

JUDGMENT SHEET

**PESHAWAR HIGH COURT
MINGORA BENCH
(Judicial Department)**

**C.R No. 164-M/2023
With C.M. No. 649-M/2023**

Gul Yar son of Mashroof.....(Petitioner)

v/s

Izzat Gul son of Rahim Gul.....(Respondent)

**Present: Muhammad Naeem, Advocate, for the
petitioner.**

**(respondent is not represented being a
motion case).**

Date of hearing: 09.05.2023

JUDGMENT

SHAHID KHAN, J.- Through the subject revision petition, petitioner has challenged, called in question, the legality & propriety of order/judgment of learned Additional District Judge/Izafi Zila Qazi, Chakdara, Dir Lower, dated 29.03.2023, whereby, the appeal preferred by petitioner/plaintiff was dismissed and maintained & upheld the order/judgment of learned Civil Judge/Illaqa Qazi-II Chakdara, dated 07.03.2023, vide which, the application of the petitioner for the grant of temporary injunction was dismissed.

2. In essence, the petitioner then plaintiff brought a suit for declaration, permanent injunction & possession, alleging therein that he has

purchased the suit property commonly known as "Grra", on the strength of sale deed dated 28.06.1986, in lieu of sale consideration of Rs. 1,40,000/-. It was further alleged in the plaint that on southern side of his purchased property, a public thoroughfare is situated, which has allegedly been converted into a "Kacha Road" and the same has been declared as ownership of petitioner/plaintiff.

3. Along with his plaint, the petitioner/plaintiff has also filed an application for the grant of temporary injunction.

4. The respondent then defendant was summoned, who on appearance submitted his written statement, raising various legal & factual objections. He also contested the application so furnished by the petitioner for the grant of temporary injunction by filing his replication.

5. After hearing arguments of both the learned counsel for the parties, the learned trial Court vide order/judgment dated 07.03.2023 dismissed the application of petitioner/plaintiff. Feeling aggrieved of the aforesaid order/judgment, the petitioner/plaintiff filed an appeal to the Court of learned Additional District Judge/Izafi Zila Qazi,

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Chakdara, Dir Lower, however, the same was also dismissed vide the second impugned order/ judgment dated 29.03.2023.

6. It obliged the petitioner to approach the Court of competent jurisdiction for an appropriate remedy.

7. Arguments of learned counsel for the parties have been heard and the record scanned with their valuable assistance.

8. A bare look of the record made available would transpire that the main claim of the petitioner/plaintiff pertains to a suit land, commonly known as *Grra*, situated within the revenue estate of *Bambolai Bala*, which was purchased by him from one Jehandar Shah, on the strength of sale deed dated 28.06.1986. It was further claimed by the petitioner/plaintiff in his plaint that there is a thoroughfare situated on the southern side of his purchased property, which was later on converted to Kacha Road and the same has been given in his ownership. It is a century long old principle that a party who is relying on a specific deed or document of title, in respect of his ownership, he/she has to prove the same through

cogent & trustworthy evidence, however, the aforesaid deed on one hand is scribed on a plain paper and on the other the same is an unregistered document/deed.

9. Other than the above, it is also part of the record that possession of the suit property is lying with the respondent/defendant and over which he has already raised construction on his own risk & cost subject to the condition that in case any favourable decree pass in favour of petitioner/plaintiff, then in that eventuality, he will not claim any compensation for the construction so raised over the suit property, as such, the two Courts below have rightly dismissed the application of petitioner/plaintiff for the grant of temporary injunction through the impugned orders/ judgements, which are neither perverse nor arbitrary nor whimsical.

10. There is no second opinion about the fact that for grant of temporary injunction under Order 39 Rule 2 C.P.C, petitioner/plaintiff is required to establish the existence of three essential ingredients i.e. a prima facie case, balance of inconvenience and irreparable loss if the interim injunction is not granted in his favour,

however, in the given facts & circumstances of the case in hand, he has not been able to establish the aforesaid ingredients. This Court in case titled **“Javed Iqbal and 5 others vs. Government Of Khyber Pakhtunkhwa through Secretary Local Government, Peshawar and 4 others** reported as **2022 CLC 502**, has held that;-

“For grant of temporary injunction, it is sine-qua-non for the petitioners/plaintiffs to have on record a prima facie case qua balance of convenience and irreparable loss with co-existence of these ingredients in their favour.

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Similarly, in case titled **Shahzad Trade Links through Sole Proprietor and another vs. MTW Pak Assembling Industries (Private) Limited through Representative and others** reported as **2016 CLC 83**, the Sindh High Court has recorded the following observations, in respect of the fact-in-issue;-

“No injunction can be issued unless all required ingredients namely prima facie case, balance of convenience and irreparable loss to aggrieved party, were found to subsist.

11. In view of the above discussion, the impugned orders/judgments of two Courts below respectively dated 07.03.2023 and 29.03.2023 are passed in accordance with law, as such, the same

are upheld & maintained and the subject petition stands dismissed, in limine.

Date of announcement

Dt: 09.05.2023

Date of writing judgment

Dt: 09.05.2023


JUDGE

Office
10/05/2023