

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

**Suit No.78/1 of 2022**

Date of original Institution: 18.07.2022  
Date of Transfer In: 21.10.2024  
Date of Decision: 24.03.2025

MUHAMMAD ALAM SON OF MUHAMMAD  
GHULAM, RESIDENT OF QOM MISHTI, CENTRAL  
TEHSIL LOWER DISTRICT ORAKZAI.

...PLAINTIFF

**VERSUS**

ABDUL WALI SON OF SABEEL KHAN, RESIDENT OF  
QOM MISHTI, CENTRAL TEHSIL LOWER DISTRICT  
ORAKZAI PRESENTLY JARMA KOHAT.

.....DEFENDANT

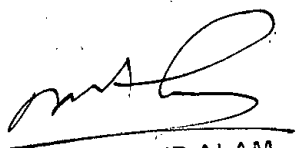
**SUIT FOR RECOVERY OF RS-7,00,000/- OR RETURN OF**  
**VEHICLE VEGO PICK UP AS ALTERNATE**

**Counsels for plaintiff: Insaf Ali Advocate**

**Counsel for defendant: Sana Ullah Khan Advocate**

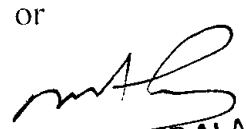
**JUDGMENT**

**24.03.2025**

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

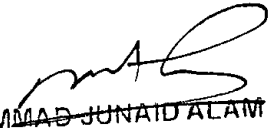
Vide this judgment the Court intend to dispose of the suit  
captioned above.

2. It is a suit of the plaintiff against defendant for the recovery of Rs-700,000/- (Seven Lac Rupees) and return of vehicle.
3. Brief facts of the case are that the plaintiff filed the instant suit for recovery of Rs. 700,000/- and return of vehicle as alternate, to the effect that plaintiff sold his Toyota Vigo Pick Up, bearing registration no. RU 336, Islamabad, Model 2007, vide sale deed dated 28.10.2013 in lieu of Rs. 3,000,000/- (thirty lac rupees). That out of sale consideration, Rs. 1,500,000/-(fifteen lac rupees) was paid by defendant and the remaining amount of Rs. 1,500,000/- (fifteen lac rupees) was promised to be paid on 15.04.2014. That on 15.04.2014 defendant paid Rs. 800,000/- but the remaining amount of Rs. 700,000/- (Seven lac rupees) is still outstanding against defendant. Plaintiff demanded the remaining amount of Rs. 700,000/- (Seven lac rupees) or return of the vehicle but in vain, hence, the present suit.
4. After institution of the suit the defendant was summoned but he did not appear before the Court and thus, he was placed and proceeded ex-parte. Ex-parte decree was passed against the defendant. Later on, ex-parte decree was set aside. Defendant appeared and submitted his written statement with legal and factual objections, raised therein.

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

5. Out of controversies of the parties, as raised in their respective pleadings, this Court framed the following issues on 20.04.2024, however the court made some amendment in the issues today.

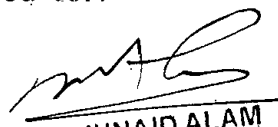
1. Whether plaintiff has got a cause of action? OPP
2. Whether suit of plaintiff is within time? OPP
3. Whether this Court has got jurisdiction to entertain the of plaintiff? OPP
4. Whether suit of plaintiff is hit by res-judicata? OPD
5. Whether suit of plaintiff is bad due to non-joinder and mis-joinder of the parties? OPD
6. Whether plaintiff is estopped to sue? OPD
7. Whether plaintiff sold Toyota Vigo Pick-Up, bearing Registration no. RU-336 Model 2007 to defendant in lieu of Rs. 3,000,000/- vide deed dated 28.10.2013? OPP
8. Whether out of the whole sale consideration amount of Rs. 700,000/- is still outstanding against the defendant? OPP
9. Whether plaintiff defaulted in handing over original registration documents of the vehicle in question to defendant? OPD
10. Whether the plaintiff is entitled for recovery of the suit vehicle? OPP

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

11. Whether the plaintiff is entitled to decree as prayed for?

OPP

12. Relief.

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

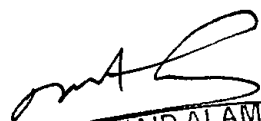
6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiff produced as many as four witnesses and thereafter closed his evidence with a note. Contrary to this the defendant produced only one witness and thereafter closed his evidence with a note.
7. Thereafter arguments were heard. Learned counsel for the plaintiff opened the case and argued that plaintiff has filed the instant suit for recovery of Rs. 700,000/- and return of vehicle as alternate to the effect that plaintiff sold his Vego Pick Up, bearing registration no. RU 336, Islamabad, Model 2007, vide sale deed dated 28.10.2013 in lieu of Rs. 3,000,000/- (thirty lac rupees). That out of sale consideration, Rs. 1,500,000/- (fifteen lac rupees) was paid by defendant and the remaining amount of Rs. 1,500,000/- (fifteen lac rupees) was promised to be paid on 15.04.2014. That on 15.04.2014 defendant paid Rs. 800,000/- and the remaining amount of Rs. 700,000/- (Seven lac rupees) is still outstanding against defendant. Plaintiff demanded the remaining amount of Rs. 700,000/- (Seven lac rupees) or return of the vehicle but in vain, hence, the present suit.

