

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

MISC. CIVIL APPEAL NO. : 4/14 (NEEM) OF 2022
DATE OF ORIGINAL INSTITUTION : 12.04.2022
DATE OF RESTORATION : 12.05.2022
DATE OF DECISION : 12.05.2022

SAJAWAL KHAN S/O HAJI GUL, R/O CASTE ALI KHEL, TAPA
MIRWAS KHLE, VILLAGE SARHA KHAWA, TEHSIL UPPER,
DISTRICT ORAKZAI(APPELLANT)

-VERSUS-

1. SHAH WAZIR S/O SYED AKBAR
 2. LAL WAZIR S/O SYED NAZIR
 3. MUSTAJAB KHAN S/O SYED NAZIR
 4. RAHMAT ULLAH S/O SYED WAZIR
- ALL RESIDENTS OF CASTE ALI KHEL, MIRWAS KHEL, VILLAGE
SARHA KHAWA, TEHSIL UPPER, DISTRICT ORAKZAI
..... (RESPONDENTS)

Present: Abid Ali Advocate for appellant.
: Noor Mir Jaan Advocate for respondents.

JUDGEMENT
12.05.2022

Impugned herein is the order dated 10.03.2022 of learned Civil Judge-I, Orakzai passed in civil suit no. 118/1 of 08.09.2021 vide which application of the appellant/plaintiff for grant of temporary injunctions has been dismissed.

- (2). In a suit before the learned trial court, the appellant/plaintiff has sought declaration-cum-perpetual injunctions with recovery of Rs. 80,000/- to the fact that appellant/plaintiff is owner in possession of a land measuring 02 Jeribs with 50 trees over there at village Sarha Khawa as detailed in the headnote of the plaint while the respondents/defendants have got no concern whatsoever with the suit property. As per averments of the plaint, the father of the appellant/plaintiff had purchased the suit property from one Ayyub Khan of village Garh against a sale consideration of Rs. 150,000/- in the presence of witness, with

about 50 trees standing over there which ensued a dispute between the parties, in pursuance of which, a Jirga was held and the matter was decided in favour of the appellant/plaintiff but the respondents/defendants are still bent upon making interference in the suit property, hence a suit for declaration-cum-perpetual injunctions. Appellant/plaintiff further claimed that the respondents/defendants have cut 18 trees from the suit property; therefore, in para 'B' of the plaint rupees of 80,000/- as a damage caused to the trees, was sought. The respondents/defendants submitted written statement wherein besides contesting the suit on various and legal factual ground, they claimed the suit property as their ancestral property being in possession of the same.

The suit was accompanied by application for grant of temporary injunctions wherein the appellant/plaintiff sought the respondents/defendants to be restrained from making interference in the suit property till final disposal of the suit. The respondents/defendants by submission of reply contested the application. The learned trial court after having heard arguments of learned counsels for parties dismissed the application.

The appellant/plaintiff being aggrieved of the impugned order filed the instant appeal.


- (3). I heard arguments and perused the record.
- (4). It is evident from the record that the appellant/plaintiff claimed the suit property to have been purchased by his father

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Gulma Khan from one Ayyub Khan about 30 years prior through an oral agreement but the said Ayyub Khan is not a party to the suit. Moreover, it also cannot be gathered from the contents of plaint, as to whether the father of the appellant/plaintiff is alive or otherwise and as to whether the appellant/plaintiff is the sole legal heir/representative of his father or otherwise? Furthermore, the claim of appellant/plaintiff is based upon an oral agreement which is yet to be proved after recording of pro and contra evidence. On the other hand, the respondents/defendants claim the suit property as their ancestral property being in possession of the same. In these circumstances, the appellant/plaintiff has got no prima facia case in his favour. Similarly, the other two ingredients for grant of temporary injunctions also do not tilt in favour of the appellant/plaintiff.

(5). Hence, in view of what is discussed above, it is held that this court sees no reason to interfere with findings of the learned trial court passed after appreciation of available record on file. The instant appeal is, therefore, dismissed with cost. File of this court be consigned to record room while copy of this order be sent to learned trial court for information. Record be returned.


Pronounced:
12.05.2022


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

CERTIFICATE:

Certified that this judgment consists of 03 pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 12.05.2022


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

