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

Civil Suit No.	84/1 of 2021
Date of Institution:	04.11.2021
Date of Transfer In:	23.08.2022
Date of Decision:	08.03.2025

1. Moeen Hassan s/o Noor Hassan
2. Kifayat Ali s/o Muhammad Hassan
3. Syed Mir Hassan s/o Amin Hassan
4. Arab Hassan s/o Ghulam Hassan
5. Japan Ali s/o Moran Ali
6. Ali Hassan s/o Khyber Ali
7. Ghalib Ali s/o Talib Ali
8. Moula Faqir s/o Ali Faqir

***All R/O Qoum Mani Khel, Tappa Zakria Khel, Tehsil Lower,  
District Orakzai.***

..... (Plaintiffs)

**VERSUS**

1. Syed Ibn-e-Ali s/o Syed Aqeel Hassan R/O Qoum Kalaya Syedan, Village Char Khela, District Orakzai.
2. Provincial Government through Secretary Local Government, Kyber Pakhtunkhwa, Peshawar.
3. Assistant Director Local Government and Rural Development Department, Orakzai.
4. BM Khel Company.

..... (Defendants)

**SUIT FOR DECLARATION OF TITLE AND A  
CORRESPONDING RESTRAINING ORDER**

**JUDGEMENT:**

08.03.2025

This order shall decide a suit filed by Mr. Moeen Hasan and others, the plaintiffs, for declaration of title and a corresponding restraining order against Syed Ibn-e-Ali, the defendant.

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**Pleadings:**

The matter as stated in the plaint reads that plaintiffs own and possess the suit land from the times of their ancestors. Plaintiffs hold they belong to Qoum Mani Khel tappa Zakria Khel who have been residents and owners of the land since ages. Their ancestors are buried in the local graveyard. Their dwellings and cultivable lands surround the disputed land. It is alleged that the defendant is a stranger to both the tribe and the land. Further, it is alleged that the attempt of defendant no 01 to interfere with the suit land, in collusion with the remaining defendants is illegal, and liable to be restrained.

Defendant, in his written reply, denies the claims and assertions of the plaintiffs. In addition to objecting to the legal validity of the suit, he has challenged its factual version. Defendant explains that suit land is a 'Sirri', and land endowment bestowed on the religious leader for his services to the community. He contends that on 18/10/22, a Jirga composed of representatives of Qoum Mani Khel, and elders of the local Shia community found in his favour after deliberations over the matter. He maintains that he has been living among Qoum Mani Khel for his last 12 generations, and most of his ancestors are

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buried in/around the suit land. He has detailed the burials of his ancestors in the suit land. He prays for dismissal of the suit.

Defendants no 02 and 03 represented by the District Attorney have also submitted their written statement. They hold that plaintiffs have got no concern with suit property which is in the possession of the defendants. A public scheme for paving the staircase has been approved for beautification of the suit land which is a tourist attraction. They allege that plaintiffs are motivated by malice and are trying to derail and delay a public scheme of great benefit. They request for dismissal of the suit.

Similarly, defendant no 04, B.M. Khel construction company has also filed its written statement. It maintains that suit land is the ownership of the defendant no 01 against which a public project for construction of staircase has been assigned to him. He alleges that plaintiffs are motivated by ill-will, and have no legally sustainable claim to the subject matter.

Differences in the positions of the sides as distilled from their pleadings were reduced into the following issues.

**Issues:**

1. Whether the plaintiffs have got a cause of action?
2. Whether the plaintiffs are estopped to sue due to their

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3. Whether the suit is bad for mis-joinder and non-joinder of the parties?
4. Whether the plaintiffs are owners in possession, since their forefathers, of the property at the North of which "Khware Pukhta Rasta" at the South of which "Mountain" and "Nanawar Area", at the East of which "Khware Qabristan" and at the West of which "Mountains" are situated and adjacent to the suit property either ownership of the plaintiffs is also situated?
5. Whether the defendant No. 01 has no relation/concern with Mani Khel caste and neither the defendants nor their predecessors have got concern with the suit property?
6. Whether defendant No. 02 and 04 are bent upon collusively, forcibly and illegally snatching the ownership of the plaintiffs in the name of government project?
7. Whether the suit property has been acquired by the defendants from the plaintiffs after payment of compensation?
8. Whether the government has approved scheme after preparation of feasibility report and PC-1 and tender has been issued in accordance with law?

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9. Whether the plaintiffs have got no concern with the suit property and no ancestral and personal graveyard of the plaintiffs is situated adjacent to the suit property?
10. Whether the plaintiffs are interfering in the official duties of the defendants by restraining them from developmental work in the public place?
11. Whether the plaintiffs are entitled to the decree as prayed for?
12. Relief?

