

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

**Suit No. 13/1 of 2021**

**Date of Original Institution.....31.03.2021**

**Date of transfer to this Court.....08.03.2023**

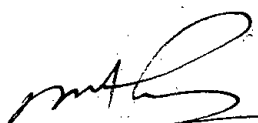
**Date of Decision of the suit.....11.03.2025**

ISMAIL KHAN SON OF MEER AKBAR, RESIDENT OF QOM  
MISHTI, TAPA DARVI KHEL VILLAGE MISHTI BAZAR  
TEHSIL CENTRAL DISTRICT ORAKZAI.

.....PLAINTIFF

VERSUS

1. SAMI ULLAH ALIAS ISRAEL,
2. KHALIL AHMAD AND
3. IKRAM ULLAH, ALL RESIDENTS OF QOM MISHTI,  
TAPPA DARVI KHEL, TEHSIL CENTRAL DISTRICT  
ORAKZAI.

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

.....DEFENDANTS

**SUIT FOR DECLARATION AND PERMANENT  
INJUNCTION**

**Counsel for plaintiff: Mr. Sana Ullah Khan Advocate**

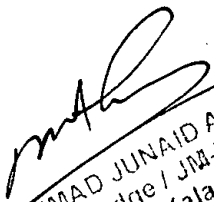
**Counsel for defendants: Mr. Abid Ali Advocate**

**JUDGMENT**

**11.03.2025**

Vide this judgment the Court intends to dispose of suit  
instant suit filed by plaintiff against defendants for  
declaration and perpetual injunction to the effect that the suit  
property is the joint ownership of the parties to the suit.

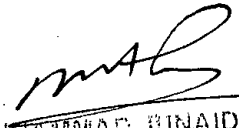
1. Brief facts of the case as narrated in the plaint are that plaintiff and defendants are real brothers inter se and the suit property is the legacy of one Meer Akbar, the father of parties to the suit. Furthermore, plaintiff alleged that he is owner in possession of the suit property detailed in the headnote of the plaint to the extent of 1/4<sup>th</sup> share being inherited by him from his predecessor. That the suit property is still un-partitioned and until now no private partition has taken place between plaintiff and defendants. Defendants have got no right to claim their possession over the whole joint and un-partitioned property and further to deny the right and stance of plaintiff. Furthermore, defendants illegally interfered with the suit property and in this respect defendants were time and again asked not to interfere with the share of plaintiff in the suit property or claim their ownership over the same but they refused, hence the instant suit has been instituted.

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

2. After institution of the suit, the defendants were summoned and accordingly defendant no. 01 & 03 appeared and submitted their written statement with legal and factual objections raised therein, while defendant no. 02 remained absent despite proper service, hence, placed and proceeded ex-parte.


3. Out of controversies of the parties, as raised in their respective pleadings, the Court has framed the following issues.

1. Whether the plaintiff has got a cause of action?
2. Whether the suit property being legacy of Meer Akbar and is joint ownership of the parties to the suit and plaintiff is entitled for his 1/4<sup>th</sup> share in the same? OPP
3. Whether the suit property is ownership of defendant no. 01 & 03, as there previously existed a dispute in respect of suit property with one Seen Akbar which was resolved by defendant no. 01 & 03 and all the expenses were met by defendant no. 01 & 03, include sale of 12 tola gold? OPD
4. Whether the plaintiff is entitled to the decree as prayed for?
5. 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. Plaintiff produced as many as three witnesses and thereafter closed his evidence. Contrary to this, defendants also 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 plaintiff

opened the arguments and argued that plaintiff is the owner in possession of the suit property detailed in the headnote of the plaint to the extent of 1/4<sup>th</sup> share being inherited by the parties from their predecessor. Defendants have got no right to claim their possession over the share of plaintiff in the suit property or further to deny the stance of plaintiff. He further argued that the plaintiff has succeeded to prove his 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 favor of plaintiff and against the defendants for the relief as prayed for.

