

**IN THE COURT OF MUHAMAMD JUNAID ALAM  
CIVIL JUDGE-II, KALAYA  
ORAKZAI**

Suit No. 85/1 Neem of 2020

Date of Original Institution.....23.09.2020

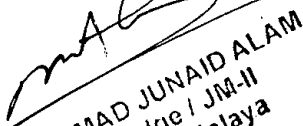
Date of transfer in .....01.07.2022

Date of Remand .....24.10.2023

Date of Decision .....18.02.2025

1. KHANA MIR GUL,
2. GHUNCHA GUL,
3. MEWA GUL AND
4. RAZMEEN GUL, SONS OF KHAISTA GUL,  
RESIDENTS OF QOM MISHTI, TAPPA DARVI  
KHEL, VILLAGE BADGOR, TEHSIL CENTRAL  
DISTRICT ORAKZAI.

.....PLAINTIFFS

  
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Civil Judge / JM-II  
Orakzai at Kalaya

**VERSUS**

1. NARO SON OF TAZA KHAN,
2. SADAM SON OF TAZA KHAN,
3. ARAB GUL,
4. MURAD KHAN, SONS OF ALAM GUL AND
5. FAZAL JAMEEL SON OF DELBAR KHAN, ALL  
RESIDENTS OF QOM MISHTI, TAPPA DARVI  
KHEL, VILLAGE BADGOR, TEHSIL CENTRAL  
DISTRICT ORAKZAI.

.....DEFENDANTS

**SUIT FOR DECLARATION AND PERMANENT  
INJUNCTION**


Counsel for plaintiffs: Mr. Abid Ali Advocate

Counsel for defendants: Mr. Sana Ullah Khan Advocate

**JUDGMENT****18.02.2025**

Vide this judgment this Court intends to dispose of suit captioned above.

2. Brief facts of the case as narrated in the plaint are that plaintiffs are owners in possession of three fields measuring around two jarib situated at Badgor, (referred as Mark A in the sketch) and two fields measuring about three jarib and twenty Marla, (referred as Mark B & C in the sketch); the suit property; since the time of their fore-fathers. Defendants have no concern with the suit property who have forcibly restrained plaintiffs from cultivating and utilizing the suit property, which was their sole source of income and livelihood. That defendants have issued threats to them as well as committed assault to one Ghuncha Gul. In order to know that reality, plaintiffs had sent Jirga to defendants but they had wrongly confined the Jirga members for around 3-4 hours, who were set-free by the police, however, no demand as such was made. Defendants were asked time and again not to interfere with the suit property but in vain, hence the present suit.
3. After institution of the suit, defendants were summoned and accordingly they appeared before the court and marked their attendance but subsequently defendants no. 01 & 04 failed to

  
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appear before the Court and accordingly they were placed and proceeded as ex-parte. Defendant no. 02, 03 & 05 submitted their written statement with legal and factual objections raised therein.

4. Out of controversies of the parties, as raised in their respective pleadings, this Court has framed the following issues on 13.08.2022. But during the arguments this court observed that previously this Court framed issue no. 04 as *03 fields of the suit property instead of 05 fields and twenty marla*. Court deems it appropriate to amend the issue no. 04.

1. Whether the plaintiffs have got a cause of action?
2. Whether the plaintiffs are estopped to sue?
3. Whether the suit of plaintiffs is time barred?
4. Whether the suit property consisting of 03 fields detailed in the headnote of the plaint are ownership in possession of the plaintiffs since their predecessors and the defendants have nothing to do with the suit property?
5. Whether the suit property is the ownership in possession of the plaintiffs and the defendants have forcefully stopped cultivation in the suit property?
6. Whether the suit property is the ownership in possession of the defendants and the plaintiffs have nothing to do with the suit property?
7. Whether the plaintiffs are entitled to the decree as prayed for? OPP
8. Relief

  
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5. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as three witnesses and thereafter closed their evidence. Contrary

to this, the contesting defendants produced only one witness to defend their rights and thereafter closed their evidence with a note.

6. Both the learned counsels for the parties to the suit then advanced arguments. Learned counsel for the plaintiffs opened the arguments and argued that parties to the suit are owners in possession of the suit property since the time of their predecessors. Counsel for plaintiffs argued that the plaintiffs have succeeded to prove their stance through cogent, convincing and reliable evidence and further nothing in rebuttal is available on the record, hence prayed that the suit in hand may kindly be decreed in favor of plaintiffs and against the defendants for the relief as prayed for.

7. Contrary to this learned counsel for the contesting defendants argued that plaintiffs have got no cause of action. He further argued that defendants are owners in possession of the suit property since the time of their fore-fathers. He further argued that plaintiffs failed to prove their stance through cogent and convincing evidence. On the other hand, the defendants succeeded to produce evidence in light and support of their stance previously alleged in their written statement. Hence, prayed that as the plaintiffs have failed to

  
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prove their case, accordingly the suit in hand may kindly be dismissed.

8. Upon perusal of record, available evidence and valuable assistance of both the learned counsels for the parties my issue wise findings of the Court are as under.

