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

Civil Misc. Appeal No. 04/14 of 2024

Date of institution: 30.05.2024

Date of decision: 10.10.2024

Date of consignment:

Muhammad Arif son of Shabab Khan and two others residents of Kurez Lower Orakzai (appellants/plaintiffs)

Versus

Ali Janan son of Ali Mat Khan and nine others residents of Kurez Lower Orakzai (respondents/defendants)

**APPEAL UNDER SECTION 96 OF CPC AGAINST  
THE JUDGEMENT AND DECREE OF THE LEARNED CIVIL  
JUDGE-I, KALAYA ORAKZAI**

**JUDGMENT**

Through this judgment I will decide appeal preferred by appellants against respondents challenging the judgment and order dated 30.04.2024 of the Court of learned Civil Judge-I, Kalaya Orakzai, whereby, he has dismissed their application of temporary injunction.

Concise facts of the case are that appellants have filed a civil suit against respondents contending that the fathers of parties at dispute were brothers *inter-se*; that the appellants were the legal heirs of Summand Ali, respondents no. 1-3 were the legal heirs of Jehangir Khan and respondents no. 4-10 were the legal heirs of Sattar Khan, who were equally entitled in the suit property, fully detailed in the headnote of the plaint; that parties at dispute are close relatives; therefore, entitled for their legal shares in the suit property but respondents were influential persons, who have illegally occupied the suit property and deprived them from their legal shares left by their grandfather; that respondents were contacted time and again for the

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resolution of matter through different means including jirga, however, no fruitful result came out; that respondents before jirga had admitted their smaller share in the government services and the suit property but denied the proper legal share; therefore, they have prayed for declaration that they are owners of their legal shares in the suit property coupled with prayer for possession of their shares in suit property through regular partition; that they have also prayed for decree for *mesne* profits coupled with decree permanent and mandatory injunctions so as to restrain the respondents from denial of their shares in the suit property.

Respondents were summoned by the court. They appeared and filed written statements, wherein, raised various legal and factual objections *inter-alia* with facts that they were neither close relatives nor the petitioners were in possession of the suit property nor did they have any nexus with it; therefore prayed for dismissal of suit. Along with suit, appellants have also filed an application for grant of temporary injunction. Written reply to this application was also submitted. The learned trial court on hearing the parties dismissed the application vide order dated 30.04.2024. Appellants through this appeal impugned herein the order with prayer for grant of temporary injunction to refrain the respondents from further alienation, sale, transfer etc. of the suit property till disposal of the case.

Arguments heard and record perused.

Learned counsel for appellants reiterated the contents of plaint in arguments and stressed that order of the learned trial court is illegal, against the law; that all the three ingredients for grant of temporary injunction favour their cause; therefore, prayed that on setting aside the impugned judgment and order dated 30.04.2024, temporary injunction may be granted as prayed for till disposal of case or for statutory period.

Handwritten signature and date: 10.02.2024  
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On contrary, learned counsel for respondents refuted the arguments advanced by learned counsel for appellants and alleged that appellants have no concern with the suit property. That he has no prima facie case in their favor nor other two ingredients for grant of temporary injunction tilt in their favor. He argued that the order of learned trial court is based on true fact and no illegality or irregularity has been committed by the learned trial court, therefore, prayed that instant miscellaneous appeal may be dismissed and order of the learned trial court may be maintained.

This would be appropriate to mention here that there is admittedly no land settlement or revenue record of district Orakzai and the disputes between the parties are resolved on basis of oral evidence, possession over lands or agreement deeds, if any, brought before the *jirga* and now the courts; therefore, while deciding this appeal, court has to base its findings on pleadings of the parties and documentary proof, if any, brought on file. There is no second view that all the ingredients i.e. prima facie case, balance of convenience and irreparable loss must co-exists for grant of temporary injunction and if any one of these are missing, the temporary injunction cannot be granted as a principle. Appellants contend the suit property to be their ancestral ownership, however, there is not an iota of evidence and material available on file to suggest that suit property was their ancestral property and respondents are their relatives, which all are factual controversies and need to be established through pro and contra evidence. Likewise, there is nothing on record to show that appellants are in possession of the suit property or they had been forcibly dispossessed from it; therefore, on the face of record, there is nothing to establish the existence of prima facie case in favour of appellants nor the other two ingredients for grant of temporary injunction tilt in their favour.

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In the backdrop of above discussion, it is held that appellants have failed to prove the co-existence of three ingredients mandatory for the grant of temporary injunction in their favour, therefore, it is held that the learned trial court has properly appreciated the available record and has not erred in arriving to just conclusion of the case, hence, order dated 30.04.2024 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**  
10.10.2024

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

**CERTIFICATE**

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



**Announced**  
10.10.2024

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