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IN THE COURT OF ABDUL BASIT,  
ADDITIONAL DISTRICT JUDGE-II, ORAKZAI

Civil Misc. Appeal No. 26/14 of 2023

Date of institution: 23.12.2023

Date of decision: 16.03.2024

Date of consignment:

Muhammad Mir son of Aqal Shah resident of Quom Mishti, Tappa Darowli Khel, Village Mishti Bazar Tali Shadal, Tehsil Central Orakzai, presently at mohallah Sangerh district Hangu (appellants/plaintiff)

Versus

Abdul Malik son of Aqal Shah resident of Quom Mishti, Tappa Darowli Khel, Village Mishti Bazar presently at Village Sangerh, District Hangu and one other (respondents/defendants)

**ORDER**

Through this order I shall decide the civil miscellaneous appeal filed by appellant against the judgment and order dated 19.12.2023 of the Court of learned Civil Judge-II, Kalaya Orakzai, whereby, he has dismissed the application of temporary injunction filed by appellant against respondents.

Concise facts of the case are that appellant has filed a civil suit against respondents, wherein, contended that he is owner in possession of landed property comprising of two *jarib* area and house consisting of two rooms, courtyard and *hujra* spread over area of 40 marla situated in Mishti Bazar Tali Shadal, Orakzai, the suit property boundaries fully detailed in the body of plaint, came to him through parents; that he has leased out the suit property to Rabia Khel Afridi on 26.01.2012 in presence of witnesses, wherein, he is residing for the last twelve years and regularly paying him the lease amount; that his brother Hasan Shah and father on committing the murder of mother and sister of Taza Gul abandoned the area, where after, Hasan Shah was killed, who was issueless; that amongst the children of

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Aqal Shah, he has decided to pay the *nek ada*/diyat value to the victims' family, however, the father of respondent no. 1 refused to receive the compensation; that he has, however, after payment of diyat value/amount constructed the suit house and since then recorded as owner in possession of the same; therefore, alleged that respondents have no concern with the suit property and prayed for declaration of his title to the suit property coupled with decree for permanent and mandatory injunctions to restrain them from making forcible possession or to evict the tenant from the suit property without any legal justification, hence the suit.

With plaint, appellant has also filed an application for the temporary injunction in order to restrain the respondents from forcible eviction of the tenant from the suit property till disposal of case on merits.

Appellants were summoned by the learned trial court, where they have filed a joint written statement and written reply, wherein, they have raised various legal and factual objections. The learned trial court heard the parties and dismissed the application. The appellant being dissatisfied with the decision of learned trial court has impugned herein the judgment and order dated 19.12.2023 with prayer to allow the appeal in hands and on setting-aside the impugned judgment and order, to grant the temporary injunction restraining the respondents from forcible eviction of the tenant from the suit property till disposal of case.

Arguments heard and record perused.

Viewing valuable arguments advanced by learned counsel for parties and record before the court, it is held that while deciding the application for temporary injunction, the court keep into its mind the co-existence of three important ingredients i.e. prima facie case, balance of convenience and

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irreparable loss and if any one of these are found missing, temporary injunction cannot be granted as a principle. This is also a settled principle of law that court rests its findings on the material available before it, however, it is admitted fact that there exists no revenue record in district Orakzai, which could help the courts to determine the proprietary or ownership rights of the parties at dispute, and the court has to look into the pleadings of the parties, possessions of parties over the properties and any *jirga* decision/ verdict, if any, in their favour. In the instant case, appellant claims the exclusive ownership and possession over the suit property coupled with fact of leasing out the suit property to Rabia Khel Afridi and collecting the lease amount, however, para no. 1 of the plaint not only suggests that the suit property originally belonged to his parents, which presumably shall devolve on all the legal heirs of their parents in accordance with their legal and Shari shares. Although, the appellant has contended that his brother and father after committing the murder of mother and sister of Taza Gul had abandoned the area, where after, his brother Hasan Shah was killed and he after paying the diyat value, he got control over the suit property but mere payment of diyat value to legal heirs of the victims without any transfer of ownership rights of the suit property in the name of appellant either in shape of gift or sale etc. is not conclusive proof of exclusive ownership of the appellant unless strong and reliable evidence is brought on file.

Importantly, the learned counsel for respondents during arguments stated that presently the suit property is not in possession of Rabia Khel Afridi rather lying vacant, to which learned counsel conceded at the bar with assertion that he is in possession of the same, which further shows that appellant has got no prima facie arguable case in his favour.

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In the wake of above discussion, it is held that the learned trial court has properly appreciated the available record and has not erred in arriving a just conclusion, which does not warrant interference of this court, hence, impugned judgment and order dated 19.12.2023 of the learned trial court is upheld and appeal in hands **dismissed**.

Needless to mention that my findings above are tentative in nature and will not prejudice the mind of learned trial court at the time of final disposal of case. Copy of this order placed on record of learned trial court and the requisitioned record, if any, be returned. Parties have to bear costs of their proceedings because none of the parties has specifically proved the cost incurred on the appeal.

Court file consigned to record room after completion & compilation.



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**CERTIFICATE**

Certified that this judgment consists of four (04) pages, those are signed by me after necessary corrections.



**Announced**  
16.03.2024

**Abdul Basit**  
Addl. District Judge-II, Orakzai