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

C.A. Miscellaneous No. 10 of 2019

Date of Institution: 20-11-2019
Date of Decision: 12-02-2020

Inaz Ali s/o Gul Jan Ali; r/o Ahmadkhel Lower Orakzai.
(Appellant/Plaintiff)

VS

Ilhan Ali s/o Ikram Ali; r/o Ahmadkhel Lower Orakzai.
(Respondent/Defendant)

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- Fazal Malik Kakakhel and Abid Ali Advocates for appellant.
 - Syed Hamza Gilani Advocate for respondent.
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APPEAL against the Order/Judgment, dated **05-11-2019** of learned Civil Judge-II, Orakzai, in Civil Suit No. 97/1 of year 2019.
(Impugned Judgment)

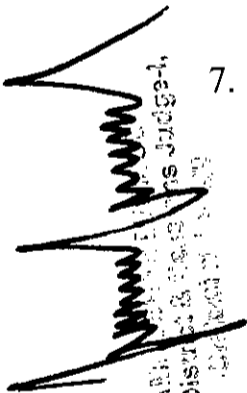
Judgment:

1. Through the impugned judgment the Ad-Interim relief granted in favour plaintiff/appellant was vacated and temporary injunction was refused.
2. The facts of the case, as averred in plaint, are; that the appellant/plaintiff claims to be entitled to the use of a passageway to his house; that the said passageway passes through the field of respondent/defendant and leads to the house of plaintiff/appellant. The plaintiff/appellant claims to be using the said passageway since year 2006. An agreement in respect of the said passageway, dated 31-08-2012, is also annexed with plaint. The defendant/respondent appeared before the learned trial court and submitted written statement.
3. Along with plaint, the plaintiff/appellant has also filed an application seeking temporary injunction, for the purpose of restraining the defendant/respondent from closing/hindering the passageway. This application was contested by

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Orakzai at Haligi

respondent/defendant; and through the impugned judgment, the said application was turned down.

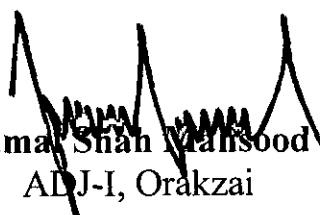
4. The appellant/plaintiff, being aggrieved of dismissal of his application has filed the instant appeal.
5. The defendant/respondent was noticed and he appeared to contest the instant appeal. Arguments of the counsels for the parties were heard and available record perused.
6. The disputed passageway/property is located in Orakzai District, where no revenue record is available for ascertainment of certain controversies. The only documentary proof brought before court so far is an agreement dated 31-08-2012; as mentioned in para no. 3 of the plaint. This agreement/document has not been specifically denied in the written statement by the defendant/respondent. According to this agreement, Ikram Ali (father of present respondent/defendant) and children of Gul Khan (father of present plaintiff/appellant) were allowed to use the said passageway and it was also agreed that the said passageway will be kept open for the children of Ikram Ali and children of Gul Khan.


 JUDGE
 Addl. District Judge
 Orakzai District

7. For the purpose of grant of a temporary injunction, generally three ingredients are kept in mind by the courts;
 - Keeping in view the agreement, dated 31-08-2012, a prima facie case exists in favour of the plaintiff/appellant.
 - Since the passageway is used by plaintiff/appellant for approaching his house, therefore, balance of convenience also lies in favour of allowing the plaintiff/appellant to use the same, till resolution of the controversy.
 - The point of irreparable loss also lies in favour of plaintiff/appellant, as any loss which might occur to respondent/defendant may be compensated in monetary terms; but stopping the respondent/defendant from approaching his house, in the meanwhile, cannot be compensated adequately in any way.

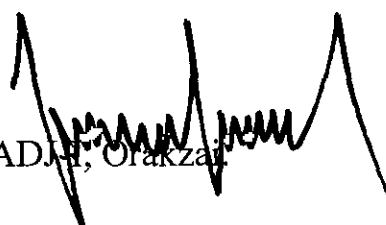
8. In light of the above discussion, the instant appeal is **accepted** and temporary injunction is granted in favour of plaintiff/appellant under order 39 rule 2 of CPC, for a period of 06 months from today or till disposal of the case, whichever is earlier. Resultantly, the respondent/defendant shall not restrain the appellant/plaintiff from using the passageway to the house of the later, nor shall the said passageway be hindered in any way for the appellant/plaintiff. However, none of the parties shall make any construction or development on the disputed passageway till final disposal of suit. The impugned judgment is set aside. No order as to costs. Let a copy of this order be placed on record and the same be returned to learned trial court. Let this file be consigned to record room after its necessary completion and compilation.

Announced
12-02-2020


Jamal Shah Mansood
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