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

Civil Suit No.	93/1 (neem) of 2021
Date of Institution:	27.03.2021
Date of Restoration:	09.09.2024
Date of Decision:	04.03.2025

- 1. Muhammad Islam s/o Khyal Bahadur.
 - 2. Umar Siddique s/o Jan Bahadur.
- Both R/O Qoum Rabia Khel, Khee Kadda, Tehsil Upper, District Orakzai.***
- (Plaintiffs)

VERSUS

- 1. Gul Sherin s/o Nasir Khan (deceased)
LRs; Muhammad Sherin, Izat Khan, Hameed Khan, Hayat Khan, Nowroz Khan, Mina Jana, Wali Marjana, Adab Jana
 - 2. Eid Sherin s/o Gul Sherin.
R/O Qoum Rabia Khel, Khee Kadda, Tehsil Upper, District Orakzai.
- (Defendants)

**SUIT FOR DECLARATION OF TITLE, AND FOR
CORRESPONDING INJUNCTIVE RELIEF**

JUDGEMENT:
04.03.2025

This order shall decide instant suit filed by Mr. Muhammad Islam for declaration of title, and for corresponding injunctive relief against Mr. Gul Shireen and others.

Pleadings:

The claim as stated in the plaint reads that landed estate in the vicinity of mountain Masha Zhawar and Angor Patay, as detailed in the headnote, are the entitlements of the plaintiff. They wish to preserve their title and possession over it, but defendants, through their illegal interference,

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to cast doubts on the title of the plaintiffs. Reportedly, the defendants were requested a couple of times extra-judicially through local elders to desist from their transgressions but to no avail, hence the suit. Plaintiffs request for declaration of title and for a restraining order against the defendants.

Defense's rebuttal as contained in their written statement reads that suit property is shamlaat in which declaration of exclusive title is not permitted by law, nor is a prayer for restraining order maintainable against a co-sharer. It is maintained that suit property is under the use and possessory control of the defendants for a very long time. They contend that the question of illegal interference with one's own possession does not make sense. They have challenged the validity of both the suit and the claim, and requests for dismissal of the suit.

Differences distilled from the pleadings of the parties were reduced 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

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4. Whether the suit of the plaintiffs is maintainable in its present form? OPD
5. Whether the plaintiffs are estopped to sue? OPD
6. Whether the suit property is the ownership of the plaintiffs and the plaintiffs are entitled to enjoy all the rights associated with suit property? OPP
7. Whether the plaintiffs are entitled to the decree as prayed for?
8. Relief.

Thereafter, both sides were invited to produce evidence to establish their respective positions.

Witnesses/Exhibits:

Muhammad Islam, plaintiff No. 01 himself appeared as PW-01, Izat Khan s/o Man Shah as PW-02, Inayat Ur Rehman s/o Noor Janan as PW-03, Gul Zaman s/o Ali Dan Shah as PW-04, Islam Bahadur s/o Sardar Khan as PW-05, Phool Badshah s/o Awal Badshah as Ex.PW-06, Siyal Badshah s/o Awal Badshah as PW-07, Said Wazir s/o Muhammad as PW-08, Eid Sherin, the defendant No. 02 himself as DW-01, Malak Zaliman Shah s/o Gul Man Shah as DW-02, Ali Sardar s/o Gul Badshah as DW-03 and Nazeer Man Shah s/o Gul Man Shah as DW-04,

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- i. Copy of CNIC of PW-01 as Ex.PW-1/1.
- ii. Copy of CNIC of PW-02 as Ex.PW-2/1.
- iii. Copy of CNIC of PW-03 as Ex.PW-3/1.
- iv. Copy of CNIC of PW-04 as Ex.PW-4/1.
- v. Copy of CNIC of PW-05 as Ex.PW-5/1.
- vi. Copy of CNIC of PW-06 as Ex.PW-6/1.
- vii. Copy of CNIC of PW-06 as Ex.PW-7/1.
- viii. Copy of Jirga deed as Ex.DW-1/1.
- ix. Copy of CLCP as Ex.DW-1/2.
- x. Copy of CNIC of DW-02 as Ex.PW-2/1.
- xi.

