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

Order---02

28.02.2024

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Appeal in hands received from the court of hon'ble
District & Sessions Judge, Orakzai.

It be entered in the relevant register.

Arguments heard and record perused.

Concise facts of the case are that appellants have filed the suit in hands seeking therein declaration, permanent and mandatory injunctions to the effect that appellants were recorded owners in possession of shamilat property situated in Sepoi Zerra, the suit property, since the time of their forefathers and respondents being co-owners have no legal right to make any interference or install any mobile tower or collect constructing material in the suit property without their consent and permission.

Along with suit, appellants have also filed application for temporary injunction in order to restrain respondents from making any interference or install any mobile tower or collect constructing material in the suit property without their consent and permission till disposal of the case. In this regard they have prayed for grant of ad-interim relief, however, the learned trial court while holding the fact that suit property is a joint ownership of parties to the suit, whereby, each and every co-sharer has got ownership over each inch of the suit property unless and until same is partitioned, therefore, turned down the request of ad-interim injunction on 22.02.2024 and fixed the case for attendance of respondents on 06.03.2024.

Appellant feeling aggrieved impugned the order dated 22.02.2024 of learned Civil Judge-II, Kalaya, Orakzai with request to set-aside the judgment and order of the learned trial court and to grant status quo against respondents to restrain them from making any interference or install any mobile tower or collect constructing material in the suit property without their consent and permission till disposal of the case. As appellants are seeking the ad-interim injunction, therefore, there is no need to summon respondents at this stage.

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Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
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Before parting with my findings and the assistance furnished by learned counsel for appellants, I would like to mention that there is admittedly no land settlement or revenue record of district Orakzai and the disputes between the parties are resolved on basis of oral evidence, possession over lands or agreement deeds, if any, brought before the *jirga* and now the courts; therefore, while deciding this appeal, the court has to base its findings on pleadings of the parties and any documentary proof, if any, brought on file. In the instant case, appellants have claimed the suit property to be shamilat land and claimed their co-ownership rights in it with assertion that respondents no. 1-3 at the instance of other respondents intend to install the mobile tower in the suit property, which shall affect their rights. Contents of plaint and the material available on file also provide that appellants have also filed an application to the local police for resolution of matter and in this respect *jirga* was fixed for 12.02.2024, wherein, the issue was supposed to be decided amicably, otherwise, the installation of mobile tower was to be stopped, however, the respondents did not attend the *jirga* on date so fixed, which *prima facie* constitutes arguable case in favour of appellants, thus, on acceptance of the appeal in hands, judgment and order dated 22.02.2024 of the learned trial court is set-aside and status quo is granted to the extent that respondents shall refrain from installing the mobile tower in the suit property till date fixed i.e. 06.03.2024 before the learned trial court subject of notice to opposite party and order of the superior courts, if any. My order is tentative in nature and will not prejudice the mind of learned trial court. The learned trial court is directed to decide the application on its own merits after hearing the parties as earlier as possible.

Copy of this order be sent to learned trial court and file of this court consigned to record room after its necessary completion and compilation.

Announced
28.02.2024


Abdul Basit
Addl. District Judge-II, Orakzai