**Witnesses/Exhibits:**

Mr. Moeen Hassan, the plaintiff No. 01 himself appeared as PW-01, Mr. Qareer Hussain s/o Rijad Hussain as PW-02, Mr. Qasrat Ali s/o Shah Wali as PW-03, Mr. Noor Jaf Ali s/o Sardar Ali, jirga member as DW-01, Mr. Wahid Ali s/o Ghulam Ali, jirga member as DW-02, Mr. Syed Ibn-e-Ali, the defendant No. 01 himself as DW-03, Mr. Syed Qaiser Alam s/o Syed Alim Jan, owner of BM Khel Company as DW-04, Mr. Rafi Ullah, computer operator, LG & RD, District Orakzai as DW-05 and Mr. Syed Jan Ali Shah Sub-Engineer Local Government as DW-06. They have exhibited the following documents;

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- i. Special Power of Attorney and copy of CNIC of PW-01 as Ex.PW-1/1 and Ex.PW-1/2 respectively.
- 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 Iqrar Nama as Ex.DW-1/1.
- v. Copy of CNIC of DW-01 as Ex.DW-1/2.
- vi. Copy of CNIC of PW-02 as Ex.DW-2/1.
- vii. Affidavit as Ex.DW-3/1.
- viii. License regarding ownership of DW-04 as Ex.DW-4/1.
- ix. Copy of Tender as Ex.DW-4/2.
- x. Final Comparative Statement as Ex.DW-4/3.
- xi. Copy of letter as Ex.DW-4/4.
- xii. Contract of BM Khel Company as Ex.DW-6/1.
- xiii. Advertisement as Ex.DW-6/2.
- xiv. Advertisement regarding contract as Ex.DW-6/3.
- xv. Authority letter as Ex.DW-6/4.

**Reasoning/Ruling:**

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

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**Issues No 01, 02, and 03:**

These issues pertain to the questions of estoppel and joinder of parties. Estoppel is a bar on holding a position during a trial that is against a previously established position. During the course of trial, no previously held position was agitated specifically to attract the bar of estoppel. Similarly, the court too, during its examination of the case record and evidence, could not find a positive instance of the suit being hit by estoppel.

Similarly, throughout the course of trial, defendants did not mention any necessary party that might have been left out. A suit for declaration against the current occupant who claims exclusive title, and a government contractor who is busy in construction on it, apparently meets the legal criteria of impleading the right parties. The court could not find any fatal defect on that score. The issues are decided for the plaintiffs.

**Issues No 04,09 and 10:**

These issues pose questions about the entitlement of the plaintiffs as owners to suit property, and consequently, the legal status of interference with suit property of both the parties.

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Clearly, if plaintiffs are found entitled as owners in possession, their use and disposal of the suit land would be

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lawful, and interference by the defendants would be illegal. However, if plaintiffs fail to establish their title over suit land, they would not receive the remedies of declaration and injunction from the court.

Plaintiffs claim they belong to tribe Mani Khel, Tappa Zakria Khel, and are owners in possession of suit property. They allege that defendant no 01 does not belong to the tribe, and thus, has no relation to the property. Having set the background, the court shall now proceed to examine the issue in light of the evidence.

- Mr. Moeen Hassan, the lead plaintiff, took the witness stand as PW-01. In his statement, he alluded to an alleged lease agreement, and conferment of turban, in relation to suit land. Both these documents find no mention in the pleadings. Moreover, in his cross examination he concedes that these documents are in relation to Lando Ghakh mountains, which is at a distance of 2 KM from the suit property. He further concedes that he has no documentary proof in the form of title deed, or ruling of a jirga that suit land is the estate of tribe Mani Khel etc.
- The witness further states that suit property is the

entitlement of Qoum Mani Khel, which, in internal

partition, fell in the share of the plaintiffs. He concedes

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that he could not produce any document or evidence on the point of partition. He also concedes that out of 08 Tappas of the Mani Khel tribe, no person has made any claim or complaint against defendant no 01.

- About the assertion of the defendant no 01 that his ancestors are buried in the suit property, the witness denies it partially. He maintains that the defendant does not have a graveyard, but he constructed a tomb/mausoleum of an ascendant in 1995 on plaintiffs' property.
- Witness also concedes that defendant no 01 is a religious leader in the local Imam Bargah, and for his services, the community has bestowed on him a 'Sirri', a piece of land surrounding the place of worship for the use and disposal of the cleric. He further concedes that Mr. Syed Haider Hussain, a similar leader, received 7-8 Sirris from the community.
- Next significant event in the controversy is a jirga of local elders that reportedly gave its verdict on 18-10-22. In their amended plaint, filed months after the date of the jirga, the plaintiffs fail to mention incidence of the jirga.

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In his rejoinder to the written statement, they deny its incidence and validity. However, PW-01, in his cross-

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examination concedes that it took place, but adds that he was not around when it was signed.

