

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

MISC. CIVIL APPEAL NO. : 2/14 OF 2022
DATE OF INSTITUTION : 15.02.2022
DATE OF DECISION : 25.03.2022

1. MALAK BAHADAR KHAN S/O KAMAL KHAN
 2. PALOOS KHAN S/O MUSHARAF KHAN
 3. ZAMIN KHAN S/O MUSHARAF KHAN
 4. MUHAMMAD YASIR S/O RUSTAM KHAN
 5. TEHSIL KHAN S/O MALAK BAHADAR KHAN
- ALL RESIDENTS OF LAGHONE, CASTE MANDRA KHEL,
TAPA MADAD KHEL, TEHSIL LOWER, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. ZIARAT GUL S/O GHANI KHAN
 2. JAHANGIR KHAN S/O GHANI KHAN
 3. DAULAT KHAN S/O GHANI KHAN
 4. MEMBER KHAN S/O GHANI KHAN
 5. SAJID S/O GHANI KHAN
 6. ASMAT ULLAH S/O ZARIF KHAN
- ALL RESIDENTS OF LAGHONE, CASTE MANDRA KHEL,
TAPA MADAD KHEL, TEHSIL LOWER, DISTRICT ORAKZAI
7. PROVINCIAL GOVERNMENT THROUGH DISTRICT
ELEMENTARY AND SECONDARY EDUCATION ORAKZAI
 8. MIAN KHEL S/O ZARIBAT KHAN R/O LAGHONE, CASTE
MANDRA KHEL, TAPA MADAD KHEL, TEHSIL LOWER,
DISTRICT ORAKZAI
 9. TEHSILDAR DISTRICT ORAKZAI
 10. LEARNED CIVIL JUDGE-I, ORAKZAI AT BABER MELA

..... (RESPONDENTS)

Present: Mr. Amir Ajam and Tariq Iqbal Advocates for appellants
: Jabir Hussain Advocate for respondents no. 1 to 5

JUDGEMENT

25.03.2022

Impugned herein is the order dated 27.01.2022 of the

learned Civil Judge-I, Orakzai vide which application of the
appellants/plaintiffs for grant of temporary injunction has
been turned down.

2. In a suit for declaration-cum-perpetual injunctions
with possession through partition of the suit property, before

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the court of learned Civil Judge-I, Orakzai, appellants/plaintiffs claim that appellants/plaintiffs and respondents/defendants no. 1 to 6 are relatives, that appellants/plaintiffs are owners in possession of the suit property with a small portion jointly owned with them by respondents/defendants no. 1 to 6, that appellants/plaintiffs donated land to the Provincial Government for construction of Primary School in 1982 with transfer of further property in 2016 for reconstruction of the school, that the respondents/defendants without proper partition of the suit property are bent upon making encroachment over the share of appellants/plaintiffs on the pretext of upgradation of Government Primary school to Middle standard.

3. The suit was accompanied by application for grant of temporary injunctions to the fact that respondents/defendants may be restrained from making construction over the suit property till final disposal of the suit. The respondents/defendants contested the suit and application by submission of their written statements wherein they claimed themselves as owners in possession of the suit property and denied the factum of joint ownership of the appellants/plaintiffs in the suit property.

4. The learned Civil Court, after having heard the arguments, turned down the application. Hence, the present appeal.

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5. I heard argument and perused the record. Perusal of the case file shows that though, the factum of parties being relatives is admitted by the respondents/defendants but the factum of joint ownership of the suit property has vehemently been denied by the respondents/defendants with assertion that respondents/defendants no. 1 to 5 are in possession of the suit property. As the factum of joint ownership of the appellants/plaintiffs with respondent/defendant no. 1 is yet to be determined after recording of prove and contra evidence but on the other hand it is evident from record that respondents/defendants no. 1 to 5 are in possession of the suit property; therefore, a prima facia case is tilted in favour of the respondents/defendants. Similarly, even in case of success of the suit of appellants/plaintiffs they can be compensated in terms of money and as such the factum of balance of convenience and irreparable loss also do not tilt in favour of appellants/plaintiffs. Furthermore, on the same set of facts in a civil suit no. 122/1 titled as "Muhammad Yasir etc. VS Provincial Government etc." which was later on withdrawn by the appellants/plaintiffs, the application for grant of temporary injunctions, had failed before the trial court as well as before this court.

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6. Hence, in view of what is discussed above, it is held that the impugned order dated 27.01.2022 of learned Civil Judge-I, Orakzai, does not suffer from any illegality or legal

infirmity; therefore, the instant appeal is dismissed with cost.

File of this court be consigned to record room. Copy of this

order be sent to learned trial court for information.

Pronounced

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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: 25.03.2022



(SHAUKAT AHMAD KHAN)

District Judge, Orakzai
at Baber Mela

