KHEL, MAZARI GARHI, ORAKZAI
 4. SAHAR GUL S/O SHER BAHADAR, CASTE MALA KHEL, TAPA AZIZ KHEL, MAZARI GARHI TEHSIL UPPER, DISTRICT ORAKZAI
-(RESPONDENTS)

Present: Khursheed Alam Advocate for appellants.
: Abid Ali Advocate for respondents.

JUDGEMENT
26.04.2022

Impugned herein is the order dated 14.02.2022 of learned Senior Civil Judge, Orakzai vide which a plaint in civil suit no. 62/1 of dated 22.10.2021 titled as "Haji Toor Khan etc. VS Haji Akbar etc." has been rejected under order 07 rule 11 of the CPC.

2. In a civil suit before the learned trial court, appellants/plaintiffs sought declaration with perpetual injunctions to the fact that they are owner in possession of land measuring 20 Jeribs near village Dabori while the respondents/defendants despite having got no concern

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
26/04/22

(63)

whatsoever with the suit property, are bent upon passing a road in the land of appellants/plaintiffs destroying the standing crops. The respondents/defendants submitted written statement wherein besides raising various other legal and factual objections, they contended that they have neither constructed the road nor they are going to destroy the standing crops, rather an already existing road is under the process of being mettled by the Government through allocation of funds, that neither the concerned contractor nor concerned executive Government departments are parties to the suit and that the appellants/plaintiffs have got no cause of action against the respondents/defendants.

3. The suit was accompanied by application for grant of temporary injunctions vide which the respondents/defendants were sought to restrain from making construction upon the suit road. The respondents/defendants contested the same through submission of a reply whereafter the learned trial court after having heard the arguments, while relying upon the satellite picture annexed with the plaint, maintained that the disputed road already exists on the spot and no new road was going to be passed through the lands of appellants/plaintiffs; therefore, dismissed the application for grant of temporary injunctions and on the same ground, also rejected the plaint under order 07 rule 11 of the CPC. The appellants/plaintiffs being aggrieved of the impugned order filed the instant appeal.

Shauket Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
26/01/22

4. I heard the arguments and perused the record.
5. It is evident from the record that appellants/plaintiffs alleged themselves as owners in possession of a suit land contending that respondents/defendants are bent upon constructing a shortcut road in the lands of appellants/plaintiffs. The respondents/defendants in their written statements on one hand denied the exclusive ownership of the appellants/plaintiffs while on the other hand they have also denied the contention of appellants/plaintiffs to the extent of non-existence of kacha road on the spot. Both these questions are questions of facts which were to be proved through pro and contra evidence instead of relying upon satellite picture, the authenticity of which was yet to be determined during the trial. In view of the aforementioned situation, the findings of the learned trial court maintained for rejection of plaint under order 07 rule 11 of the CPC and deciding the application for grant of temporary injunctions, was not tenable in the eyes of law. However, while going to the pleading it is evident from the record that as discussed above the appellants/plaintiffs have sought the respondents/defendants to be restrained from passing a road in the land of appellants/plaintiffs while respondents/defendants in their reply have conceded the fact that they are not going to make any interference and have contended that in their personal capacity they are neither going to reconstruct the already existing road nor they are destroying the standing crops. They have further


Shaukat Ahmad Khan
District & Sessions Judge,
Oranjal at Baber Meyer

(65)

contended that the already existing road is under the process of reconstruction by allocation of funds by the Government and that the concerned contractor, the Government department and executive department being necessary parties, are not impleaded in the suit. Both the parties when confronted with the aforementioned situation, the respondents/defendants submitted that in their personal capacity they are not going to make any interference in the suit road. In response the learned counsel for appellants/plaintiffs submitted that in view of the commitment of respondents/defendants, he is not going to press the instant appeal; however, he may reserve the right of filing a fresh suit against the concerned Government department. To that fact joint statement of respondents/defendants and separate statement of counsel for the appellants/plaintiffs recorded and placed on file.

6. Hence, in view of what is discussed above, the appeal in hand is dismissed being not pressed with permission to file a fresh suit. Parties to bear their own costs. File of this court be consigned to Record Room after its completion and compilation. Copy of this order be sent to learned trial court for information.


Pronounced:
26.04.2022


(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: 26.04.2022


(SHAUKAT AHMAD KHAN)
District Judge, Orakzai
at Baber Mela

