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**COURT OF SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA**

**Case Title:** Babu Khan etc VS Ali Sar Jan etc

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. 06	15.01.2025	<p>Petitioners through special attorney namely Babu Khan (petitioner No. 01) present who submitted family tree. Respondents No. 01 and 02 in person and as special attorney for respondents No. 04 to 10, 12, 13, 15, 17, 19 and 22 present. Respondents No. 03 and 14 absent despite proper service; hence, they are placed and proceeded ex-parte. Respondents No. 11 and 18 are reportedly abroad.</p> <p>This order shall decide an application filed by plaintiffs represented by Mr. Babu Khan in a representative suit for permanent injunction against Mr. Ali Sar Jan and others. Respondents have already filed their written reply.</p> <p><b><u>Brief Account:</u></b></p> <p>Plaintiffs represented through Mr. Babu Khan, and further seeking representation of other persons interested in the subject matter claim that the property comprising 5 hillocks is a shared grazing land, and Shamilaat of the owners in the adjacent village including the plaintiffs and defendants. That land owned exclusively by the inhabitants as private ownership has already been divided among the share-holders, while suit land, being shamilaat, has been held jointly till date. They allege that defendants have</p>

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<div>Order No. 06 continued</div>	<div>15.01.2025</div>	<p>begun to misappropriate the shamilaat illegally to the exclusion and prejudice of the plaintiffs.</p> <p>Defendants/respondents contend that plaintiffs are purposely making frivolous claims to harass the defendants into unfair settlement. They contend that plaintiffs are neither children of a shared ancestor with the defendants, nor are they entitled to suit land. Counsel further argued that suit is bad in form and substances, as the remedies sought are incompatible with the claims made. That plaintiffs are deliberately confusing in claiming injunction against a co-sharer. He concludes that plaint is vague about the suit property, and entitlement of the sides, and in such a scenario, grant of restraining order will create unnecessary complications for the inhabitants of the locality.</p> <p>Arguments heard and record perused.</p> <p><b>Reasoning:</b></p> <p>It is pertinent to highlight the legal requirements of a restraining order, before merits for its grant in the instant case are weighed. A pre-trial restraining order is an extraordinary remedy provided by law for exceptional circumstances where a party is faced with a real risk of irreparable loss. Since it is an extraordinary remedy, the standards set by law for its grant are commensurately high. The spirit of law is that pre-trial restraining orders be</p>
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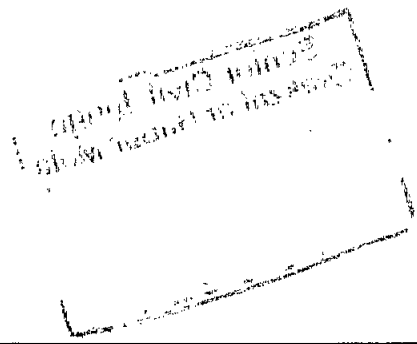
<b>Order No. 06 continued</b>	15.01.2025	<p>issued sparingly and in deserving cases only.</p> <p>Presently, plaintiffs claim that suit land is shamilaat, and that defendants are beyond their rights in interfering with it. Given that the district is yet to undergo land settlement, no official record is currently available on the nature and categories of land, or their owners and possessors. Essentially, it is a contest between pleadings of both sides, with no documentary evidence to substantiate their pleas prima-facie.</p> <p>The controversy of the parties having a shared common ancestor can neither be resolved nor safely commented upon at this stage when the court is yet to try the matter out through evidence.</p> <p>About the objection to the form and frame of the suit, a claim for injunction against interference presupposes a preceding declaration of entitlement. However, in shamilaat, the only remedy available to a claimant is to preserve his possession, and in case of its loss claim back its recovery. Title over shamilaat land is the subject of conduct of Jadool, that is partition of shamilaat land between all contending claimants in proportion to their ownership.</p> <p>In these circumstances, when the title is not sufficiently clear, its extent is yet to be established, and when the fact of possession is to be discovered, it is only</p>
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<b>Order No. 06 continued</b>	15.01.2025	<p>prudent to side with caution in a matter seeking restraining order against a large section of the inhabitants.</p> <p>However, the bailiff of the court is directed to visit the site, prepare a comprehensive report on the nature of the land, and what stands on it, and also take photographs. Defendants shall submit an affidavit within 07 days to the effect that any modification with possession or title of the suit land shall be at their risk and cost, and subject to the outcome of this suit.</p> <p>Application is disposed of in these terms.</p> <p>File be consigned to the record room after its completion and compilation.</p> <p><b><u>Announced</u></b> 15.01.2025</p> <p> <b>Ijaz Mahsood</b> Senior Civil Judge, Orakzai (at Baber Mela)</p> <p></p>
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