

## Gul Nawaz and others Vs Ajab Ali and others

Order...11

18.04.2024

Present:

Petitioner No.08 in person and as attorney for rest of the petitioners.


Respondent No.01 to 03, 05 and 06 through attorney.

Respondent No.04 through counsel.

Respondent No.07 to 09, 13 and 14 through District Attorney.

1. This order is intended to dispose of the instant petition separately filed for grant of temporary injunction by the plaintiffs/petitioners against the defendants/respondents.
2. Brief facts of the case are that plaintiffs have filed the instant suit against defendants for declaration-cum-permanent injunction and possession through partition to the effect that plaintiffs are co-owner in the suit property, which is fully detailed in the headnote of plaint. That the suit property is joint property and yet to be partitioned. That the defendants be restrained from taking into possession and raising construction over the disputed property. That defendants were asked time and again to admit the legal claims of plaintiffs and refrain from interference but in vain, hence, the present suit.
3. The defendants/respondents contested the suit by filing written statements and replies of the application for grant of temporary injunction. They contended that petitioners have got no cause of action by filing the suit/petition. Furthermore, the stance of the plaintiffs that they are co-owners with the defendants in the suit property is straight away denied by the defendants/respondents in the pleadings.
4. Arguments on the instant petition are already heard by parties.
5. Learned counsel for the plaintiffs/petitioners argued that plaintiffs/petitioners have got a prima facie case. Balance of convenience also lies in his favor and that if temporary injunction is not granted, he would suffer irreparable loss and lastly prayed for the acceptance of the application.
6. The other side fully resisted the application through arguments and contended that the plaintiffs don't have any right over the disputed

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Sam Ullah  
Civil Judge/JM-I  
Orakzai at (Babar Meela)

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property. not a single document has been attached with the plaint which might have shown their ownership and which might have established their prime facie case.

7. It is well settled law that for grant of temporary injunction, a party has to prove three essential ingredients i.e., prima facie case in his favor, balance of convenience tilts in his favor and in case injunction is not granted, he would suffer irreparable loss. Insofar, as the instant case is concerned, plaintiffs are claiming that they are co-owner in the suit property. Plaintiffs have not annexed with their plaint any reliable documentary proof in support of their claim and contention. On the other hand, the defendants totally denied the claim of the plaintiffs. There is nothing in the shape of any relevant document from which, it could be presumed that tentatively that the plaintiffs are co-owner in suit property. In absence of record and any documentary proof, possession might be considered for establishing a prime facie case in favour of plaintiffs, however, in the instant suit even possession of the plaintiffs is not established at this stage as some portion of the land is acquired by the government from the defendants. Furthermore, the description of suit property is not clear and the temporary injunction cannot be granted when the same has not been specified and fully detailed.
8. Therefore, as a result of above discussion, the petitioners/plaintiffs failed to establish his claim prima facie, what to say of the balance of convenience and irreparable loss.
9. Thus, the three necessary ingredients for the grant of temporary injunction do not exist in favor of the plaintiffs, therefore, the application in hand is hereby **Dismissed**. Costs shall follow the events.
10. The instant petition be consigned to record room after its necessary completion and compilation.

Announced  
18.04.2024

  
**Sami Ullah**  
Civil Judge-I,  
Orakzai at Baber Mela.