

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

Petition No.....3/6 of 2023.

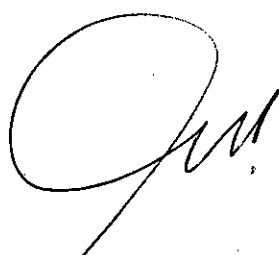
Date of Institution.....07.06.2023.

Date of Decision.....26.02.2024.

Order No.16
26.02.2024

Petitioner No. 1 for himself and as special attorney for rest of the petitioners along with counsel present. Special attorney for respondent No. 1 present. Respondent No. 4 present through counsel. Respondent No. 4 has already submitted application in main suit for transposition from panel of defendants into panel of plaintiffs. Arguments on application for grant of temporary injunction already heard and record perused.

Brief facts of the case are that petitioners/ plaintiffs have filed the instant suit for declaration cum-permanent injunction and possession through partition to the effect that parties to the suit are cousins/relatives, belong to Qaum Mishti, Tappa Darway Khel, Said Rasool Kandi and the suit property (08 fields) measuring about 05 Jirab fully detailed in the head note of the plaint is their joint, undivided and ancestral ownership since migration of Hindus from Pakistan to Hindustan in the year 1954-55. That respondents/defendants are bent upon raising construction on the valuable portion of the suit property. That respondents/defendants


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were asked time and again to admit the legal claim of petitioners/plaintiffs but in vain, hence, the present suit.

The defendants were summoned, out of whom respondent / defendant No. 1 appeared before the court and contested the suit by submitting written statement and reply while respondent/defendant No. 2, 3 placed and proceeded against ex-parte. Respondent No. 4 has already submitted application in main suit for transposition from panel of defendants into panel of plaintiffs. In the written statement, contesting respondent/defendant No.1 has denied the claim of plaintiffs alleging that he is owner in possession of the suit property since his forefathers and petitioners/plaintiffs have no concern with the suit property.

As per law, for grant of temporary injunction, a party has to prove three essential ingredients i.e. prima facie case in his favor, balance of inconvenience tilts in his favor and in case injunction is not granted, he would suffer irreparable loss. Insofar, as the instant case is concerned, petitioners/plaintiffs have annexed certain documents with their plaint prima facie supporting their claim. There is no land record in this newly merged district, therefore, documents annexed with the plaint are considered. Contesting respondent has evasively denied the claim of petitioners/plaintiffs. A prima facie case exists in favor of plaintiffs. There is a great apprehension of irreparable loss to plaintiffs, if defendants are not restrained from alienation, changing nature of the suit property and raising construction on its valuable



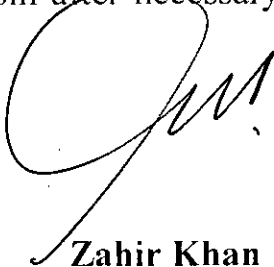
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portion. Balance of convenience also lies in favor of petitioners. Per record, the disputed land is lying barren since long. Jirga members had also restrained respondents/defendants from raising construction on the disputed property, therefore, application for temporary injunction is accepted and respondents/defendants are restrained from raising construction and changing the nature of the suit property for six months or till the disposal of instant suit whichever comes earlier. No order 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
26.02.2024


Zahir Khan
Civil Judge-I, Kalaya, Orakzai.