Reasoning:

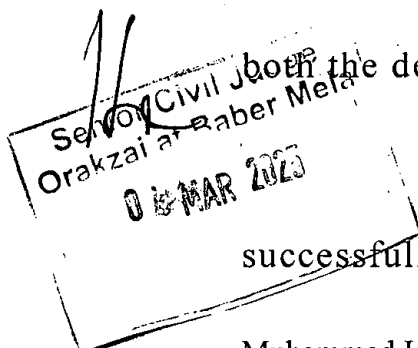
Issue wise findings of the court followed by a ruling on the suit is as follows:

Issues No 02, 03, 04, 05:

These issues pose the regular questions of limitation, joinder of parties, maintainability, and estoppel.

These issues, since they go to the legal roots of the suit, burden both the defense and the court to determine them.

During the course of trial, the defense could not successfully establish the fact of the suit being hit by any of



these legal bars and defects. Given that jurisdiction of civil courts was extended to the area in 2019, the question of limitation rarely arises, as the law provides 06 years for claims of declaration of title.

Similarly, throughout the course of trial, neither any positive instance of estoppel of non-joinder was either pointed out by the defendant, or noted by the court, sufficient to merit dismissal on these grounds.

Moreover, no fatal defect in maintainability could also come to surface throughout the trial. These issues are, accordingly, decided for the plaintiff.

Issue No 06:

This issue contains the central element of dispute between the sides: entitlement to the suit property. Plaintiffs claim it is their ancestral property which has been in their use since the times of their forefathers. They allege that defendants' interference with the possession of suit property is both illegal, and prejudicial to the rights of the former.

Defendants, to the contrary, claim that suit land is their property and has been in their possession, so the question of interference with it, lawful or unlawful, does not arise.

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Below we shall examine the claim of the plaintiffs in light of the evidence as the onus to prove the issue rests with them.

Muhammad Islam, witness no 01 for plaintiffs, in his cross-examination discloses that suit land was acquired by their forefather, and devolved on his heirs from him. He could not state the mode through which it was acquired, nor could he state its measurement.

Witness no 01 further states that defendants previously interfered with suit property two years prior to the institution of the suit. The witness claims that a complaint for legal action was filed with the then political agent. However, the complaint finds no mention in the pleadings. Plaintiffs could not produce documents recording its proceedings or outcome. They also could not produce the witnesses they first mentioned in their evidence.

Witness further states that during the military operation in the area, the fled to adjoining districts, and their houses in the disputed area got demolished. He concedes that a survey by the government for compensation was conducted by registering the names of persons who owned houses/buildings. However, plaintiffs could not produce any document in that

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respect to establish their registration as owners of a demolished building.

He concedes that his family and relatives have settled in Punjab since 2011. However, he denies the possession of defendants over suit land.

Mr. Izzat Khan, witness no 02 for the plaintiffs, claims to have purchased trees/timber from the plaintiffs in the year 2014, thereby implying the title and possession of the plaintiffs over the land. The witness disputes witness no 01 on the point of peaceful chopping and sale of trees standing on suit land made by the latter. He states that defendant had telephonically warned the contractor Mr. Ghani against chopping or purchase of trees.

Mr. Inayat Ur Rahman is witness no 03 for the plaintiffs. He claims to have mediated between the sides in a Jirga. He states that during the proceedings, defendants got quarrelsome and disrespectful, so we imposed a fine of Rs 30,000/- and declared them as being wrong.

Similarly, Mr. Gul Zaman appeared and testified as PW-04. During his cross examination, he acknowledges his ignorance of the fact as to whether defendants own land in and about the suit property. He concedes that they have a house.

