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IN THE COURT OF DISTRICT JUDGE, ORAKZAI AT BABER MELA

Case Title: Khial Zaman VS Askar Ali et

Serial No of order or proceedings	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	04.09.2025	<p>Counsels for the parties present. Arguments heard and record perused.</p> <p>This Civil Appeal was preferred by the appellant against the judgment dated 26.05.2025 passed by the Court of learned Civil Judge-II, Tehsil Court Kalaya, District Orakzai, whereby Civil Suit No. 92/1 of 2023 was dismissed summarily.</p> <p>The suit was brought by the plaintiff for establishment of his right of easement against the defendants to the effect that the plaintiff has been using the pathway, situated at Chamando Mela, which is passing through the property of defendant No. 5 for the last 20 years whereas the defendants No. 1 to 4 have forcefully and illegally blocked the same despite the fact that they have got no concern with the same. The plaintiff further claimed that there is no other pathway leading to his house. He also sought permanent injunction along with prohibitory, perpetual and mandatory injunction against the defendant to refrain them from causing interference in the pathway in question in the shape of altering its nature by raising construction or sale/purchase.</p> <p>The case was fixed for submission of amended written statement when the learned trial Court initiated</p>

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		<p>reconciliation and scheduling conference proceedings under the Case Management and Scheduling Conference Rules and dismissed the suit through the impugned summary judgment through its own initiative.</p> <p>I have heard learned counsels for the parties and perused the record.</p> <p>According to Order XV-A of the CPC, the Court may fix the case for summary judgment hearing on the application of either party or on its own initiative. Sub-Rule 4 (3) of the said Rule provides following procedure for summary judgment at initiative of the Court;</p> <p><i>“(3) Where the summary judgment hearing is fixed by the Court on its own initiative, any party to the proceedings may file an affidavit citing particular parts of the documentary evidence filed with the Court to support or oppose the notice, issued by the Court to consider grant of summary judgment and serve copies of such affidavit on every other party to the proceedings at least seven (07) days before the summary judgment hearing, and any party may file a response to such affidavit and serve copies on every other party to the proceedings at least</i></p>

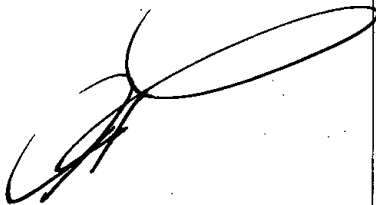


Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

(7)

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		<p><i>three (03) days before the summary judgment hearing."</i></p> <p>The procedure provided under the said Rule was not applied by the trial Court before announcement of the impugned summary judgment. Secondly, the Honorable Peshawar High Court, Peshawar in its judgment dated 21.04.2025, passed in Cr. No. 13-P/2024 against the dismissal of injunction application in the instant case, issued directions to the learned trial Court to decide the suit on merits according to law after recording pro and contra evidence.</p> <p>In view of the above facts, the appeal is accepted. The impugned order is set aside and the case is remanded back to the trial Court to proceed strictly in accordance with law and directives of the Honorable Peshawar High Court, Peshawar. Parties are directed to appear before the trial Court on 15.09.2025. File of this Court be consigned to record room after its necessary completion and compilation.</p> <p><u>Announced:</u> 04.09.2025</p> <div style="text-align: right;"> (HAQ NAWAZ) District Judge, Orakzai at Baber Mela</div>