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IN THE COURT OF IJAZ MAHSOOD,
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No.	45/1 of 2022
Date of Institution:	21.03.2022
Date of Transfer In:	21.05.2024
Date of Decision:	10.02.2025

1. Sial Gul s/o Nazeer Gul
 2. Habib Ur Rehman s/o Nazeer Gul
 3. Manawar Gul s/o Nazeer Gul
 4. Mst. Janaka Bibi w/o Abdul Janan and d/o Nazeer Gul
- All R/O Bazar Kalay, Samana, Tehsil Ismail Zai, District Orakzai.*

..... (Plaintiffs)

VERSUS

1. Saleem Marjan s/o Sar Gul
 2. Saeed Khan s/o Gul Faraz
 3. Bismillah Khan s/o Nazeer Gul
 4. Muzafar Khan s/o Gul Midar
 5. Latif s/o Gul Hakeem
 6. Juma Gul s/o Shehzad
 7. Yousaf s/o Itbar Gul
- R/O Qoum Rabia Khel, Tappa Piawo Khel, Bazar Kalay, Tehsil Ismail Zai, District Orakzai*

..... (Defendants)

**SUIT FOR DECLARATION AND CORRESPONDING
INJUNCTIVE ORDERS**

JUDGEMENT:

10.02.2025

This order shall decide instant suit filed by Mr. Sial Gul and others for declaration and corresponding injunctive orders against defendants Mr. Salim Marjan and others.

S. Senior Civil Judge
Orakzai at Baber Mela

10 FEB 2025

Pleadings:

The claim as recounted in the plaint reads that plaintiffs are the owners in possession of suit land as described in the head-note of the plaint since the time of their ancestors. The suit property consists of their residential houses and cultivable fields with which the defendants have no juridical concern. It contends that defendants are beyond their rights in asserting title over suit land, interfering with its possession etc. It is held that defendants were requested extra-judicially to desist from their illegal acts but to no avail, hence the suit. Plaintiffs pray for declaration of their title over suit land, and for restoring the suit land to its original status by ordering demolition of temporary constructions erected illegally by the defendants.

Defense rebutted the claim and refuted its grounds in its written statement. In addition to the conventional objections to the legality of the suit, they attempted to present their version of the facts of the matter in their written statement. They contend that plaintiffs are not the domiciled residents of Tarray Kalay, thus their claim of being owners through their ancestors is baseless. In fact, it is alleged, the plaintiffs are residents of Sar Mela, Samana.

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Senior Civil Judge
Sar Mela

Defendants claim that they purchased suit property 40 years ago from its previous owner Mr. Farooq of Qaum Rabi Khel for a consideration of Rs. 75,000/-. They maintain that in the Jirgas convened extra-judicially for resolution of the dispute, the plaintiffs failed to produce any witness, and the matter was decided in favor of the defendants in October 2020. The written statement concludes with allegations that plaintiffs are filing frivolous suits merely to harass the defendants, and extort unfair benefits.

Differences between the sides were distilled into the following issues:

Issues:

1. Whether the plaintiffs have got cause of action? OPP
2. Whether the suit of the plaintiffs is time barred? OPD
3. Whether the suit of the plaintiffs is bad for non-joinder and mis-joinder of necessary parties? OPD
4. Whether the plaintiffs are estopped to sue? OPD
5. Whether the suit property is the ownership of the plaintiffs and the plaintiffs are entitled to enjoy all the rights associated suit property? OPP

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6. Whether the defendants have purchased the suit property and are entitled to enjoy all the rights associated with the same? OPD
7. Whether the plaintiffs are entitled to the decree as prayed for?
8. Relief.

Thereafter, both sides were invited to produce evidence in respect of their claim/defense.

Witnesses/Exhibits:

Muzafar Khan s/o Abdul Khanan appeared as PW-01, Muhammad Rehman s/o Naik Badshah as PW-02, Shafi Ullah s/o Habib Ur Rehman as PW-03, Muhammad Farooq s/o Said Marjan as DW-01, Zaliman Shah s/o Gulman Shah as DW-02, Nazeer Mann Shah s/o Gulman Shah as DW-03 and Musafir Khan s/o Gul Haider as DW-04. They have exhibited the following documents;

- i. Special power of attorney as Ex.PW-3/1.
- ii. CNIC of Shafi Ullah as Ex.PB.
- iii. Special Power of attorney of Habib Ullah as Ex.PB-1.
- iv. Wakalat Nama as Ex.PA.
- v. CNIC of DW-01 as Ex.DW-1/1.
- vi. Special Power of attorney of DW-04 as Ex.DW-4/2.

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Oral/Verbal at Rabeel Mela

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Reasoning/Ruling:

Issue wise reasoning of the court followed by a ruling on each issue, and eventually on the suit is as follows:

Issue No 02, 03, and 04:

These issues pose the regular questions about the validity of the legal form and frame of suit. They raise the questions of estoppel, non-joinder, and limitation. During the course of trial, defendants have attempted to prove a jirga conducted between the sides in the year 2020, which clearly places the instant suit within the 06 years period provided for limitation for a claim of declaration of title.

About non-joinder of necessary parties, no person was pointed out by the defendants, nor deemed necessary by the court that might have offered the occasion to dismiss the suit for non-joinder of the suit on the ground of necessary party.

Similarly, no conclusive bar of estoppel to file the suit was established by the defendants during trial, hence the suit was/is held competent for trial. Issues are decided accordingly.

