

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

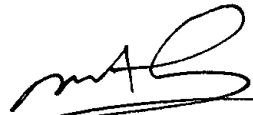
**Suit No. 56/1 of 2021**

DATE OF ORIGINAL INSTITUTION.....13.01.2021

DATE OF TRANSFER TO THIS COURT...01.07.2022

DATE OF DECISION OF THE SUIT .....10.03.2025

1. GHANI AKBAR,
2. SAKHI AKBAR,
3. MASTAN AKBAR,
4. EIDEN AKBAR, ALL SONS OF MAMATAN,
5. MST. AQAL MANDA,
6. MST. NAZEERA,
7. MST. LAIBA,
8. MST. MOEEN WAZIRA,
9. MST. AQAL JAL, ALL DAUGHTERS OF MST. NIAZ  
MANDA WIDOW OF AAIN AKBAR, ALL RESIDENTS  
OF QOM SHEIKHAN, WOOT MELA, TAPPA UMAR  
ZAI, PRESENTLY HANGU ROAD NEAR OLD  
TABLEGHEE MARKAZ, KOHAT.

  
**MUHAMMAD JUNAID ALAM**  
Civil Judge / JM-II  
Orakzai at Kalaya

.....PLAINTIFFS

**VERSUS**

1. NOOR AKBAR SON OF ALI SARDAR,
2. KHAISTAN AKBAR;
3. MUHAMMAD AKBAR, BOTH SONS OF SAID ASKAR  
AND
4. SANO SON OF SARWAR, ALL RESIDENTS OF WAM  
PANRRA DISTRICT ORAKZAI.

.....DEFENDANTS

**SUIT FOR DECLARATION -CUM- PERPETUAL  
AND MANDATORY INJUNCTION AND  
POSSESSION.**

**Counsel for plaintiffs: Mr. Shoaib Nasrat Khel Advocate**


**Counsel for defendants: Mr. Insaf Ali Advocate**

**JUDGMENT**

**10.03.2025**

Vide this judgment the Court intends to dispose of the instant suit filed by plaintiffs for declaration cum perpetual and mandatory injunction.

1. Brief facts of the case in hand according to the plaint are that plaintiffs are owners of the suit property situated at Woot Mela District Orakzai since the time of their fore-fathers while defendants are their tenants. That plaintiffs had migrated from Orakzai to distirct Kohat 15 years ago due to personal enmity and had given the suit property to the defendants for cultivation. That about two years ago defendants have stopped the payment of due shares in the produce of the suit property and now they are claiming their ownership over the suit property. That defendants are illegally and unlawfully depriving plaintiffs from their property. Defendants were asked time and again to admit the legal claim of the plaintiffs but they refused, hence, instant suit has been instituted.

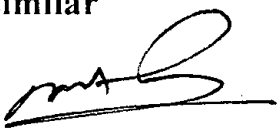
  
**MUHAMMAD JUNAID ALAM**  
Civil Judge / JM-II  
Orakzai at Kalaya

2. After institution of the plaint, the defendants were summoned. Defendants appeared before the Court and submitted their written statement, wherein they raised many legal and factual objections.
3. Out of controversies of the parties, as raised in their respective pleadings, the then incumbent Court has framed the following issues on 18.10.2022. But during the arguments this Court observed that previously this Court framed issues without an opportunity discussing the stance of defendants. Court deems it appropriate to amend the issues as follows.

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

**2. Whether this court has got jurisdiction to try similar nature suit? OPP**

**3. Whether the suit of plaintiffs is time barred? OPD**

  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

**4. Whether the suit of the plaintiffs is bad due to mis-joinder and non-joinder of the parties? OPD**

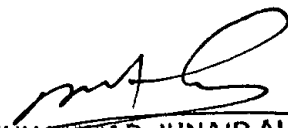
**5. Whether the plaintiffs are owners in possession of the suit property situated at Wot Mela, Orakzai since their fore-fathers and defendants are the tenants of the plaintiffs? OPP**

**6. Whether the plaintiffs received their due share in annual produce regularly but about 02 years ago the same has been stopped by the defendants? OPP**

7. Whether defendants are owners in possession of the suit property and not the tenant of plaintiffs? OPD

8. Whether the plaintiffs are entitled to the decree as prayed for?

9. Relief.

  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

4. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as two witnesses and thereafter closed their evidence. Contrary to this the defendants produced three witnesses and thereafter closed their evidence with a note.
5. Both the learned counsels for the parties to the suit then advanced arguments. Learned counsel for the plaintiffs opened the arguments and argued that plaintiffs are owners of the suit property situated at Woot Mela District Orakzai since the time of their fore-fathers while defendants are their tenants and cultivators. He further argued that plaintiffs had migrated from Orakzai district to Kohat 15 years ago due to some enmity and had given the suit property to the defendants for cultivation. Furthermore, he argued that about two years ago defendants have stopped the due shares in the produce of the suit property and are now claiming their ownership over the suit property. That defendants are illegally and unlawfully depriving plaintiffs from their property. He further 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 favour of plaintiffs and against the defendants for the relief as prayed for:

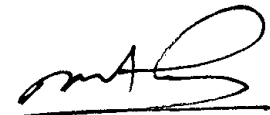
6. Contrary to this learned counsel for the defendants argued that plaintiffs have got no cause of action. He further adduced that defendants are owners in possession of the suit property and not the tenants of the plaintiff thus plaintiffs are neither owner of the same nor they have got any concern with the same. Learned counsel further contended that the plaintiffs have failed to prove their stance through cogent and convincing evidence. Hence, prayed that as plaintiffs failed to prove their case, accordingly the suit in hand may kindly be dismissed.
7. Perusal of record, available evidence and valuable assistance of both the learned counsels for the parties the issue wise findings are as under.

**ISSUE NO. 3 & 4:**

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

**Whether the suit of plaintiffs is bad for non-joinder and mis-joinder of the parties? OPD**

Issue no. 03 and Issue no. 04 being legal in nature and interlinked are hereby decided as under:

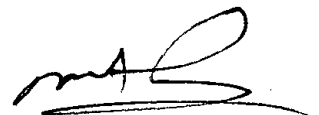
  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

Defendants have alleged in their written statement that suit of plaintiffs is not filed within time and suit is bad for non-joinder and mis-joinder of the parties. To prove their stance defendants produced three DWs. In given circumstances, perusal of the statements of all the DWs would reveal that none of the DWs uttered a single word regarding the issues in hand and thus deviated from the stance of defendants alleged in the 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. Moreover, no person has been identified by the defendants who was necessary party but not impleaded and likewise no person has been identified who was unnecessary but impleaded in the suit.

In light of what has been discussed above, as defendants miserably failed to prove issue no.03 & issue no. 04 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. 02:**

**Whether this court has got jurisdiction to try similar nature suit? OPP**



**MUHAMMAD JUNAID ALAM**  
Civil Judge / JM-II  
at Kalaya



MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
On of the court at Kuala


of the suit. Kalaya

of the suit. Kalaya

of the suit. Kalaya

of the suit. Kalaya

due to some enmity and had given the suit property to the defendants for cultivation. That about two years ago defendants stopped the due shares in the produce from the suit property and are now claiming their ownership over the suit property. To prove their stance plaintiff no. 1/attorney himself appeared in the witness box as PW-01. He produced his special power of attorney which is Ex. PW-1/1, who stated on oath in light and support of their stance as stated in the plaint. He deposed in his cross examination that the present and permanent addresses mentioned in their CNICs are not of District Orakzai. Self-stated that Woot Mela is the ownership of Umarzai Shiekhan. It is correct that he has no written proof regarding the suit property as there is no settlement record in the district Orakzai but rather it is his inherited property. It is correct that the suit property is in possession of defendant no. 01 since three years. He further in his cross examination stated that beside defendants other his relatives are also in possession of their respective properties. He further deposed that he has no written proof regarding the due shares of produce from the suit property. It is further correct that he does not know the names of the suit fields. He further deposed in his cross examination that the predecessors of the defendants were not settled in the Woot Mela rather they belong to Wam Panrra. It is further correct

  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya



that I had not reported the matter to the then APA Orakzai. He further deposed that jirgas regarding suit property has not been conducted between parties to the suit. Later on his cross examination he stated that it is correct that defendants refused the Jirga decision held on 14.12.2018. Furthermore, he deposed in his cross examination that they residing in District Kohat.

Plaintiffs produced one Alam son of Gul Ghamay in the witness box as PW-02, who stated on oath in light and support of the stance of the plaintiffs as narrated in the plaint. Plaintiffs closed their evidence without cross examining the PW-02. Moreover, plaintiffs failed to produce any independent witnesses before the Court to prove their stance through reliable evidence.

  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

In light of the above evidence produced by the plaintiffs to prove the issues in hand, it has been noticed that a single PW-01 deposed in support of the stance of plaintiffs who is not actually a witness, but in his cross examination he had deposed that the suit property is in possession of the defendants. Similarly, PW-01, plaintiff no. 1 himself stated in his cross examination that he does not know the names of the suit fields, which is quite strange and does not appeal to a prudent mind. It is also pertinent to mention here that plaintiffs were also supposed to have produced the


independent witnesses regarding their ownership over the suit property and should have produced all the official or local record before the court in support of their stance. A jirga deed dated 14.12.2018 was annexed by the plaintiffs but not exhibited and neither its witnesses have been produced before the court to prove it.