He further adduced that the plaintiff succeeded to prove his stance through his evidence and furthermore nothing in rebuttal or contradictory is available on the record. Hence prayed that the suit in hand may kindly be decreed in favour of plaintiff and against the defendant for the relief as claimed for.

8. Contrary to this learned counsel for the defendants argued that the plaintiff has approached this court not with clean hands. He further adduced that plaintiff has filed a baseless case against the defendant. He further argued that plaintiff did not hand over the original documents of the said vehicle. He further adduced that plaintiff failed to prove his case through cogent, convincing and reliable evidence while on the other hand the defendant succeeded to produce evidence in light and support of their stance as narrated in the written statement. Hence, prayed that as plaintiff failed to prove his case, hence the suit in hand may kindly be dismissed with costs.
9. Now on perusal of record and available evidence the issue wise findings of the court are as under.

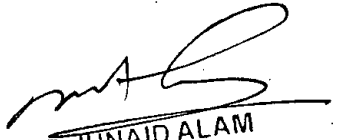
**ISSUE NO. 2:**

**Whether suit of plaintiff is within time? OPP Orakzai at Kalaya**

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

Burden of this issue on plaintiff. Contention of defendant is that suit of plaintiff is not within time. Period of limitation for filing declaratory suit under Article 120 of Limitation Act, is six years. Furthermore, after the 25<sup>th</sup> Constitutional (Amendment) Act, 2018, all Federal and Provincial Laws stood extended to the newly merged districts. Suit of plaintiff is held to be within time. Hence, issue is decided in positive in favor of plaintiff against defendant.

**ISSUE NO. 3:**

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

**Whether this court has got jurisdiction to entertain the suit of plaintiff? OPD**

This objection has neither been taken in the preliminary objection in the written statement nor brought on record during course of recording evidence and arguments. Burden of proof regarding this issue was on defendant, although, defendant failed to discharge his duty in this respect however keeping in view the circumstances of the instant case the issue is decided in positive.

**ISSUE NO. 4:**

**Whether suit of plaintiff is hit by res-judicata? OPD**

Burden of proof regarding this issue was on defendant, however, defendant failed to discharge his duty

in this respect, therefore, this issue is decided in negative against the defendant.

**ISSUE NO. 5:**

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

Burden of proof regarding this issue was on defendant. All the parties which are necessary to be impleaded in the instant suit are rightly and correctly arrayed in the plaint. Similarly, no party has been detected by the defendant to be improperly or unnecessarily enlisted in the suit. Therefore, issue is decided in negative against the defendant.


**ISSUE NO. 6:**

**Whether plaintiff is estopped to sue? OPD**

Burden of proof regarding this issue was on defendant. Estoppel needs cogent, convincing and reliable evidence which is lacking on the part of defendant, therefore issue is decided in negative and against the defendant.


**ISSUE NO. 7 & 8:**

**Whether plaintiff sold Toyota Vigo Pick-Up bearing Registration no. RU-336 Model 2007 to defendant in lieu of Rs. 3,000,000/- vide deed dated 28.10.2013? OPP**

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

**Whether out of the whole sale consideration and amount of Rs. 700,000/- is still outstanding against the defendant? OPP**

Issues no. 7 & 8 are interlinked, hence, taken together for discussion.

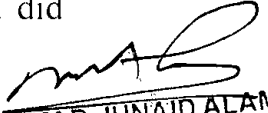
  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

Plaintiff has stated in his plaint that he had filed the instant suit for recovery of Rs. 700,000/- and return of vehicle as alternate to the effect that plaintiff sold his Vego Pick Up, bearing registration no. RU 336, Islamabad, Model 2007, vide sale deed dated 28.10.2013 in lieu of Rs. 3,000,000/- (thirty lac rupees). That out of sale consideration, Rs. 1,500,000/- (fifteen lac rupees) was paid by defendant and the remaining amount of Rs. 1,500,000/- (fifteen lac rupees) was promised to be paid on 15.04.2014. That on 15.04.2014 defendant was paid Rs. 800,000/- and the remaining amount of Rs. 700,000/- (Seven lac rupees) is still outstanding against defendant. Hence, he is entitled for the recovery of same from the defendant. To prove his stance plaintiff produced one Abdul Ullah Shah son of Islam Shah as PW-01, who is one of the jirga member, previously conducted jirga between parties to the suit. He stated on oath in light and support of the stance of plaintiff as alleged in the plaint. He produced his copy of CNIC and