- He further concedes that the jirga was mediated by the elders of Mani Khel tribe. He admits that Mr. Wahid Ali, Mr. Rizwan Ali and Mr. Muhammad Qambar was his representative in the proceedings.
- Mr. Qareer Hussain appeared and testified as PW-02 for the plaintiffs. In the very beginning of his cross-examination, he admits that the forefathers of the defendants have been in the property since before my birth, and he is 44 years old.
- Mr. Qasrat Ali, the third witness for plaintiffs shared interesting details in his statement. He concedes the incidence of the jirga about the disputed property, and that it was mediated by the elders of Qoum Mani Khel. He concedes that the dispute is over land measuring 28-30 jirabs roughly. He further admits that almost all or most of the elders of the jirga were from Mani Khel tribe. He also admits to the possession of the defendant no 01 over the Tomb and suit property.
- Mr. Noor Ja Ali appeared as the first witness for

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Jirga of 18-10-22. He supplies concrete details of the

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Jirga in his direct statement. He states that Jirga continued for 5-6 hours, its ruling was written by Mr. Tajamul Hussain, was signed by the mediators, and that it decided in favor of defendant no 01.

- In his cross-examination, through a direct question, he is made to admit that defendant no 01 belongs to Qoum Mani Khel, a fact the plaintiffs have been denying since day 1.
- Mr. Wahid Ali, aged 75, appeared as witness no 02 for the defendants. He claims to be agent/representative for the plaintiffs in the Jirga. He further states in his direct statement that the jirga almost unanimously held that suit property is the Sirri of defendant no 01, and the plaintiffs had no legal claim over it.
- In his cross-examination, his assertion that he was the representative of plaintiffs in jirga remains undamaged. A single question about the mode of investiture was posed to him to which he responded that it was done orally, as per local tradition. Again, through a direct question he was made to admit that defendant no 01 belongs to Qoum Mani Khel.

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- Defendant no 1 himself took the witness stand as DW-03. He was also made to admit that he belongs to Qoum Mani Khel.
- To take an overview of the matters highlighted above, the court observes as follows. Plaintiffs alleged that suit property is the estate of Qoum Mani Khel that fell in their share at the time of partition, and that defendant no 01 does not belong to Mani Khel, thus, is unrelated to the property. To establish their claim, plaintiffs refer to two documents which during evidence came out to be related to some mountains situated 08 kms away from the suit property. Of the Jirga that plaintiffs conceded, they failed to produce the alleged written outcome or any witness although they admitted their existence. Next, the plaintiffs fail to mention a jirga that took place in the year 2022, and when disclosed by the defendants, the plaintiffs denied its incidence and validity.
- However, during evidence they conceded its occurrence but disputed its outcome. Interestingly, a jirga mediated by the elders of Mani Khel, to whom the defendant no 01 does not belong allegedly, had found in his favor against the plaintiffs.

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- An agent for plaintiffs in the jirga, appeared and testified in favor of defendants. While a witness for plaintiffs conceded the possession of the defendant no 01 over suit property for at least over 50 years now. Three witnesses of the defendants were made to admit that he belonged to Qoum Mani Khel through a direct question.
- In view of the foregone, it is safe to conclude that plaintiffs failed to produce any title deed, ruling of tribal elders, or witness on the point of their title. On the other hand, they have conceded possession of the defendant over suit land for generations, and that he belongs to Qoum Mani Khel.
- In this background, the issues are decided against the plaintiffs.

**Issues No 05, 06, 07, and 08:**

These issues pose the questions of relation of the defendant to the suit land, and question of collusion between the private and official defendants, and the mode of acquisition of the suit property.

The answers to these questions have already been

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provided under the discussion in the preceding section. Suit land was a Sirri given to defendant no 01 for his religious service to Qoum Mani Khel. Defendants no 02 to 04 maintain

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that the government is merely interested in beautification of the area in the possession of defendant no 01 by giving it a facelift, and installing stairs track for tourists.

Plaintiff testifying as PW-01 concedes that in his cross-examination that Nanawar mountain, a tourist spot, is adjacent to the suit property, and that the government project pertains to installation of a walking track to Nanawar Mountain. Further, he admits that he has not objected to the project before any government body.

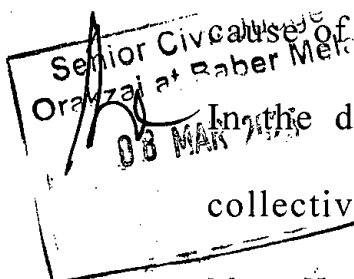
Similarly, the contractor for the project, Mr. Qaisar Alam, testified as DW-04, and related the same version that he was handed over a project for beautification through face lift of the track to mountain Nanawar. That the portion of land adjacent to it was in possession of defendant no 01 who duly consented to the project. Interestingly, this portion of the statement was not disputed throughout his cross-examination.

In view of the above, the issues are decided for the defence, and against the plaintiffs.

**Issue No 11 and 12:**

This issue digs into the question of presence of cause of action for the plaintiffs, and their entitlement to relief.

In the discussion on the facta probanda, the principal issues collectively discussed above, the plaintiffs failed to prove their




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claim in relation to the suit property being their entitlement and possession, therefore, they do not have an actionable cause of action. Issues decided accordingly, against the plaintiffs.


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

**Announced**  
08.03.2025

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

**CERTIFICATE**

Certified that this judgment of mine consists of fifteen (15) pages, each has been checked, corrected where necessary and signed by me.

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