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IN THE COURT OF ASGHAR SHAH
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

MISC. CIVIL APPEAL NO. : 9/14 OF 2021
DATE OF INSTITUTION : 16.03.2021
DATE OF DECISION : 29.03.2021

GUL AKBAR S/O MUHAMMAD AKBAR, R/O TORA WARI,
TEHSIL TAL, DISTRICT HANGU AND ONE ANOTHER

.....(APPELLANTS)

-VERSUS-

DIN SHAH S/O MUHAMMAD SHAH, R/O CASTE MAMOZAI,
TAPA ABDUL REHMAN KHEL, VILLAGE KRAPI DISTRICT
ORAKZAI AND TWO OTHERS

..... (RESPONDENTS)

Present: M. Abid Wazir Advocate for appellants
: Malak Hameed Khan Afridi Advocate for respondents

JUDGEMENT
29.03.2021

In the suit before the trial court, the appellants/plaintiffs claimed possession of half share in the suit house through partition measuring three kanals as briefly bounded in the heading of the plaint besides through a separate application requested for issuance of temporary injunction in order to restrain the respondents/defendants from interference, changing the nature of the suit house and its alienation in favour of anybody in any shape whatsoever. The application after due process dismissed by the trial court through impugned order dated 20.02.2021 hence, the appeal in hand.

2. Arguments heard and record perused.


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3. From the arguments and record available on file, it reveals that for the grant of temporary injunction it is essential that three of its basic ingredients i.e., prima facie case, balance of inconvenience and irreparable loss must co-exist side by side and even if a single ingredient is missing, no temporary injunction could be granted in such a case. In the instant case, the claim of appellants/plaintiffs regarding ownership of the suit property is subject to proof, which proof at the moment is neither available in oral nor in documentary form as such anything which is subject to proof no temporary injunction can be granted in such a case. The sole document available on the case file with the appellants/plaintiffs is a document dated 15.06.2009 which is a sort of decision between the parties carried out through the ban organization of Tehreek-e-Taliban Pakistan. The perusal of said document reveals that four matters i.e., a plot at Karachi, land at Tora Warayi, land at Khidad Khel and Kabali rupees 1800 were the subject of disputes and in the same there is no mentioning of the suit house. Moreover, admittedly the suit house is in possession of respondents/defendants and that is why the appellants/plaintiffs are claiming possession of the suit house and thus the same has created very good prima facie case not in favour of appellants/plaintiffs but respondents/defendants and any restraining order to the respondents/defendants would amount to deprive them from the enjoyment of their

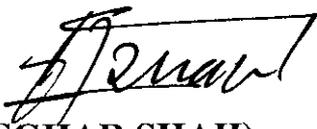


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property in their possession as such the balance of inconvenience tilt towards the respondents/defendants and certainly they would suffer irreparable loss if the injunctive order as requested is passed against them.

4. Thus, the trial court after considering the case from all the four corners was justified in dismissing the application of appellants/plaintiffs submitted for temporary injunction through impugned order dated 20.02.2021. No illegality or legal infirmity in the impugned order of the trial court was pointed out. Therefore, the impugned order of the trial court stands upheld and the appeal in hand resultantly stand dismissed with no order as to cost. File be consigned to Session Record Room after its completion and compilation.

Announced
29.03.2021


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CERTIFICATE

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

Dated: 29.03.2021


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