**ISSUE NO. 2 TO ISSUE NO. 03:**

**Whether the plaintiffs are estopped to sue?**

**Whether the suit of plaintiffs is time barred?**

  
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Issue no. 02 to issue no. 03 being interlinked are hereby decided as under:

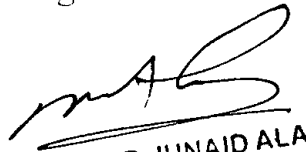
Defendants have alleged in their written statement that plaintiffs are estopped to sue by their conduct, suit of plaintiff is barred by limitation, hence burden to prove issues no.2, issue no.03 was on the shoulders of defendants. In this respect, to prove the issues in hand, defendants produced one witness, the defendant no. 03 himself recorded his statement as DW-01. However, on perusal of the statements of the DW, it has been noticed that they failed to utter a single word regarding the abovementioned issues in his respective examination in chief and thus deviated from the stance of defendants previously alleged in their written statement. Even otherwise, after the 25<sup>th</sup> Constitutional (Amendment) Act, 2018, all Federal and Provincial Laws stood extended to the

newly merged districts. Period of limitation for filing declaratory suit under Article 120 of Limitation Act, is six years. Suit of plaintiffs is held to be within time.

In light of what has been discussed above, the defendants miserably failed to prove issue no.02 to issue no. 03 through their cogent, reliable and convincing evidence, hence the aforementioned issues are hereby decided in negative against defendants and in favor of plaintiffs.

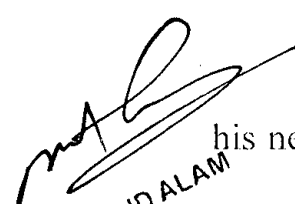
**ISSUE NO. 04 & ISSUE NO. 05:**

**Whether the suit property consisting of 03 fields declared in the headnote of the plaint are ownership in possession of the plaintiffs since their predecessors and the defendants have nothing to do with the suit property?**  
**Whether the suit property is the ownership in possession of the plaintiffs and the defendants have forcefully stopped cultivation in the suit property?**

  
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Issues no. 04 and issue no.05 being interlinked are hereby decided collectively. Plaintiffs have alleged in their plaint that they are owners in possession of three fields measuring around two jarib situated at Badgor, (referred as Mark A in the sketch) and two fields measuring about three jarib and twenty Marla, (referred as Mark B & C in the sketch), the suit property, since the time of their fore-fathers. Defendants have no concern with the suit property and have forcibly restrained them from cultivating and utilizing the suit property, which was their sole source of income and

livelihood. To prove their stance plaintiffs produced witness namely Walayat Khan as PW-01 in the witness box, who stated on oath that plaintiffs are owners in possession of the suit property consists of three fields comprising of five jerib and twenty marlas from their fore-fathers. PW-01, further stated that plaintiffs had made a house in one disputed field. He also stated that before merger of FATA, it was not possible that someone could have constructed a house in the property/field of other person. He produced his CNIC which is Ex. PW-1/1. He lastly requested for decree of the suit.

  
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During cross examination he stated that plaintiffs are his neighbors. He further stated in his cross examination that plaintiff no. 01 is residing in Hangu, since 1992. He further stated that plaintiffs were previously engaged an enmity with the defendants. Furthermore, PW-01 stated in his cross examination that it is correct that the suit property is in possession plaintiffs and they cultivate the same. He further strengthens the stance of plaintiffs as narrated in the plaint that father of plaintiff namely Khaista Gul had three fields.

PW-02 was produced and examined as one Abdul Latif son of Daulat Khan, who deposed on oath that plaintiffs had cultivated the suit property since the time of their predecessors. He further stated in his examination in chief

that he cultivated the suit property with plaintiffs. He further stated that there exists house of plaintiffs in the suit property. He produced his copy of CNIC which is Ex. PW-2/1. He lastly requested for decree of the suit.

During cross examination he stated that parties to the suit previously had enmity. He further stated that plaintiffs are in the possession of the suit property.

Khana Mir Gul son of Khaista Gul, plaintiff no. 01/attorney for plaintiffs, who deposed in light and support of the stance of plaintiffs and further exhibited his special power of attorney which is Ex. PW-3/1. He stated that they are owners in possession of the suit property. He further stated that their house exists in the suit property. He further stated that they have enmity with the defendants. He further denied the stance of defendants.

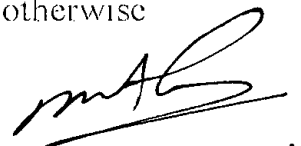
  
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During cross examination he deposed that he is residing in Hangu since, 1992. He further stated that it is incorrect that defendants cultivated the suit property.

In light of the above evidence produced by plaintiffs to prove the issues in hand, it has been noticed that all the PWs deposed in light and support of the stance of plaintiffs as stated in the plaint and furthermore, during cross examination the opposite party failed to contradict the witnesses in



material particular and thus nothing in rebuttal or contradictory has been brought on the record. Moreover, such questions were put to the witnesses which were otherwise admissions on the part of defendants.