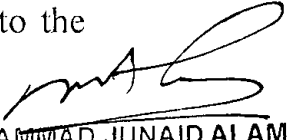
deed which are Ex. PW-1/1 & Ex. PW-1/2 respectively. During cross examination he deposed that it is correct that he was not present during the bargaining between the parties. Also stated that, it is correct that defendant paid eight lac rupees to plaintiff in his presence. Self-stated that defendant had paid fifteen lacs in cash to plaintiff. It is further correct that plaintiff seized and taken into possession the vehicle from the defendant in Azad Kashmir.

PW-02 was produced and examined as one Muhammad Rafiq son of Numan Shah. He produced his copy of CNIC which is Ex. PW-2/1. Who deposed on oath in light and support of the stance of plaintiff as alleged in the plaint. During cross examination he stated that he is not the witness of deal agreement between the parties. He stated that it is correct that the jirga was conducted between the parties, however, defendant did not sign the same and did not submit bond and had fled away from the jirga.

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

PW-03 was produced and examined as one Luqman Shah son of Wazir Gul, who deposed on oath in light and support of the stance of plaintiff previously alleged in the plaint. He was one of the witness of the contract deal of Toyota Vigo Pick-Up. He produced his copy of CNIC, copy of jirga verdict and copy of agreement deed, which are

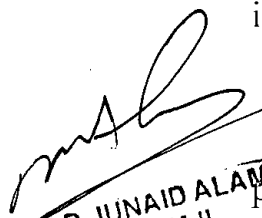
exhibited as Ex. PW-3/1 to Ex. PW-3/3 respectively. During cross examination he deposed that it is correct that agreement deed has not been attested by the oath commissioner and stated that it is also correct that original documents are in possession of plaintiff. It is further correct that the said vehicle was given on rent by defendant in Azad Kashmir. He further stated that he does not have any statement of defendant regarding jirga, previously conducted between parties to the suit. Self-stated that he called both the parties but defendant extent from jirga and jirga member declared defendant as *Parr* according to the local customs.

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

PW-04 was produced and examined as ~~Ormai~~ at Kalaya

Muhammad Ghani son of Muhammad Ghulam, the brother of plaintiff and as special attorney for plaintiff, who deposed on oath in light and support of the stance of plaintiff as stated in the plaint. During cross examination he stated that all the original documents of the said vehicle are in his possession. It is correct that he seized the said vehicle from one Sardar Ilyas and after that the same was taken into custody by local police. Self-stated that the first owner of the said vehicle was Muhammad Jameel and original documents are also in the name of the said Muhammad

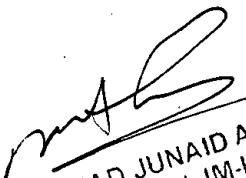
Jameel. FIR was also lodged against Muhammad Jameel and the plaintiff in the PS Bagh, Azad Kashmir. He further stated that his brother purchased the said vehicle from Muhammad Jameel. He further stated that they had not reported the issue in the Court before seizing the said vehicle. Self-stated that jirgas were conducted between the parties to suit regarding the said vehicle in the presence of witnesses. The plaintiff was promised by the defendant to pay the remaining amount. He further stated that the dispute between the parties around in the year 2013. It is correct that plaintiff has not approached to any court regarding the matter in issue. He further stated that plaintiff was promised by defendant to pay the remaining amount of seven lacs at the time of jirgas. However, when the defendant refused to pay the remaining amount in the year 2022 they filed the instant recovery suit against defendant.

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

In light of the above evidence produced by the plaintiff to prove the issues in hand, it has been noticed that PW-01 and PW-04 have fully supported the stance of plaintiff and furthermore, during cross examination of PWs, such questions were put to the witness which were otherwise an admission on the part of defendant. For instance, during cross-examination of PW-02 a question

was put to the witness to which he replied that *"it is correct that he is not witness of the said contract, which was executed between plaintiff and defendant"*. This question from PW-02 is otherwise an admission of the execution of agreement, either oral or written, previously executed between parties to the suit. Furthermore, during cross examination of PW-04 a question was put to him, to which he answered that *"jirgas were conducted between the parties is in respect of remaining outstanding of seven lacs against defendant"*. Putting this question by the defendant also amounts to admission regarding the non-payment of remaining amount to plaintiff, for the reason that defendant is admitting the dispute regarding remaining amount. Furthermore, there is nothing such available in the cross examination of PWs which could suggest that had paid the remaining seven lacs rupees to plaintiff.

