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SIAL GUL ETC. VS SALEEM MARJAN ETC.

Civil Appeal No. 2/13 of 2025

**IN THE COURT OF HAQ NAWAZ,**  
**DISTRICT JUDGE, ORAKZAI (AT BABER MELA)**

CIVIL APPEAL NO. : 2/13 OF 2025  
DATE OF INSTITUTION : 04.03.2025  
DATE OF DECISION : 15.05.2025

1. SIAL GUL
2. HABIB REHMAN
3. MUNAWAR GUL, ALL SONS OF NAZEER GUL
4. JANKA BIBI W/O ABDUL KHANAN AND D/O NAZEER GUL,  
ALL RESIDENTS OF CASTE RABIA KHEL, TAPA PIKHEL,  
BAZA KALEY, TEHSIL ISMAILZAI, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. SALEEM MARJAN S/O SAR GUL
2. SAID KHAN S/O GULFARAZ
3. BISMILLAH KHAN S/O NAZEER GUL
4. MUZAFAR KHAN S/O GUL MIDAR
5. LATIF S/O GUL HAKEEM
6. JUMA GUL S/O SHEHZAD
7. YOUSAF S/O ITBAR GUL  
ALL RESIDENTS OF CASTE RABIA KHEL, TAPA PIKHEL,  
BAZA KALEY, TEHSIL ISMAILZAI, DISTRICT ORAKZAI

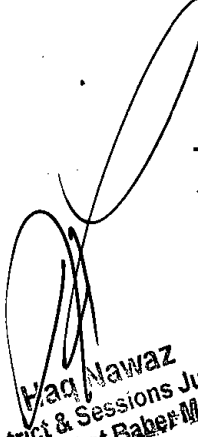
..... (RESPONDENTS)

**Present** : Mr. Shaheen Muhammad Advocate for appellants.  
: Abid Ali Advocate for respondents.

JUDGEMENT  
15.05.2025


This civil appeal was preferred by the appellants against the judgment and decree dated 10.02.2025 passed by the court of learned Senior Civil Judge, Orakzai, in civil suit no. 45/1 of 2022.

- (2) The suit was brought by the appellants for declaration and permanent as well as mandatory injunction to the effect that they are owners in possession of the suit property situated beneath the road to Village Tari, District Orakzai described with four boundaries in headnote of the plaint. The respondents have got no concern with the suit property and their claim of

  
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ownership is against the facts and law. However, they have constructed a kacha house in the suit land forcibly and they are bent upon to construct road towards Village Tari. The appellants also sought demolition of the kacha house and road in case the respondents constructed the same during pendency of the suit.

- (3) According to averments of the plaint, the suit property was the ancestral ownership of appellants which was devolved upon them from their predecessors and they are in possession of the same since long. They have also constructed residential houses in the suit land. The respondents have got no concern with the suit property but they are bent upon to possess the same forcibly and have constructed a kacha house and thereby causing interference in lawful possession of the appellants. They are also trying to construct road towards Village Tari in the suit land unauthorisedly. The respondents were repeatedly asked to refrain from their illegal acts, but they refused; therefore, the suit was filed.

  
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- (4) The respondents contested the suit by submitting their written statement. They alleged the purchase of suit land from Farooq s/o Said Marjan about 40 years back for a consideration of Rs. 75,000/-. Pleadings of the parties were reduced to the following issues;

- I. *Whether the plaintiffs have got a cause of action?*
- II. *Whether the suit of the plaintiffs is time barred?*

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

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

*V. Whether the suit property is the ownership of the plaintiffs and the plaintiffs are entitled to enjoy all the rights associated with the suit property?*

*VI. Whether the defendants have purchased the suit property are entitled to enjoy all the rights associated with the same?*

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

*VIII. Relief.*

(5) After recording pro and contra evidence and hearing both the parties, the learned trial court dismissed the suit through his impugned judgment and decree, hence this appeal was filed.

(6) I have heard learned counsels for the parties and perused the record.

(7) The appellants have given the following boundaries of the suit land in the headnote of the plaint;

North: Road and property of the appellants

South: Property of the respondents

East: Property of Aslam Khan

West: Property of Fazal Habib.

During the course of arguments, the appellants produced two witnesses as PW-1 and PW-2 besides recording the statement of attorney for the appellants as PW-3. The PW-1 mentioned different boundaries of the suit land in his statement towards south and west whereas the PW-2 described two different boundaries towards north and east of the suit land. It was thus

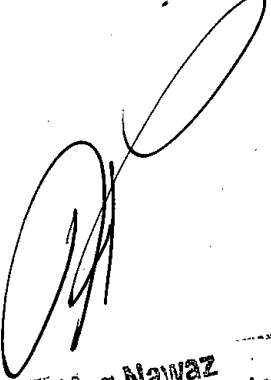
evident that both the PW-1 and PW-2 were not certain with regard to boundaries of the suit property.

The learned counsel for the appellants during his arguments referred to earlier written statement of the respondents submitted on 11.03.2021 in Civil Suit No. 129/1 of 2020 before institution of the fresh suit with permission of the court and submitted that they in their earlier written statement alleged hereditary ownership of the suit property as against their present stance in the written statement in which they claimed the suit property to be their purchased ownership.

The perusal of written statement of the respondents shows that they allege the purchase of suit property about 40 years back.

During the course of evidence, the respondents produced Muhammad Farooq s/o Said Marjan who deposed that his father sold out the suit property in favour of predecessor of the respondents for a consideration of Rs. 75,000/-. Since, the said transaction was taken place about 40 years back between the predecessors of the respondents and DW-1; therefore, claiming ownership of the suit property as hereditary, being devolved upon the respondents from their predecessor, does not seem to be in contradiction with the fact that the suit property was originally purchased from the predecessor of DW-1.

The attorney for the respondents has also produced a jirga verdict before the court as Ex. DW 4/1. The jirga members were also produced before the court as DW-2 and DW-3. Both

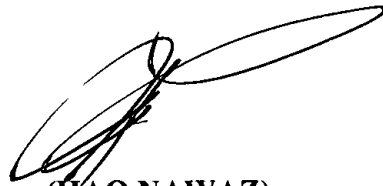
  
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of them deposed that the jirga was conducted in respect of the present dispute between the parties. During the jirga proceedings, the DW-1 deposed in favour of the respondents; therefore, the jirga decided the issue in favour of the respondents.

Though the learned counsel for the appellants argued that the said jirga verdict Ex. DW 4/1 bears no signatures of the parties but the fact of convening jirgas in respect of the present dispute was admitted by the attorney for the appellants in his cross examination as PW-3.

- (8) In view of the above facts and circumstances, the suit was rightly dismissed by the trial court. This appeal, being devoid of merits, is dismissed. Judgment announced. File of this court be consigned to record room after its necessary completion and compilation.

Dated: 15.05.2025

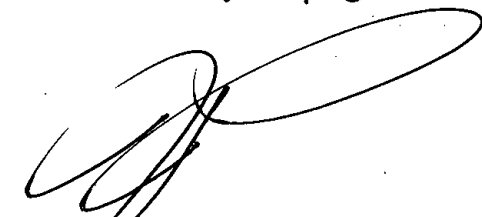
  
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**CERTIFICATE**

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 15.05.2025



  
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