

(14)

IN THE COURT OF JAMAL SHAH MAHSOOD,
ADDITIONAL DISTRICT JUDGE-I, ORAKZAI

C.A. Miscellaneous No. 20 of 2020

Date of Institution: 13-03-2020
Date of Decision: 20-06-2020

1. **Gul Badshah** s/o Khyber Shah and
 2. **Zahid Ullah** s/o Alif Shah; both belonging to Zakha Khel tribe, tapa Painidi Khel; r/o Landi Kotal District Khyber.
- (Appellants/Plaintiffs)**

VS

1. **Tor Kham** s/o Ali Shifa,
2. **Gulcha Khan** s/o Ali Shifa and
3. **Noor Shah** s/o Masher Khan; all belonging to Bezot caste; r/o Lower Orakzai.

(Respondents/Defendants)

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- Hafiz Yasir Arafat and Gohar Ali Advocates for appellants.
 - Sana Ullah Khan Advocate for respondents.
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APPEAL against the Order/Judgment, dated **10-03-2020** of learned Civil Judge-II, Orakzai, passed in Civil Suit No. 59/1 of year 2019.
(Impugned Judgment)

Judgment:

1. Through the impugned judgment the application for grant of temporary injunction, filed by present appellants/plaintiffs, was dismissed by the learned lower court.
2. The facts of the case, as averred in the plaint, are; that the fathers and forefathers of appellants/plaintiffs bought the suit property (about 88 kanal of land consisting of 26 fields, with 02 double storey houses and a hujra; situated in Warkotay Bezot, district Orakzai) from elders of defendants - decades ago; that the families of plaintiffs/appellants had to leave the area/suit property on account of fear of persecution and due to situation of warfare between Orakzai and Zaka Khel tribes; that after merger of FATA into settled area and establishment of proper judicial system the appellants/plaintiffs intended to return to the suit property;

that the appellants/plaintiffs approach the defendants/respondents but were refused; that the appellants/plaintiffs approach to the AC, Lower Orakzai, on whose intervention the elders of Orakzai tribe issued a declaration, dated 27-03-2019, in favour of appellants/plaintiffs. The appellants/plaintiffs prayed for declaration to the effect that they were the actual and real owners of the suit property; and also prayed for permanent and mandatory injunctions against respondents/defendants for handing over the suit property to the plaintiffs; and further for restraining any third party from interference in the suit property. This plaint was accompanied with an application for temporary injunction. The suit is pending adjudication before civil court, while application for temporary injunction was dismissed through the impugned judgement.

3. The appellants/plaintiffs, being aggrieved of dismissal of their application for temporary injunction, have filed the instant appeal.
4. The defendants/respondents were noticed; they appeared to contest the instant appeal. Arguments of the counsels for the parties were heard and available record perused.
5. The disputed property is allegedly located in Orakzai District, where no revenue record is available for ascertainment of certain controversies. In such a situation the parties are bound to prove their cases through oral and/or documentary proof.
6. For the purpose of grant of temporary injunction, generally, three ingredients are required to be proved by the petitioner in their favour, viz. prima facie case, balance of inconvenience and irreparable loss.
 - In the present case the appellants/plaintiffs have based their case on the strength of a vague agreement; the date, detail of parties and other important stipulations of which have not been given in the plaint. It was essential that important stipulations of agreement, like date, description of parties and sale consideration etc., are provided in the plaint, in order to give prima facie credibility to the claim

of the appellants/plaintiffs. During arguments, the counsels for appellants/plaintiffs provided photocopies of certain decisions, dated 26-07-2019 and 27-03-2019, made by jirgas and AC, Lower Orakzai; however, the dates of these decisions prima facie show that these were made after the establishment of courts in district Orakzai, when the AC or local jirgas had lost authority to decide civil disputes. Thus, the appellants/plaintiffs have failed to establish a prima facie case in their favor.

- The appellants/plaintiffs admit that they had left the area where suit property was situated and that the same is presently in possession of the defendants/respondents. Thus, it is evident that the respondents/defendants have been cultivating the suit property in the recent past. In such a situation the balance of convenience lies in the favour of respondents/defendants.
- As far irreparable loss is concerned, the appellants/plaintiffs can claim mesne profits in respect of suit property; and the same shall be granted to them - if they succeed in proving their case before the trial court. Thus, it is not a case of irreparable loss to the appellants/plaintiffs.

7. In light of the above discussion, the instant appeal is found to be without merit. No infirmity could be pointed in impugned judgement. Resultantly, the instant appeal is **dismissed**. No order as to costs. Let a copy of this order be sent to the learned trial court. Let this file be consigned to record room after its necessary completion and compilation.

Announced
20-06-2020


Jamal Shah Mahsood
ADJ-I, Orakzai

CERTIFICATE

Certified this judgment consists of 03 pages. Each page has been corrected, wherever necessary, and signed by me.


ADJ-I Orakzai.