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Court at Kalaya

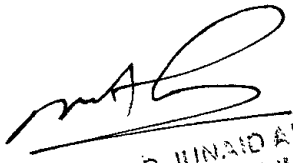
During cross examination of PW-01 it has been brought on the record that the father of plaintiffs had three fields in his possession, being his ancestral property. Similarly, PW-02 has deposed in his cross examination that it is incorrect that defendants are in the possession of the suit property. PW-03 has deposed in his cross examination that it is incorrect that defendants are cultivating the suit property. It also pertinent to mention here that these answers/statements of PWs were not even rebutted through suggestions. Furthermore, PW-01, it has been brought on the record that plaintiffs had an enmity with the defendants. Similarly, PW-02 in his cross examination stated that the allegation of murder of one Saif Ullah Khan, the brother of defendant no. 01 & 02 was on plaintiff no. 03. PW-03; the attorney for plaintiffs also described the enmity with defendants.

In light of the above discussion, as plaintiffs have succeeded to prove issue in hand through cogent, convincing and reliable evidence, hence accordingly the issues in hand

are hereby decided in positive in favour of plaintiffs and against the defendants.

**ISSUE NO. 06:**

**Whether the suit property is the ownership in possession of the defendants and the plaintiffs have nothing to do with the suit property**

  
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Judge / J-11  
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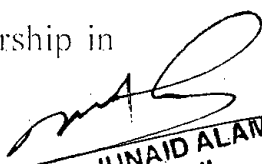
Contested defendants had alleged in their written statement that the suit property is their ownership in possession since the time of their predecessors. To prove their stance defendant no. 03 personally appeared as DW-01 in the witness box and deposed in light and support of his previous stance alleged in the written statement.

During cross examination he stated that it is correct that he did not produce any independent witness in respect of his stance regarding the suit property before the Court. Self-stated that he had produced two witnesses on previous two date of hearing. He further stated in his cross examination that he had no claim over the house of plaintiffs. He further stated in his cross examination that it is correct that they have old enmity with plaintiffs. It is also correct that the suit property is near the house of plaintiffs. He admitted in his cross examination that plaintiffs have constructed one house in one of the disputed fields. He did not know that how old of the plaintiff's house. It is correct that the suit property

mentioned in the plaint does not belong to plaintiffs rather same is their ownership.

Now in light of the above evidence produced by defendants to prove the issue in hand, it has been noticed that the DW has supported the stance of defendants in his examination in chief but in his cross examination some material contradiction and admissions were brought on the record by the opposite party. DW-01 had stated in his examination in chief that they are owners in possession of the suit property since the time of their fore-fathers. However, during his cross examination he stated that he had no dispute over the house of plaintiffs, which has been made in one of the suit field. In circumstances the question arise that when DW-01 stated in his cross examination that he had no dispute over the house of plaintiffs, how DW-01 allege in his examination in chief that suit property is their ownership in possession since the time of their fore-fathers.

In light of above evidence produced by defendants to prove the issue in hand, it has been noticed that although the DW-01 deposed in light and support of the stance previously alleged by defendants in their written statement. However, during cross examination he was contradicted in material particulars and thus their credibility was shattered. Moreover,

  
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no independent witnesses have been produced before the Court.

In light of above discussion, the Court holds that the defendants miserably failed to prove the stance of defendants previously alleged in the written statement. Hence, accordingly the issue in hand is hereby decided in negative against the defendants and in favor of plaintiffs.

**ISSUE NO. 01**

**Whether the plaintiffs have got a cause of action? OPP**

In wake of issue wise findings above, the plaintiffs have got a cause of action, hence issue in hand is hereby decided in positive against defendants and in favour of plaintiffs.

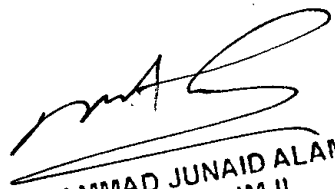
**ISSUE NO.07:**

**Whether plaintiffs are entitled to the decree as prayed for? OPP**

In wake of the issue wise findings, of the Court as narrated above, plaintiffs are entitled to the decree as prayed for, hence issue in hand is hereby decided in positive against defendants and in favour of plaintiffs.


**Relief:**

As per issue wise findings of the Court narrated above the instant suit of plaintiffs is hereby decreed in their favors as prayed for. No order as to costs. File be consigned

  
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Kuala Lumpur  
Prayed

to the record room after its necessary completion,  
compilation and scanning.

**Announced**  
18.02.2025

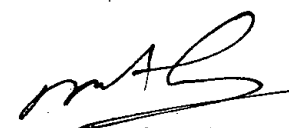


**Muhammad Junaid Alam,**  
Civil Judge-II,  
Tehsil Court Kalaya, Orakzai

**C E R T I F I C A T E**

Certified that this judgment of mine consist upon thirteen  
(13) pages. Each page has been read over, checked and signed  
after making necessary correction therein.

**Dated: 18.02.2025**



**Muhammad Junaid Alam,**  
Civil Judge-II,  
Tehsil Court Kalaya, Orakzai