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


6. Contrary to this learned counsel for the defendants argued that plaintiffs have got no cause of action. He further adduced that suit property is the ownership in possession of defendants. Moreover, suit property had been neither joint ownership nor inherited from the predecessor of the parties i.e. Meer Akber property. Learned counsel for defendants further contended that defendants have purchased the suit property from one Mirwas Khan. He further argued that plaintiff failed to prove his stance through cogent and convincing evidence. While, on the other hand, the defendants have succeeded to produce evidence in light and

support of their stance alleged in their written statement.

Hence, prayed that as plaintiff failed to prove his case, accordingly the suit in hand may kindly be dismissed.

7. In the light of perusal of record, available evidence and valuable assistance of both the learned counsels for the parties the issue wise findings are as under.

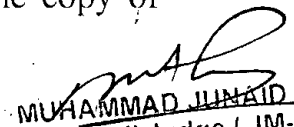
**ISSUE NO. 2:**

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

**Whether the suit property being legacy of Meer Akber and is joint ownership of the parties to the suit and plaintiff is entitled for his 1/4<sup>th</sup> share in the same? OPP**

Plaintiff has claimed in his plaint that he is owner in possession of the suit property to the extent of 1/4<sup>th</sup> of his share being inherited by the parties from their predecessor. That the suit property is still un-partitioned and until now no private or official partition has taken place between plaintiff and defendants. To prove his stance plaintiff produced one Taj Ali Khan son of Faqeer Hussain in the witness box as PW-01 who deposed in light and support of the stance of plaintiff as claimed in the plaint. During cross examination he produced his CNIC which is Ex. PW-X-1/1. He stated that plaintiff and defendant no. 01 had jointly resided in one house, prior to dispute on the suit property with one Seen Akber. He further stated that dispute over the suit property with Seen Akber ended just 5/6 years ago. He stated that the

dispute over the suit property had been going on for decades. It is incorrect that during dispute over the suit property, all the expenses had been paid by defendant no. 01 only. Self-stated that during dispute over the suit property all the expenses have jointly been incurred by plaintiff and defendant no. 01. It is correct that Jirga was convened between plaintiff and defendant no. 01 regarding expenses of the enmity with Seen Akber over the suit property. It is also correct that plaintiff resided with defendants and then he went abroad for livelihood. He lastly produced the copy of passport of plaintiff is Ex. PW-X-1/2.

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

PW-02 was produced and examined as one Ajmir Badsrah, who deposed on oath in light and support of the stance of plaintiff as contained in the plaint. During cross examination nothing contradictory has been extracted out of him.

PW-03 was produced and examined as one Arif Khan son of Faqeer Hussain, who stated on oath in light and support of stance of plaintiff previously alleged in the plaint. During cross examination he deposed that I do not know about the previous enmity with Seen Akber over the suit property. Plaintiff had gone abroad for livelihood. It is correct that suit property was in possession of Seen Akber since long.

In light of the above evidence produced by plaintiff to prove the issue in hand, it has been noticed that all the PWs deposed in light and support of the stance of plaintiff as stated in the plaint and furthermore, during cross examination the opposite party failed to contradict the witnesses in material particular and thus nothing in rebuttal or contradictory has been brought on the record. Moreover, such questions were put to the witnesses which were otherwise admissions on the part of defendants.

During cross examination of PW-01 it has been brought on the record that the parties to the suit had dispute over the suit property with Seen Akber. Similarly, when PW-02 appeared in the witness box he also deposed that he has the knowledge about the dispute over the suit property with Seen Akber. Furthermore, PW-01 in his cross examination stated that at the time of dispute over the suit property plaintiff and defendant no. 01 were jointly settled and lived together. It also pertinent to mention here that these answers/statements of PWs were not even rebutted through suggestions. On the other hand, all the DWs admitted the stance of the plaintiff that the suit property is the legacy of the Meer Akber and both the parties are entitled to their due shares. DW-01 Gul Ajab Khan stated in his cross examination that it is correct

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

that defendant no. 01 has not purchased the suit property but it was ancestral property.

یہ درست ہے کہ سمیع اللہ نے آراضی متدعوہ خریدی نہیں ہے بلکہ موروثی جائیداد ہے۔

DW-01 further in his self-stated statement said that defendant no. 01 sold out 12 tola gold of his wife and with the same amount he conducted jirgas over the suit property, therefore, it is the right of defendant no. 01.