In light of the above evidence produced by the plaintiffs to prove the issues in hand, it has been noticed that only the PW and attorney for plaintiffs deposed in light and support of the stance of plaintiffs as alleged in their plaint. However, during cross examination the said PW was contradicted in material particulars. Furthermore, plaintiffs failed to prove both the issues in hand through cogent, convincing and reliable evidence, hence accordingly both the issues are hereby decided in negative against the plaintiffs and in favor of the defendants.

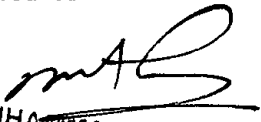
**ISSUE NO. 07:**

**Whether defendants are owners in possession of the suit property? OPD**

The defendants in their written statement have alleged that they are owners in possession of the suit property and plaintiffs have no concern with the suit property. To prove their stance defendants produced one Peer Gul son of Gul Akbar in the witness box and deposed as DW-01, who

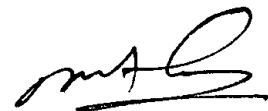
  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

deposed on oath in light and support of the stance of defendants as alleged in the written statement. During cross examination he deposed that the suit property situated at Woot Mela. It is correct that defendant no. 1 Noor Akbar residing in Wam Panrra. He further deposed that he has no bond with defendants. It is correct that the distance between Wam Panra and Woot Mela is about five kilometers. It is correct that several jirgas were convened between parties to the suit.

  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

One Malak Noor Akbar son of Ali Sardar the defendant 01 himself appeared and deposed as DW-02. He produced his special power of attorney which is Ex. DW-2/1. He deposed on oath in light and support of stance of previously alleged in their written statement. During cross examination he stated that plaintiffs belong to Tappa Umarzai. It is correct that people of Tappa Umarzai were settled in Woot Mela and defendants belong to Tappa Bazid Khel and people of the same area were settled in Wam Panrra. He further stated that many oral Jirgas were conducted between parties to the suit. He further stated that the suit property is his inherited property. He has not purchased the suit property from anyone. nothing contradictory regarding issue in hand has been brought on the record.

DW-03 was produced and examined as Khan Shah son of Malak Iman Shah. He produced copy of his CNIC which is Ex. DW-3/1, who deposed in light and support of the stance of defendant no. 01 as well as issue in hand. During cross examination he deposed that a Jirga was conducted between parties to the suit. It is correct that a last Jirga was conducted between parties to the suit by the elders of the locality namely Malak Zali Man Shah, Malak Nazeer Badsha and Malak Bahadur etc. It is incorrect that defendants purchased the suit property. Self-stated that the suit property is their inherited property.



Now in light of the above evidence produced by defendants, **MUHAMMAD JUNAID ALAM**  
Civil Judge / JM-II  
Orakzai at Kalaya

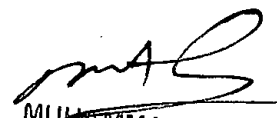
to prove their stance as well as the issue in hand, it has been noticed that all the DWs have fully supported the stance of defendants in their respective examination in chief. On the other hand, during cross examination nothing in rebuttal or contradictory has been brought on the record by the opposite party rather such questions were put to the witnesses, which were otherwise admission of the stance of defendants by plaintiffs. During cross examination of DW-02 the admissions are reproduced for ready reference as *"it is correct that the suit property is his inherited property and has not been purchased from anyone."* Similarly, during cross examination of DW-03 the admissions brought on the record

are "it is correct that the suit property is inherited property of the defendants.

In light of the above discussion as defendants succeeded to prove the issue in hand through their cogent, convincing and reliable evidence and furthermore nothing in rebuttal or contradictory has been brought on the record by the opposite party during cross examination rather a series of admissions is witnessed in the cross examinations of DWs, hence issue in hand is hereby decided in positive in favor of defendants and against plaintiffs.

**ISSUE NO. 1**

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

  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

In wake of issue wise findings above, the plaintiffs have got no cause of action, hence the issue in hand is decided in negative against the plaintiffs and in favour of defendants.

**ISSUE NO.07:**

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

In wake of the issue wise findings above, plaintiffs are not entitled to the decree as prayed for as they failed to prove their stance through reliable evidence and that the court lacks the jurisdiction to entertain the present suit regarding the tenancy, hence the issue in hand is decided in negative against plaintiffs and in favour of defendants.

**Relief:**

As per issued wise findings above the instant suit of plaintiffs is hereby dismissed. No order as to costs. File be consigned to the record room after its necessary completion, compilation and scanning.

Announced

10.03.2025

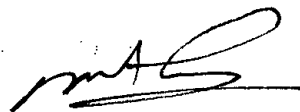


**Muhammad Junaid Alam,**  
Civil Judge-II,  
Tehsil Court Kalaya, Orakzai

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

Certified that this judgment of mine consist upon fourteen (14) pages. Each page has been read over, checked and signed after making necessary correction therein.

**Dated: 10.03.2025**



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