

**IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE-I**  
**KALAYA, ORAKZAI**

Complaint No: 1/4 OF 2021.  
Date of Institution: 22.02.2021.  
Date of Decision: 01.10.2022.

**ASHO, Raees Khan, PS Kalaya (Complainant)**  
**VS**

1. Hassan Khan S/O Javid Hassan Khan,
2. Behram Khan S/O Saood Khan,
3. Babar Khan S/O Saood Khan all residents of Qaum Feroz Khel, Tappa Aziz Khel, Village Sultan Zai, Tehsil Lower, District Orakzai.

..... **(First Party)**

1. Haji Mina Gul S/O Lewan Shah,
2. Malak Jan S/O Sikandar,
3. Asghar Shah S/O Eid Badshah,
4. Gul Mir S/O Zameer Khan,
5. Syed Ali Shah S/O Nazeer Shah,
6. Alif Gul S/O Haji Ziarat Gul all residents of Qaum Stori Khel, Tappa Mala Khel, Village Tarkho Sam, Tehsil Lower, District Orakzai.

..... **(Second Party)**


**Order. No. 25**  
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Complainant absent. First party present through co-counsel.

Second party, namely Haji Mina Gul, Asghar Shah and Malak Jan along with Mr. Sanaullah Khan Advocate present. Arguments heard.

Record perused.

Record shows that complaint in hand was filed by ASHO PS Kalaya U/S 145 Cr. PC on 18.02.2021 wherein it is alleged that both the parties have dispute over land situated at Khrasha, Stori Khel, Lower Orakzai. Both the parties are claiming the disputed property as

  
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their lawful ownership and the dispute is likely to result into breach of peace. Therefore, it is requested that the disputed property be attached accordingly.

The learned transferor court recorded statement of complainant U/S 200 Cr. PC on 22.02.2021. Parties were summoned with directions to submit their written statement of respective claims regarding possession of the subject of dispute. First party i.e., Hassan Khan etc submitted written statement of their claim on 26.07.2021. Second party i.e., Haji Mina Gul submitted their written statement on 17.09.2022.

As per contention of first party/respondent namely Hassan Khan etc, they are law abiding citizens and belong to a respectable family and that they are lawful owners of the disputed property while second party/respondent namely Mina Gul etc are land grabbers. It is further contended that previous litigations in the court of APA, Lower Orakzai and Civil Courts ended up in their favour. Execution petition is pending before this court and warrant of possession has been issued. Objections of second party over execution petition have already been turned down.

Respondents namely Mina Gul etc, in their written statement have averred that the disputed property is their ancestral ownership and no one else has got any concern whatsoever with the same. That they have their dwelling houses and fields in the said property and it is requested that complaint U/S 145 Cr. PC be dismissed accordingly.

  
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Complainant has alleged that sufficient material is placed on file and that there is apprehension that the dispute is likely to lead to breach of peace and it is requested that the disputed property be attached.

Execution petition No. 2/10 of 2019, petition U/S 12(2) CPC and contempt of court petition is pending before this court between the parties. Execution petition, petition U/S 12(2) CPC and contempt of court petition are fixed for today. The relevant record is before the court.

Brief history of the matter in controversy is that there was a land dispute between "Khanan" (first party) and Qaum Stori Khel (second party). The disputed land is situated at Khrasha. In order to resolve the matter in controversy, Jirga was held in the year 2006. The Jirga decided the matter in favour of Mina Gul etc. Jirga decision dated 30.06.2006 was set aside by the court of APA on 05.09.2016 and a fresh Jirga was constituted to decide the matter. The Jirga decided the matter in favour of Khanan/Hassan Khan etc declaring the disputed property as their ownership and AC, Lower Orakzai vide order/judgement dated 28.10.2018 decreed suit of Hassan Khan etc in their favour.

The dispute over land between the parties is an old one. The matter between the parties is pending since 2005/2006. As per averments of complaint, there is land dispute between the parties which is likely to lead to breach of peace, however, there is no FIR,

  
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mad report and complaint of either parties to support the version of complainant, the dispute is pertaining to the year 2005/2006 and execution petition, 12 (2) CPC petition and contempt of court petition between the parties are pending before this court. There is nothing on record which could show forcible and wrongful dispossession of the party concerned.

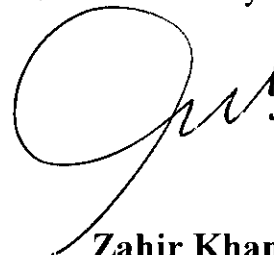
Dispossession in two months prior to the institution of the complaint is a prime ingredient of section 145 Cr.PC. It is established that the ingredient of dispossession in the given situation and circumstance is unthinkable. It is held that a competent court of jurisdiction has already taken cognizance of the matter.

As far as apprehension of alleged breach of peace is concerned, S.H.O concerned is required to bound down the parties within the meaning of Section 107 and 151 Cr. PC.

In view of the above facts, this court is debarred from proceeding further with the complaint. Complaint is hereby dismissed being not maintainable.

File be consigned to record room after necessary completion & compilation.

**Announced**  
01.10.2022



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