Issue No 05:

This issue deals with the claim of entitlement of the plaintiffs to suit land. They claim to have been owners in

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continuous possession of land from the times of their ancestors. Defendants deny the assertion and they maintain that plaintiffs are residents of Samana, a village placed at three hours travel from the disputed land. They further allege that plaintiffs are trying to illegally occupy suit land.

All three witnesses for the plaintiff reiterate with minor difference the stance that plaintiffs are owners in possession of suit land since ages. That defendants have illegally constructed a single room, and are chopping trees unlawfully. Below we shall weigh the evidence for its probative force and worth:

- Since the suit property is located in a recently merged tribal district, there is no land revenue record available to inform on the status of title or possession.
- Plaintiffs claim being owners in possession through their ancestors, so actual deed on acquisition of title is also not available.
- Defendants have alleged that plaintiffs are residents of Samana, a village at 2-3 hours distance from the disputed land. This assertion finds support in the statement of plaintiffs' witness no 02. He concedes that plaintiffs are

his co-villagers, whose entire family is settled in his village Samana that falls at a distance of 03 hours from

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the suit land. In rural centres, dwellings are established close to landed estates for ease of access and protection.

- Defendants claim that they acquired suit land from the father of one Mr. Farooq, and a local Jirga decided the matter in their favor. Plaintiffs deny the version in their pleadings and evidence. An Authorized agent for plaintiffs took the stand as PW-03. In his cross-examination, he denies the suggestion that Mr. Farooq had appeared before a jirga and confirmed the sale of suit land to the defendants.
- However, when Jirga member Zali Man Shah took the stand as witness for defendants, he confirmed the entitlement of the defendants over suit land, and also supplied a detailed narrative of the jirga proceedings that Mr. Farooq testified for the defendants.
- Surprisingly, none of the details about the Jirga were cross-examined. Further, he stated that he was a relative of the plaintiffs and that they were on the wrong side in the matter. That it was well known to everyone that suit land was the entitlement of Mr. Samand Khan, predecessor of Mr. Farooq. None of these assertions was challenged through cross-examination.

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- The fact that a witness for defendants, claiming to be a relative of the plaintiffs, convincingly supplied plausible details about the title of the suit land and outcomes of the jirga, and that he went undisputed or rebutted on these points, clearly weighs heavily in favor of the defendants.
- Similarly, witness no 03 for defendants, Mr. Nazir Shah, a jirga member, also confirms the proceedings of the jirga that Mr. Farooq appeared before them and admitted the sale of the land to the defendants. During his cross, he confirmed his presence in the proceedings, and signatures over the Jirga deed, but he was not cross-examined on the point of appearance of Mr. Farooq or his statement.

In view of the discussion above, the court understands the evidence preponderates in favor of the defendants. In civil litigation, the standard of proof adopted by courts is balance of probability and preponderance of evidence. Clearly, from the discussion above, the scale tilts towards the stance of the defendants.

The issue is decided against the plaintiffs.

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Issue No 06:

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This issue examines the claim of the defendants of entitlement to suit land by purchase. They claim that they purchased suit land from the father of one Mr. Farooq. The

latter has confirmed the transfer before this court and allegedly before a jirga between the sides.

- As discussed above, no public body has created or kept any record of land entitlements in the region, on the pattern of revenue records maintained in older districts.
- Besides the parties before the court, the court lacks knowledge of third parties that might be interested in the suit property.
- From the material before the court, defendants claim to have purchased suit land from the one Mr. Farooq. The latter took the stand as defense witness no 01. In his statement, he conceded that suit land was sold to the defendants by his father for a consideration of Rs. 75,000/-. He further reported that in all the jirgas held on the dispute, the plaintiffs had been held in the wrong by the mediators.
- It is pertinent to mention that plaintiffs' witnesses have not denied the incidence of the jirgas. The mediators of the jirga produced by the defendants include Mr. Zali Man Shah, who claims to be a relative of the plaintiff.
- Said witness supplied details of the proceedings of the jirga as to how Mr. Farooq appeared before them and testified in favour of defendants. He has further stated

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that it is common knowledge that suit land was owned by Mr. Samand Khan, father of Mr. Farooq, before its sale to the defendants.

- None of the assertions of the witness/mediator have been rebutted or refuted through cross-examination, or counter evidence by the plaintiffs.

In these circumstances, considering the available record, the court is of the view that evidence leans in favor of the defendants.

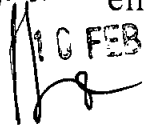
However, as indicated above, the decision on the issue is one in personam against the present plaintiffs, and third party rights that might have been concealed from the court, or left out inadvertently shall not be affected. Issue is decided accordingly.

Issue No 01, 07, and 08:

These issues raise the questions of cause of action for plaintiffs, their entitlement to a decree and relief.

The facta probanda, or principal issue in the suit was issue no 05 which dealt with the claim of the plaintiffs of entitlement to suit land as owners. Under the discussion and decision on issue no 05, they have failed to establish their

entitlement. Consequently, they are held without a cause of

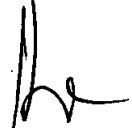
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action, and thus, not entitled to a decree or relief. Issues decided accordingly.

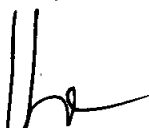
Case file be consigned to the record room after its necessary completion and compilation.

Announced
10.02.2025


Ijaz Mahsood)
Senior Civil Judge,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment of mine consists of eleven (11) pages, each has been checked, corrected where necessary and signed by me.


(Ijaz Mahsood)
Senior Civil Judge,
Orakzai at (Baber Mela)