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Witness no 05, Islam Bahadur, also testified on the incidence and particulars of the Jirga. During his cross-examination, *he concedes the possession of the defendants over the suit property at the time of recording of statement i.e. 04/03/23. Further down in his cross-examination, he states that they declared the plaintiff to be in the wrong. He further admits that defendants are in possession of suit property from the time of their ancestors (Emphasis Added).*

From the defense's sides, Mr. Eid Shireen took the stand as defense witness no 01. He produced a ruling of the Jirga convened on 04/01/2015 whereby the plaintiffs were apparently declared to be wrong. He also produced alleged receipts of their registration as owners of houses demolished during military operations. He states that defendants are owners in possession of suit land since ages.

During his cross examination, he denies the suggestion that the house in which he resides, located in Masha zhawar, was sold to him by the ancestors of the plaintiffs. The suggestion is loaded with the admission of defendants being owners in possession of a house in Masha Zhawar.

Mr. Zali Man Shah, a mediator in the Jirga, appeared and testified as DW-02. Before directly addressing the dispute, he made certain observations about the witnesses, and

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family origins of the plaintiffs. He alleged that Mr. Izat Khan was a broker for Taliban who would receive contributions from the plaintiffs, and is now compensating them for the favour through false testimony. He further states that suit land is situated in Matha Khel Kandey, while plaintiffs belong to the Nori Khel sub-tribe, who do not own land in the Kandey.

Interestingly, throughout the course of trial, plaintiffs had been denying the incidence of Jirga of 04/01/2015. However, during the cross-examination of DW-02, he is made to admit the incidence of Jirga in 2015 through a direct question. He is then questioned about the mode and conduct of the Jirga, and the document on which its outcome was recorded. He is made to admit that it was written on a stamped paper.

Mr. Nazir Mansha testified as DW-04. He states that suit land is the ownership of the defendants and has been in their possession for quite some time. He explains that plaintiffs come from the Noori Khel sub tribe, and they have no ownership in the property. He endorses the document, his thumb impression, and the decision of the Jirga dated 04/01/15.

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Concluding Remarks:

To summarize the discussion above, plaintiffs claimed ownership and possession of the suit land. They were

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accordingly burdened under the issue to prove their claim. In respect of title, understandably, no document is available, since it was not customary in the former tribal agency to record transfers of land.

The mode in which the land was acquired by the grand-father is also unknown, so is its physical measure. Of the Jirgas conducted on the matter, one by the then political administration, and one through local mediators, the plaintiffs, although they admit the existence of documents in respect of the former, failed to produce it during evidence. They also omitted/failed to produce the witnesses of the Jirga they named in their statements.

The second Jirga, convened on 04/01/15, is plainly denied in their evidence by the plaintiffs. However, during the cross-examination of the witnesses for defense, through their mode of questioning, the plaintiffs admit its incidence. In that Jirga, they were declared defeated.

About possession of suit land, plaintiffs have consistently maintained that they are in possession. However, they also concede that their houses in the area got demolished during the period of militancy, and that they have been living in Punjab since 2011.

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Witness no 05 for the plaintiffs made plain admissions to the fact that defendants have been in possession of suit land since the times of their forefathers, and currently retain it.

In view of the discussion above, the issue is decided against the plaintiffs.


Issues no 01, 07, and 08:

These issues pose the questions of presence of cause of action for the plaintiffs, and, consequently, their entitlement to relief from the court.

Issue no 06, previously discussed and decided, contained the principal claim of the plaintiffs which they failed to prove to the satisfaction of the court. Clearly, when the claim is not established the plaintiffs are not entitled to any relief from the court. Issues are decided against the plaintiffs. Suit is dismissed.

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

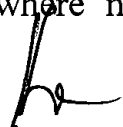
Announced
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Senior Civil Judge,
Orakzai (at Baber Mela)

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CERTIFICATE

Certified that this judgment of mine consists of twelve (12) pages, each has been checked, corrected where necessary and signed by me.


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