

4


**COURT OF SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA**

**Case Title:** Rehman Shah etc VS Maseed Gul

Serial No of order or proceeding s	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order No. 05	20.01.2025	<p>Petitioners through special attorney along with counsel present. Respondent in person present. Reply submitted.</p> <p>This order shall decide an application filed by plaintiff/petitioner for grant of a restraining order against the defendant/respondent.</p> <p><b><u>Brief account:</u></b></p> <p>The controversy is that plaintiff and defendant are owners of adjacent properties. Allegedly, the defendant in the garb of construction is exceeding his entitlement, and attempting to occupy/block a public thoroughfare. Plaintiffs/petitioners contend that unless the respondents are restrained from their illegal act, they are likely to misappropriate land unlawfully, and seriously inconvenience the entire community by blocking a public pathway.</p> <p>Respondents on other hand counter argue that his clients are constructing within their entitlement and have neither exceeded their title, or blocked public pathway. He argues that plaintiff's land falls before the disputed construction and its portion touches the pathway. He has submitted photographs for consideration of the court. He submits that his client is willing to submit an affidavit to undertake that he would not block the pathway. He adds that if the allegation of blocking the pathway was true, many other inhabitants of the locality would have joined the cause with the plaintiff.</p> <p>Arguments heard and record perused.</p> <p><b><u>Reasoning:</u></b></p> <p>Both sides concede their being owners of</p>

5  
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<p>Order No. 05 continued</p>	<p>20.01.2025</p>	<p>neighbouring estates. Given that there is no public record of the land in the district, the pleadings and photographs annexed form the only resource for the court to guide its decision.</p> <p>Plaintiffs concede that their plot falls prior on the passage leading to the village neighbourhood. In the photographs, the pathway is already clearly visible as being open and unobstructed.</p> <p>Whether the plaintiff is stretching his plot beyond its actual size, or the defendant is misappropriating land, cannot be adequately determined at this stage, even for the present purpose.</p> <p>However, the court does not see any imminent threat of closure of the pathway considering the photographs on file, and the assurances of the defendants. The fact that no other local has joined hands with the plaintiff adds to our conviction in the inference.</p> <p><b><u>Ruling:</u></b></p> <p>In these circumstances, the court is inclined against the grant of a restraining order. However, the defendant shall submit a sworn undertaking to the effect that he will not block the pathway, and that any construction found in excess to his title shall be removed at his risk and cost.</p> <p>He is further directed to assist the bailiff who shall prepare a detailed report on the pathway, the on-going construction if any within 03 days. Application stands disposed of in these terms. File be consigned.</p> <p><b><u>Announced</u></b> 20.01.2025</p> <p style="text-align: right;"> <b>Ijaz Mahsood</b> Senior Civil Judge, Orakzai (at Baber Mela)</p>
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