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

Civil Appeal No. 04/13 of 2024

Date of institution: 15.02.2024

Date of decision: 01.04.2024

Date of consignment:

The Deputy Commissioner, Orakzai (appellant/defendant no. 2)

Versus

Liaquat Ali son of Khan Muhammad resident of Barmad Khel, Tappa Alat Khel, Sarobi Garhi, Tehsil Lower Orakzai and two others (respondents no. 1 to 3)

**APPEAL UNDER SECTION 96 OF CPC AGAINST  
THE JUDGEMENT AND DECREE OF THE LEARNED CIVIL  
JUDGE-I, ORAKZAI**

**JUDGMENT**

Through this judgment I will decide appeal preferred by appellant against respondents challenging the judgment and order dated 17.01.2024 of the Court of learned Civil Judge-I, Orakzai, whereby, he has allowed the application and granted temporary injunction to respondent no. 1/plaintiff for a period of six months.

Concise facts of the case are that respondent no. 1/plaintiff has filed a suit against the appellant and respondents no. 2 & 3/defendants, wherein, alleged that a cabin constructed between area of District Courts Orakzai and male/female waiting area, the suit cabin, had been allotted to him through a regular meeting of The Cabin Committee Orakzai through allotment order no. 6/SCJ/ORK/C-C dated 29.05.2023 of the learned Senior Civil Judge, Orakzai, the letter, for a period of two years on payment of fixed rent of Rs. 3,000/- per month; that respondent no. 1/plaintiff has started the stationery business in suit cabin in July 2023, which was not interrupted by anyone since the time of its establishment; that on 03.11.2023, the appellant and

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respondent no. 3 have sealed the suit cabin without any legal justification and forcibly evicted him from there; that this act of appellant & respondents no. 2 & 3 is illegal, against the law and in contravention to the allotment order of learned Senior Civil Judge, Orakzai, which apprehends irreparable loss to him; that appellant and respondents no. 2 & 3 have no right to issue notice and seal the suit cabin; therefore, prayed for decree to declare this act of appellant and respondents no. 2 & 3 to be illegal, against the law coupled with prayer for possession on breaking open the seal of suit cabin; that he has also prayed for decree for the permanent and mandatory injunctions to restrain them from making any sort of interference in the suit cabin without any lawful authority, hence, the suit.

Respondents were summoned by learned trial court. They appeared and filed a joint written statement, wherein, raised various legal and factual objections *inter-alia* with facts that since the building/property over which the District Courts Orakzai are established was the property of the district administration, which was temporarily provided for functioning of courts; therefore, the learned Senior Civil Judge, Orakzai had no authority to allot the suit cabin, which is also situated outside the limits of courts premises, to respondent no. 1/plaintiff; that respondent no. 1/plaintiff has been given notice under The Encroachment Act, thus, the jurisdiction of civil court is also barred under section 11 of The Encroachment Act; that the suit cabin erected at place is the ownership of government and a State property, which can only be allotted by the Estate Officer i.e. Deputy Commissioner/ District Collector; that the appellant and respondents no. 2 & 3 have not allotted the suit cabin to respondent no. 1/plaintiff; therefore, he has no legal status to occupy the same and prayed for dismissal of suit.

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With plaint, respondent no. 1/plaintiff has also filed an application for temporary injunction so as to break open the lock/unseal the suit cabin and refrain appellant and respondents no. 2 & 3 from making any sort of interference in it till disposal of the case. The appellant and respondents no. 2 & 3 have filed written reply to this application, which was vehemently contested by parties at dispute. The learned trial court heard the arguments and finally allowed the application and granted the temporary injunction for statutory period. The appellant being dissatisfied with verdict has impugned herein the judgment and order dated 17.01.2024 of the learned trial court with assertions raised in written statement coupled with fact that judgment and order of the learned trial court is illegal, against the law, arbitrary, unfounded; therefore, he has prayed that on acceptance of the appeal, the impugned judgment and order of the learned trial court may be set-aside and temporary injunction granted may be vacated.

The learned counsel for respondent no. 1/plaintiff has refuted the arguments of learned counsel for appellant and contended the judgment and order of the learned trial court is based on true facts, which does not need interference of this court; therefore, prayed for dismissal of the appeal.

Arguments heard and record perused.

Before parting with my findings, it is necessary to mention that the impugned judgment and order of the learned trial court is not appealable within the meaning of section 96 of The Civil Procedure Code, 1908 rather made appealable within the meaning of section 104 of The Code; therefore, Muharrir of the court is directed to delete the case from the Civil Appeals register and enter it in the register maintained for cases/petitions of The Civil Miscellaneous Appeals in accordance with rules.

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Viewing valuable arguments advanced by learned counsel for parties and record before the court, it is held that while deciding the applications for temporary injunctions, the courts keep in its mind the co-existence of three important ingredients i.e. prima facie case, balance of convenience and irreparable loss and if any one of these are found missing, temporary injunction cannot be granted as a principle. In the instant case, respondent no. 1/plaintiff claims the possession of suit cabin on strength of allotment order/letter of the learned Senior Civil Judge, Orakzai dated 29.05.2023, whereas, appellant denies the competence of learned Senior Civil Judge, Orakzai to pass the allotment order in favour of respondent no. 1/ plaintiff on sole ground that the building over which the District Courts, Orakzai are functioning is actually the State property under the administrative control of appellant and only appellant is competent to allot it. Be that as it may, I agree with the appellant on point that the District Courts, Orakzai are currently running its official business from building allotted to them at Baber Mela, which is the part of District Hangu in absence of any contrary record; therefore, this is yet to be determined by the learned trial court that as to whether the appellant was also competent to refrain respondent no. 1/ plaintiff from running his business or seal the suit cabin having same standing like Senior Civil Judge, Orakzai because appellant is also running its official business from Baber Mela, District Hangu and legally speaking the building should have been under the administrative control of district Hangu unless any rebuttable record is brought on file.

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Besides above, if it is admitted that the appellant had provided the property to District Courts, Orakzai at Baber Mela on temporary basis, even then, this is to be determined by the learned trial court after recording of pro and contra evidence that whether the suit cabin was constructed within the

area provided to the District Courts Orakzai for running its official business or not. So much so, the suit cabin was allotted to respondent no. 1/plaintiff by learned Senior Civil Judge, Orakzai through letter no. 06/SCJ/ORK/C-C dated 29.05.2023, whereas, appellant has allegedly issued notice to Akseer Ali, who had no locus standi, which provides that respondent no. 1/plaintiff has prima facie arguable case against appellant and respondents no. 2 & 3 and in case he is refused the temporary injunction, he will suffer irreparable loss in the shape of good will he had earned and thus provides that balance of convenience also tilts in his favour.

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 to just conclusion, hence, impugned judgment and order of the learned trial court dated 17.01.2024 is upheld and appeal in hands **dismissed**.

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 case.

Case file consigned to record room after completion & compilation.




**Announced**  
01.04.2024

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

**CERTIFICATE**

Certified that this judgment consists of five (05) pages, those are signed by me after necessary corrections, if any found.



**Announced**  
01.04.2024

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