

IN THE COURT OF ZAHIR KHAN

Civil Judge-I, Kalaya, Orakzai

Petition No.....1/6 of 2023.

Date of Institution.....13.06.2023.

Date of Decision.....07.03.2024.

Order No.21**07.03.2024**

Petitioners/plaintiffs No. 1 and 10 for themselves and as special attorneys for rest of the petitioners/plaintiffs present. None present for respondents/defendants. Arguments already heard. Record gone through.

This order of mine is directed to dispose of application for grant of temporary injunction filed by petitioners/ plaintiffs.

Brief facts of the case are that petitioners/plaintiffs have filed the instant representative suit for declaration, cum-permanent injunction and possession through partition to the effect that Qaum Feroz Khel is comprised of four sub-sections (Tappas) namely Qismat Khel, Ghairat Khel, Jesal Khel and Qasim Khel and the suit property (Lerri, Chatta, Karapa, Rusmali and Chappri Feroz Khel mountains) detailed through boundaries in the head note of the plaint is the joint, undivided/un-partitioned ownership of the parties but respondents/defendants are bent upon raising construction, changing nature and alienation of suit property which is wrong, illegal and ineffective upon the rights of

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petitioners/plaintiffs and respondents/defendants be restrained from illegally occupation, raising construction, changing nature and alienation of suit property till official partition. That respondents/defendants were asked time and again to admit the legal claims of petitioners/plaintiffs but in vain, hence, the present suit.

After institution of the suit, respondents/defendants were summoned, out of whom defendant No. 3, 22, 34, 36, 82, 101, 129, 141, 165 and defendant No. 198 appeared before the court and contested the suit by submitting written statement and reply. In the written statement, contesting defendants have averred that there is a dispute of demarcation between the parties and other groups not party to the suit, unless and until, demarcation is carried out, no official partition is possible. It is also averred that suit of petitioners/plaintiffs is bad due to non-joinder and mis-joinder of the parties. It is also alleged that there are coal mines in the suit property, therefore, no official partition is possible, hence, suit of petitioners/plaintiffs is liable to be dismissed. Some of the respondents/defendants have submitted cognovit while rest of the respondents/defendants are placed and proceeded against ex-parte.



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Learned counsel for the petitioners/plaintiffs argued that petitioners/plaintiffs have got a prima facie case. Balance of

convenience also lies in their favor and that if temporary injunction is not granted, they would suffer irreparable loss and lastly prayed for the acceptance of the application. The other side fully resisted the application through arguments.

All the three conventional ingredients for grant of temporary injunction must be fulfilled by the petitioners/plaintiffs. Even if one of those ingredients is found missing, injunction cannot be issued in their favor. Insofar, as the instant case is concerned, rights of petitioners/plaintiffs in the joint, un-divided suit property and its extent is yet to be determined by recording of evidence. The question of prima facie case in favor of petitioners/plaintiffs would also be seen after scanning the evidence of the parties. Petitioners/plaintiffs have not annexed with their plaint any authentic documents in support of their claim and contention. Petitioners/plaintiffs failed to establish a prima facie case in their favor. Per record, coupled with report of the office of Assistant Commissioner, Lower Orakzai, there are coal mines in the disputed property. The coal mines have been leased out to lease holders by the authority concerned, therefore, an injunctive order will adversely affect the coal mining on one hand and loss to government kitty on the other hand. Balance of convenience does not tilt in favor of petitioners/plaintiffs and



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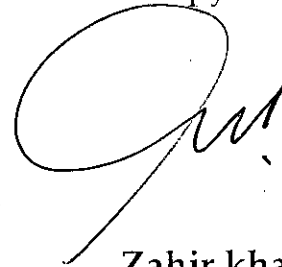
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there is no apprehension of irreparable loss to petitioners/plaintiffs, if temporary injunction is not granted.

As a result of above discussion, as all the three ingredients for the grant of temporary injunction do not exist in favor of petitioners/plaintiffs, therefore, the application of petitioners/plaintiffs for temporary injunction is hereby dismissed. No order as to cost. This order of mine is tentative in nature and shall not affect merits of the case.

File of this court be consigned to record room after its necessary completion and compilation while copy of this order be placed on main file.

Announced
07.03.2024



Zahir Khan
CJ-I, Tehsil Kalaya, Orakzai.