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

MISC. CIVIL APPEAL NO. : 7/14 OF 2022  
DATE OF INSTITUTION : 25.06.2022  
DATE OF DECISION : 28.06.2022

RIAT KHAN S/O AMEEN KHAN, R/O CASTE AKHEL, TAPA  
MOHSIN KHEL, TESHIL UPPER, DISTRICT ORAKZAI  
..... (APPELLANT)

-VERSUS-

1. QALANDER SHAH S/O NOORZALI
2. SARDAR KHAN S/O DOORANAI
3. KHAMIN GUL S/O DOORANAI
4. KAMIN KHAN S/O AMEEN KHAN
5. DAOD KHAN S/O AMEEN KHAN
6. SHEHZAD KHAN S/O HAMID KHAN
7. MUNAWIR KHAN S/O HAMID KHAN
8. SHERMAT KHAN S/O HAMID KHAN
9. ZARMAT KHAN S/O SHERAZ KHAN
10. FEROS KHAN S/O SHERAZ KHAN

ALL RESIDENT OF TALY, CAST AKHAIL, TAPPA MUSIN  
KHEL, TEHSIL UPPER DISTRICT ORAKZAI.

..... (RESPONDENTS)

**Present:** Noor Karim Advocates for appellants.

: Shaheen Muhammad Advocate for respondents/defendants no. 1 to 3.

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**JUDGEMENT**  
28.06.2022

The appellant/plaintiff through a suit for declaration before the court of learned Civil Judge-I, Orakzai claimed that appellant being plaintiff and proforma respondents/defendants are owners in possession of the suit property detailed in the headnote of the plaint, being devolved upon them after the death of their predecessor Juma Khan in 1973. That the appellant/plaintiff due to worst law and order situation in District Orakzai migrated to Hangu; however, after restoration of the writ of government when they returned to District Orakzai, the contesting respondents/defendants no. 1 to 3 were found levelled the suit property through excavator and now

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they are bent upon illegally occupying the same by collecting construction material on the spot. That the contesting respondents/defendants no. 1 to 3 have got no concern with the suit property.

The plaint was accompanied by application for grant of temporary injunctions seeking the contesting respondents/defendants no. 1 to 3 to restrain from making construction over the suit property or changing the course of pathway over there. The learned trial court instead of issuing restraining order, noticed the application to the respondents/defendants. The appellant/plaintiff being aggrieved of the order, filed the instant appeal.

(2). I heard arguments and perused the record.

(3). Learned counsel for appellant/plaintiff submitted that the appellant/plaintiff has got prima facia case and the ingredients of irreparable loss and balance of convenience are also tilted in his favour. Learned counsel for the contesting respondents/defendants no. 1 to 3 submitted that the appellant/plaintiff and proforma respondents/defendants no. 4 to 10 are settled at District Hangu and they have got no concern with the suit property. With respect to grant of temporary injunctions, the contesting respondents/defendants no. 1 to 3 submitted that they are not making any construction over the suit property rather one Habib Ullah has started construction over there.

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(4). Keeping in view the available record and arguments of the learned counsels for parties, it is observed that the application for grant of temporary injunctions is pending before the learned trial court and it is yet to be decided on merits; therefore, touching the merits of the case may cause bias to either of the party, however when the learned counsel for contesting respondents/defendants no. 1 to 3 was confronted with the contention of respondents/defendants no. 1 to 3 that they are not making construction over the suit property rather one Habib Ullah has carried out construction over there who is not a party to the suit, he conceded that he has got no objection if the status quo is directed to be maintained till date fixed before the learned trial court.

(5). Hence, in view of what is discussed above, the instant appeal is accepted. Parties are directed to maintain status quo on the spot till date fixed before the learned trial court. Needless to mention here that the learned trial court will decide the fate of application on the basis of its own merits.

Consign. Record of the learned trial court be returned with a copy of this order for information and compliance.




**Pronounced**  
28.06.2022

  
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at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.  
Dated: 28.06.2022

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