

IN THE COURT OF ZAHIR KHAN
Civil Judge-I, Kalaya, Orakzai

Petition No.....5/6 of 2023.
Date of Institution.....12.06.2023.
Date of Decision.....31.05.2024.

Order No.21
31.05.2024

Petitioner/plaintiff namely Khayal Zaman present.
Respondents/defendants namely Waris Khan and Sahar Ali present.
Arguments on application for grant of temporary injunction already heard and record perused.

ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

Am. K.
31/05/2024

Brief facts of the case are that petitioner/plaintiff is seeking decree of this court to the effect that he hails from Qaum Bar Muhammad Khel, Tappa Alat Khel, village Chamando Mela, Lower Orakzai and he has constructed a house on his ancestral property and has got a right of way which he has been peaceably and openly enjoying as an easement, as of right, without interruption for the last 20 years. That, respondents/defendants have blocked/obstructed the said way without lawful justification, therefore, respondents/defendants be directed to unblock the way for peaceful enjoyment. That respondents/defendants were asked time and again to admit the legal claim of petitioner/plaintiff but in vain, hence, the present suit.

Respondents/defendants were summoned who contested the suit by submitting written statement and reply. In the written statement, respondents/defendants have averred that claim of petitioner/plaintiff is baseless and that he has no concern whatsoever with the suit way.

It is established principle of law that a party seeking temporary injunction is required to make out a prima facie case, which would mean arguable case, likelihood of irreparable loss or injury for no-grant of temporary injunction; and balance of convenience tilts in his favor and all ingredients must co-exist. Absence of any one of these essentials would be fatal to the plea for the issuance of the injunction. In so far, the instant case is concerned, petitioner/plaintiff is claiming that he has got prescriptive right of easement over the property in dispute. On the other hand, respondents/defendants are contending that the suit property is owned and possessed by them as ancestral ownership and that there is no way/passage. Record shows that petitioner/plaintiff is seeking decree of this court in respect of his easement right without prayer for any perpetual injunction. When perpetual injunction cannot be granted being not sought in the plaint, temporary injunction cannot be granted. Secondly; on one hand, petitioner/plaintiff is claiming prescriptive right of easement over the property in dispute and on the other hand, he is contending that respondents/defendants have no concern whatsoever with the suit property and suit way. No prima

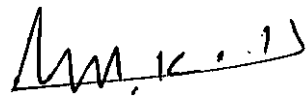
ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

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facie case is made out. He failed to establish that he would suffer irreparable loss if stay is not granted, resultantly, application for grant of temporary injunction is dismissed. No order as to cost. This order of mine is tentative in nature and shall not affect merits of the case. Copy of this order be placed on main file.

File of this court be consigned to record room after necessary completion and compilation.

Announced
31.05.2024



Zahir Khan
Civil Judge-I, Kalaya, Orakzai.