

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

CIVIL MISC. APPEAL NO. : 10/14 OF 2021  
DATE OF INSTITUTION : 17.03.2021  
DATE OF DECISION : 31.03.2021

MUHAMMAD YASIR S/O RISHAM KHAN, RESIDENT OF LAGHONE,  
CASTE MANDRA KHEL, SUB-SECTION MUDAT KHEL, DISTRICT  
ORAKZAI AND TWO OTHERS

.....(APPELLANTS)

-VERSUS-



PROVINCIAL GOVERNMENT AND SIX OTHERS

..... (RESPONDENTS)

**Present:** Ameer Najam Advocate for appellants  
: Jabir Hussain Advocate for respondent no. 3

JUDGEMENT  
31.03.2021

It is on the record that Government Primary School Mandra Khel was constructed by the Education Department in the year 1982 on the land provided by the respondents/defendants no. 2 to 7. However, later on the government upgraded the said school to middle for which some piece of land was again provided by the above-mentioned respondents/defendants in the year 2017 and after allocation of funds in Annual Development Program of 2019, the extension and construction work was started. The appellants/plaintiffs objected the same through the suit before the trial court on the ground that the recent development is being carried out on the property jointly owned and possessed by them and respondents/defendants no. 2 to 7. Alongwith with the suit an application for the grant of temporary injunction was also filed requesting the trial court for issuance of temporary injunction in order to restrain the respondents/defendants from raising construction, interference and changing the nature of the

  
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suit property in any shape whatsoever. The trial court after due process dismissed the said application vide impugned order dated 10.03.2021, hence the appeal in hand.

- 2. Arguments heard and record perused.
- 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 joint ownership of the suit property is denied by the respondents/defendants no. 2 to 7 and 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. On the other hand, the respondents/defendants relied upon the agreement deed dated 05.12.2017, the ADP no. 331 of 2019 for which administrative approval has already been granted and work order is also issued by the executant department i.e., C&W in June, 2020. Moreover, prima facie the suit premises is in possession of respondents/defendants over which the Education Department is raising construction and that is why the appellants/plaintiffs are claiming possession of the suit premises and thus the same has created very good prima facie case not in favour of appellants/plaintiffs but respondents/defendants. Moreover, even after the evidence if the suit premises proved joint then the respondents/defendants at the most could be awarded compensation for their share, hence the monetary loss, if any, cannot

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be termed as irreparable loss. The allocation of land and funds for the extension of the school is showing that 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 10.03.2021. 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**  
31.03.2021

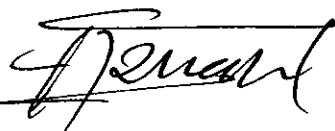
  
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**CERTIFICATE**

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

Dated: 31.03.2021



  
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