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

Civil Misc. Appeal No. 11/14 of 2024

Date of institution: 06.09.2024

Date of decision: 15.10.2024

Date of consignment:

Mohabbat Shah son of Walayat Shah resident of Tappa Mulla Khel Kharki,  
Dabori, Tehsil Ghiljao, District Orakzai & one other (appellants/defendants)

Versus

Essa Khan son of Khushal Gul resident of Quom Afridi Wali Nai Shaka  
Bazar Dakha Khel, Tehsil Landi Kotal, District Khyber  
(respondent/plaintiff)

**ORDER**

Through this order I shall decide the civil miscellaneous appeal filed by appellants against respondent, wherein, impugned the judgment and order dated 19.08.2024 of the Court of learned Civil Judge-II, Kalaya Orakzai, whereby, he has allowed the application and granted temporary injunctions in favour of respondent as against appellants

Concise facts of the case as per plaint are that respondent belonged to Afridi caste and resident of district Khyber; that landed property was ancestral property of appellants; that respondent and appellant no. 1 had entered into oral agreement for a period of 12 years starting from April 2016 to April 2028 through which he was cultivating the landed property of appellants on payment of half share in the produce to the appellants; that appellant no. 1 had also delivered him possession of a house for residence, where he was living with his family members; that he had made huge improvements in the landed property of appellants, properly looked after the same and regularly paid the appellants their half share in the produce without fail; that appellant no. 1 was living in Islamabad and it was agreed

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between them that whenever he would need the house for his personal use, he will inform him with one year advance/prior notice to vacate the house as well as construct a house in the Dangara Nakhtar (Diyar/Cedar) field; that now appellant no. 1 intend to dispossess him from his landed property and house without any prior notice, which is illegal, against the law and fact; that wages amount of Rs. 730,000/- is also due against appellant no. 1, to the recovery of which respondent is entitled on rendition of account; that respondent had also advanced Rs. 210,000/- interest free loan to appellant no. 1, which he had demanded on expiry of three years but he had denied the payment; therefore, respondent has prayed for decree of declaration that appellants have no right to dispossess him from their landed property and house until April 2028 coupled with decree for permanent injunction so as to restrain them from making any sort of interference in the suit property; that he has also prayed for decree for the recovery of Rs. 730,000/- from appellant no. 1 on account of his wages on rendition of account coupled with decree for recovery of Rs. 210,000/-, the amount advanced as interest free loan to appellant no. 1, hence, the suit.

With plaint, respondent has also filed an application for temporary injunction so as to refrain appellants from making any sort of interference and illegally dispossessing the respondent from their lands and house.

Appellants were summoned by learned trial court.

Appellants no. 1 and 2 appeared and filed a joint written statement & written reply, wherein, they had raised various legal and factual objections. The learned trial court heard the parties, allowed the application & granted temporary injunction for statutory period or disposal of the case, whichever period comes earlier, so as to not dispossess respondent from their landed property & house without due course of law.

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The appellants being dissatisfied with decision of learned trial court has impugned herein judgment & order dated 19.08.2024 with request that on acceptance of this appeal, the impugned judgment & order of the learned trial court may be set-aside and temporary injunction may be refused.

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. Record provides that respondent had rest his claim on oral agreement, which was allegedly to be lasted in April 2028; therefore, he has to prima facie establish the execution of oral agreement and possession over the landed property and house of appellants. To establish this, respondent has referred the written statement submitted by appellants no. 1 & 2 and when contents of written statement perused, it explicitly provided that there existed the relationship of landlord and tenant between parties at dispute, whereby, appellants had admittedly delivered possession of their lands and house to respondent but allegedly for a period of four years; however, on expiry of time so fixed, the period of one year was extended on request of respondent and so on the possession of their lands remained with respondent till 2024, which admission itself provides the existence of prima facie case in favour of respondent thus in case of refusal of temporary injunction, there is likelihood of irreparable loss to respondent, which also provides that balance of convenience tilts in favour of respondent.

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As far contention of appellants that respondent had delivered him possession of the lands in January 2024 but occupying the house illegally are factual controversies, which cannot be settled without record of pro and contra evidence from both the sides.

In the wake of above discussion, it is held that the learned trial court has committed no illegality or irregularity in passing impugned judgment and order and properly appreciated the available record and has not erred in arriving to just conclusion, hence, impugned judgment and order dated 19.08.2024 of the learned trial court is upheld and appeal **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**  
15.10.2024

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**CERTIFICATE**

Certified that this judgment consists of four (04) pages, those are signed by me after necessary corrections.



**Announced**  
15.10.2024

**Abdul Basit**  
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