DW-01 namely Abdul Wali (defendant) admits in his cross examination that:

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

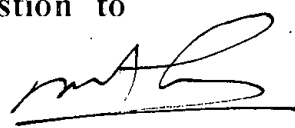
یہ درست ہے۔ کہ مابین فریقین گاڑی کا سودا بعوض تین لاکھ ہوا تھا۔ یہ درست ہے۔ کہ پندرہ لاکھ مدعی کو نقد آدا کئے۔ اور بقایا آٹھ لاکھ مقررہ تاریخ پر آدا کئے اور بقایا مجھ پر سات لاکھ روپے رہ گئے۔

In light of the above findings the plaintiff has succeeded to prove the issues in hand through cogent, convincing and confidence inspiring evidence, hence

accordingly the issues in hand are hereby decided in positive in favour of plaintiff and against the defendant.

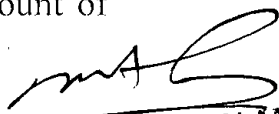
**ISSUE NO. 9:**

**Whether plaintiff defaulted in handing over original registration documents of the vehicle in question to defendant? OPD**

  
MUHAMMAD JUNAID ALAM  
C-14, Phase I / JM-II  
Orakzai at Kalaya

Defendant in his written statement has stated that the plaintiff had not approached this court with clean hands. He further adduced that plaintiff has filed a baseless case against the defendant. Defendant further stated in his written statement that plaintiff had not handed over the original documents of the said vehicle to him. To prove his stance defendant himself appeared and deposed as DW-01, who deposed on oath in light and support of his stance previously alleged in the written statement. During cross examination he stated that it is correct that an agreement was made between parties to the suit regarding the said vehicle in Rs. 3,000,000/- (thirty lacs rupees). He also stated that it is further correct that he had paid Rs. 1,500,000/- (fifteen lacs rupees) in cash while further paid Rs. 800,000/- (eight lacs rupees) on the fixed date. He further stated that Rs. 700,000/- (seven lacs rupees) was outstanding against him. Self-stated that plaintiff did not

hand over the original documents, therefore, the remaining amount outstanding against him. He further stated that it is correct that plaintiff had given application at the Police Station and police called me to the PS. It was decided by the DRC that plaintiff had to return the said vehicle to defendant and defendant has pay the remaining amount of seven lacs rupees to the plaintiff.

  
MUHAMMAD JUNAID ALAM  
by the Judge / JM-II  
Orakzai at Kalaya

In light of the above evidence produced by the defendant to prove the issue in hand, it has been noticed that although initially in his written statement and subsequently in his statement as DW-01, defendant has stated that the contract/bargaining of vehicle was of Rs. Thirty lacs rupees and fifteen lacs was paid in cash while eight lacs rupees paid on the other fixed date and remaining seven lacs rupees was not paid as the plaintiff was not handing over the original documents of the said vehicle, to the defendant. But this stance of defendant has not been rebutted by the plaintiff, therefore, the court declared that the defendant is entitled to receive the original documents of the vehicle in question.

In light of what has been discussed above as defendant prove the issue in hand through cogent, convincing and reliable evidence, hence accordingly the

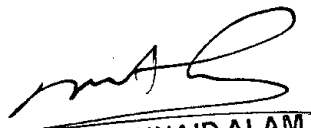
issue in hand is hereby decided in positive in favor of defendant and against the plaintiff.

**ISSUE NO. 1**

**Whether plaintiff has got a cause of action? OPP**

In wake of issue wise findings above, the plaintiff has got a cause of action, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiff and against the defendant.

**ISSUE NO.11:**

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

**Whether plaintiff is entitled to the decree as prayed for?**

**OPP**

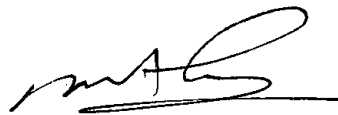
In wake of the issue wise findings above, plaintiff is entitled to the partial and conditional decree as prayed for in the prayer Alif of the plaint, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiff and against the defendants.

**Relief:**

As per the detailed discussion upon various issues, the suit of plaintiff is hereby decreed to the extent of Para Alif i.e recovery of Rs. 700,000/- from the defendant, subject to the condition of handing over the original documents of the vehicle in question by the plaintiff to the defendants and Para Bay of the plaint is dismissed. No

order as to costs. File be consigned to record room after its necessary completion.

Announced.  
24.03.2025

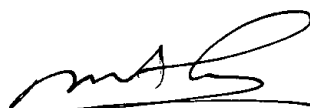


Muhammad Junaid Alam,  
Civil Judge-II,  
Tehsil Courts Kalaya, Orakzai

C E R T I F I C A T E

Certified that this judgment consists of sixteen (16) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 24.03.2025



Muhammad Junaid Alam,  
Civil Judge-II,  
Tehsil Courts Kalaya, Orakzai