

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

Civil Misc. Appeal No. 09/14 of 2024

Date of institution: 24.08.2024

Date of decision: 30.09.2024

Date of consignment:

Kashmir Ali son of Shiraz Ali resident of Quom Ali Khel Tappa Mirwas  
Khel Gandital, Dakkhan Ghiljo, Tehsil Upper, District Orakzai  
(appellant/ plaintiff)

Versus

Zameer Khan son of Mehmood Khan resident of Quom Ali Khel Tappa  
Mirwas Khel Gandital, Dakkhan Ghiljo, Tehsil Upper, District Orakzai and  
five others (respondents/defendants)

**ORDER**

Through this order I shall decide the civil miscellaneous appeal filed  
by appellant against the judgment and order dated 03.08.2024 of the Court  
of learned Civil Judge-II, Kalaya Orakzai, whereby, he has been refused the  
grant of temporary injunction for statutory period.

Appellant has filed a civil suit against respondents and contended  
that he was owner in possession of four mountains situated at moza Gandital  
district Orakzai, the suit property; that his ancestor had never received any  
sale consideration nor did sell out the suit property to respondents; that  
respondents have no concern with the suit property but they were bent upon  
to make interference in the suit property; therefore, appellant has prayed for  
decree for declaration that he was owner in possession of the suit property  
and respondents had no concern with it; that appellant has also prayed for  
decree for permanent and mandatory injunctions to restrain the respondents  
from making any sort of interference, cutting the standing trees and sale of  
suit property to any person, hence, the suit.

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Orakzai at Baber Mela,  
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With plaint, appellant has also filed an application for temporary injunction so as to refrain respondents from making any sort of interference, cutting the standing trees and sale of the suit property to any person till disposal of case.

Respondents were summoned by the learned trial court, where they had filed a joint written statement and written reply, wherein, they have raised various legal and factual objections. The learned trial court heard the parties and dismissed the application. The appellant being dissatisfied with the decision of learned trial court has impugned herein the judgment and order dated 03.08.2024 with request that on acceptance of the instant appeal, the impugned judgment and order of the learned trial court may be set-aside and the temporary injunction may be granted as per prayer.

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 their minds 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 have helped 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. In the instant case, appellant claim the ownership and possession of the suit property i.e. four mountains; however,

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he did not produce any supportive material on file in support of his claim. This is observed that mere alleging the thing to be one's ownership does not mean that he had become owner of the same or succeeded to establish a prima facie case in his favour unless he produces some material on record to support his cause. On the contrary, jirga decisions/agreements referred by respondents goes against the cause of appellant; therefore, 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 is upheld and appeal in hands **dismissed**.

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**  
30.09.2024

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

**CERTIFICATE**

Certified that this judgment consists of three (03) pages, those are signed by me after necessary corrections.



**Announced**  
30.09.2024

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