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

Civil Misc. Appeal No. 02/14 of 2024

Date of institution: 14.03.2024

Date of decision: 06.06.2024

Date of consignment:

Muhammad Yousaf son of Taj Gul resident of Quom Mishti Tappa Darwi Khel, Tehsil Central, District Orakzai (appellant/defendant no. 1)

Versus

Syed Raziq son of Sher Asghar resident of Quom Mishti Tappa Darwi Khel, Tehsil Central, District Orakzai and 22 others (respondents no. 1-19 and 22/plaintiffs and respondents no. 20, 21 & 23/defendants no. 2, 3 & 6)

ORDER

Through this order I shall decide a civil miscellaneous appeal filed by appellant against the judgment and order dated 26.02.2024 of the Court of learned Civil Judge-I, Kalaya Orakzai, whereby, he has allowed the application and granted the temporary injunctions in favour of respondents as against appellant and respondents no. 20, 21 & 23 in Civil Suit No. 28/1 of 2023.

Concise facts of the case are that respondents have filed a civil suit against appellant and respondents no. 20, 21 & 23, wherein, contended that parties at dispute are relatives and belonged to Kandi Syed Rasool of Tappa Darwi Khel (Surdada); that Munnawar Khan son of Meeran Khan is the descendant of Taji Khan, brother of Syed Rasool, as Meeran Khan etc. were also fallen into the Kandi Syed Rasool; that parties at dispute are recorded joint owners of the landed property comprising of eight fields measuring around 5 *jarib* situated at Zawan Mishti, boundaries are fully given in the headnote of the plaint, to be referred as suit property; that suit property was

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the ownership of Ghuncha, a hindu, who was collective neighbor of Kandi Syed Rasool, however, the Ghuncha while migrating to Hindustan has mortgaged it with different persons in 1954-55; that after his migration, the ancestors of Kandi have jointly decided to redeem the suit property and divide the same amongst them, however, in the meantime another Kandi named Zameen Gul Qasban, to be referred as the Qasban, has claimed the ownership of the suit property; that a jirga was held, three persons from respondents/plaintiffs and three persons from Kandi Syed Rashool have taken the oaths and won the title from Qasban, where after, the ancestors of Kandi Syed Rasool have inhabited Jannat Shah, the ancestor of appelland and respondents no. 20, 21 & 23, in the suit property as their joint cultivator in 1959-60; that after the demise of Jannat Shah and father of appelland, the appelland and respondents/defendants have claimed the suit property to be their ownership and not only redeemed the suit property but also started cultivating the same without any consultation of Kandi Syed Rasool, which resulted into dispute between the parties; that a tube-well sanctioned for the suit property was not installed due to dispute over ownership, whereas, payment of compensation amount of road led through the suit property was also stopped to them; that many jirga were held between the parties but in vain; that appelland and respondents/defendants intend to raise constructions in the suit property, which is still joint ownership, whereas, also intend to make interference in it, which will cause them irreparable loss; therefore, they have prayed for declaration that suit property is the joint ownership of parties at dispute; that they have also prayed for possession of the suit property on its regular partition by metes and bound coupled with decree for permanent and mandatory injunctions so as to refrain them from raising constructions and making any sort of interference in the suit property.

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With plaint, respondents/plaintiffs have also filed an application for temporary injunction so as to refrain appellant and respondents/defendants from raising constructions, making interference and sale of the suit property till disposal of case.

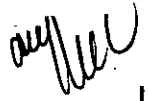
Appellant and respondents/defendants were summoned by learned trial court. Respondents/defendants were placed ex-parte, while, appellant/defendant no. 1 has filed a written statement and written reply, wherein, he has raised various legal and factual objections. The learned trial court heard the parties and on allowing the application, granted temporary injunctions and restrained the appellant from raising constructions or changing the nature of the suit property for statutory period or till disposal of the case, whichever, period accrued earlier. The appellant being dissatisfied with the decision of learned trial court has impugned herein the judgment and order dated 26.02.2024 to the extent of grant of temporary injunction.

Arguments heard and record perused.

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 into 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. This is also a settled principle of law that court rests its findings on the material available before it, however, it is admitted fact that there exists no revenue record in district Orakzai, which could help the courts to determine the proprietary or ownership rights of the parties at dispute, and the court has to look into the pleadings of the parties, possessions of parties over the properties and any jirga decision/verdict in their favour.

Handwritten signature and date: 06/06/2024
Abdul Basit
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In the instant case, respondents/plaintiffs alleged that suit property was actually mortgaged to the different persons by a Hindu at the time of his migration to Hindustan, where after, there had been a jirga held between ancestors of parties at dispute and it was decided to redeem and divide the suit property as per their shares. Respondents/plaintiffs though contend that they had filed an application before the learned Assistant Political Agent, Orakzai (APA) for resolution of the matter in dispute between the parties and a jirga was constituted, however, from the start to till date, respondents/plaintiffs have failed to bring on record a single jirga verdict/decision in their favour. On the contrary, the suit property is admittedly in possession of appellant, who claimed the same to be his ancestral property. If it is presumed that suit property was not his ancestral property, even then, the pleadings of respondents/plaintiffs provide that it has been redeemed by appellant and respondents/defendants from mortgagees though they alleged to be without their consent, which fact shall be determined by learned trial court after recording of pro and contra evidence. Similarly, respondents/plaintiffs alleged that they had already challenged the suit property before the court of learned APA, Orakzai, however, they have not brought on record a single piece of paper or document disclosing a fact that any dispute pertaining to suit property was actually decided or pending adjudication before the court of learned APA, Orakzai, which all facts above leads me to the inference that respondents/plaintiffs have got no prima facie case in their favor nor the balance of inconvenience tilt in their favour. Rather all the ingredients, which are considered while granting temporary injunction, favor the appellant.


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In the wake of above discussion, it is held that the learned trial court has not properly appreciated the available record and has erred in arriving to just conclusion, hence, the appeal in hands is allowed, the impugned judgment and order dated 26.02.2024 of the learned trial court is set-aside. It is, however, added that any constructions or changes made by appellant or respondents/defendants in the suit property after this order shall be purely at their own risk and costs, for which they shall not be entitled to claim any compensation.

Needless to mention that my findings above are tentative in nature and will not prejudice the mind of learned trial court at the time of final disposal of case. 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.

Court file consigned to record room after completion & compilation.




Announced
06.06.2024

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Addl. District Judge-II, Orakzai

CERTIFICATE

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



Announced
06.06.2024

Abdul Basit
Addl. District Judge-II, Orakzai