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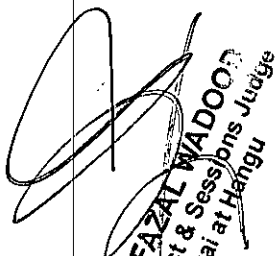
IN THE COURT OF ADDITIONAL DISTRICT JUDGE ORAKZAI, AT BABAR MELA

Civil Misc. Appeal No. 7/14 of 2022

Date of institution: 10.08.2022

Muqbal Khan etc. Vs Aqal Jafar etc.

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order	19/09/2022	<p>Parties present. This is aimed to dispose of captioned Civil Misc. Appeal.</p> <p>2. This Miscellaneous Civil Appeal calls in question the validity and propriety of the Order dated 04.08.2022, passed by learned Civil Judge-II, Tehsil Court Kalaya, Orakzai, in Civil Suit bearing No.106/1 of 2021; whereby, the learned Trial Court has dismissed application of plaintiff for grant of temporary injunction.</p> <p>3. The brief facts of the suit pending trial in the Civil Court are such that plaintiffs being owner in possession of landed property measuring 1 Kanal 9 Marlas including a dwelling house constructed over 15 Marlas, situated at Ali Khel Shekhan, Lower Orakzai had delivered vacant possession of such house and adjacent property to defendants for its utilization on humanitarian ground during Military Operation in the area. Defendants were residing in the property and were utilizing adjacent area without payment of rent or other consideration. They refused return of property and had forcefully occupied further property up to 8 marlas for construction of approach road that necessitated presentation for suit for declaration possession and injunction.</p> <p>4. Defendant on appearance negated the stance of the plaintiffs and had taken specific plea that they are owners in possession of the property and plaintiffs have got no nexus with it. The plaintiffs are belonging from different tribes and cultivating the property as farmers having no title of land.</p> <p>5. The learned Trial Judge had dismissed application for grant of temporary injunction vide Order No.14 dated</p>

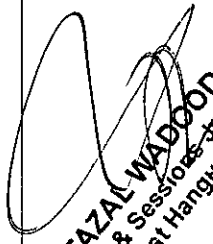
  
SAYED FAZAL WADOON  
Additional District & Sessions Judge  
Orakzai at Hangu

04-08-2022. The plaintiffs being aggrieved filed instant Misc. Civil Appeal, which is under consideration.

6. Mr. Khan Kareem and Mr. Afzal Khan Advocate(s) while opening the appeal has argued that the property in dispute is ancestral property of the appellants/plaintiffs and had been delivered to the defendants on pure benevolent ground without any monetary consideration that they may not be suffered in Military Operation. The claim over property is illegal in further pavement of land for the purpose of approach road is forceful dispossession. They added that all the ingredients required for grant of injunction are being met out and therefore withholding of injunction was against law, facts and material available on record.

7. Mr. Sana Ullah Khan Advocate representing respondents/defendants was of the stance that defendants are owner in possession of dwelling house as well as the adjacent land including that of the approach path. They are ready to carry on repair work along with access road on their own risk and cost. He added that they being actual and real owners in possession of the suit property are not intending to transfer the same in the name of anyone and thus having no objection over grant of injunction to the extent of restriction over the further sale or transfer of property.

8. In the light of above discussed facts and circumstances of the case followed by statement at the bar by learned counsel representing respondents/defendants; without touching merits of the case, this Court holds that the defendants will not transfer the property for preserving status quo in accordance with the law. They will submit undertaking before the Learned Trial Judge to the effect that they will carry on the repair work in dwelling house as well as establishing approach road on their own risk and cost by not demanding the fresh improvements if the case has been decreed in favor of plaintiffs. Reliance in this

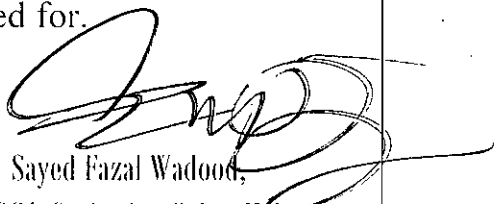
  
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Orakzai at Hangu

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regard can be placed on cases reported as 2012 CLC 1409 and 1999 CLC 964.

9. Instant Civil Miscellaneous Appeal is disposed of accordingly. Requisitioned record be returned with the copy of this Order while file of this Court be consigned to the District Record Room Orakzai after completion and compilation, within the span allowed for.

**Announced in open Court**

  
Sayed Fazal Wadood,  
AD&S.J, Orakzai at Baber Meta