از خود کہا کہ مدعی یا مدعیہ علیہم جس جائیداد پر تنازعہ کر رہے ہیں وہ سمیع اللہ نے بارہ تولے سونا جو اس کے بیوی کا تھا فروخت کر کے اسی رقم سے جرگہ جات و دوشمنی کی جس میں تاوان و نقصان ہوا وہ سمیع اللہ کا حق ہے۔

But on the other hand DW-01 says:

مجھے مدعی علیہم کے جرگوں میں تاوان کی بابت کوئی علم نہ ہے

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

DW-02, Walayat Khan stated in his cross examination that it is correct that the suit property is ancestral property and it was not purchased. It is correct that every brother and sister have the right in every inch of the ancestral property.

یہ درست ہے کہ جائیداد متدعوہ بھی موروثی ہے اور زیر خرید نہیں ہے۔ یہ درست ہے کہ موروثی جائیداد میں تمام بہن بھائیوں کا برابر حصہ ہوتا ہے۔

DW-02 further stated in his cross examination that:

یہ درست ہے کہ جب میرا حقیقی بھائی جائیداد پر نقصان وغیرہ کریں تو اسے کسی کی وراثت ختم نہیں ہوتی۔



DW-03, Umar Hayat stated in his cross examination that suit property is the ancestral property of parties to the suit.

No partition had been effected between the parties to the suit.

جائیداد متدعو یہ مدعی اور مدعا علیہم کی موروثی جائیداد ہیں۔ فریقین مقدمہ مدعی اور مدعا علیہم کی ابھی تک کوئی تقسیم نہیں ہوئی ہے۔

DW-04, defendant no. 01 Sami Ullah stated in his cross examination that it is correct that the suit property is ancestral and inherited from the time of one Ghulam Haider.

یہ درست ہے کہ اراضی متدعو یہ وراثتی ہے اور غلام حیدر کے وقت سے موروثی چلی آرہی ہے۔

DW-04, further stated that suit property is not purchased rather it was ancestral.

جائیداد متدعو یہ زیر خرید نہیں ہے بلکہ موروثی ہے۔

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

DW-04, further stated in his cross examination that:

ہم سب اور والد صاحب ایک ساتھ ایک ہی گھر میں رہتے تھے ہم والد کی فوتگی کے بعد الگ ہوئے۔ اراضی

متدعو یہ کی تقسیم ابھی تک نہیں ہوئی ہے۔

DW-04, further stated in his cross examination that the dispute started over the suit property after demise of their father.

زمین پر تنازعہ والد صاحب کی فوتگی کے بعد شروع ہوئی۔

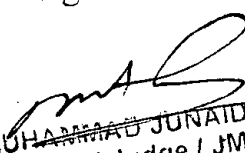
DW-04 further stated in his cross examination that he had conducted jirgas after the demise of his father and the dispute over the suit property for about three years.

جرگہ جات میں نے والد صاحب کے وفات کے بعد کئے ہیں۔ تین سال تک اراضی پر تنازعہ چلتا رہا۔

In light of the above discussion, it is clear that all the DWs including the defendant no. 01 himself admits that the suit property is ancestral and every legal heir has his right to inheritance. Furthermore, the DW-04 (defendant no. 01) Sami Ullah admits the jirgas were conducted after the demise of their father namely Meer Akber, which means that jirgas were conducted upon the inherited property. Thus, plaintiff have succeeded to prove issue in hand through cogent, convincing and reliable evidence and through the admissions of the DWs, hence, accordingly the issue in hand is hereby decided in positive in favor of plaintiff and against the defendants.

#### ISSUE NO. 04

**Whether the suit property is ownership of defendant no. 01 & 03, as there previously existed a dispute in respect of suit property with one Seen Akber which was resolved by defendant no. 01 & 03 and all the expenses were met by defendant no. 01 & 03, include sale of 12 tola gold? OPD**

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

Defendants have alleged in their written statement that suit property is the ownership in possession of defendants. Moreover, claimed that the suit property had neither been joint nor inherited property. They further contended that defendants previously purchased the suit property from one Mirwas Khan. To prove their stance defendants produced one Gul Ajab Khan s/o Zaman Khan as DW-01, who stated on oath in light and support of stance of defendants as alleged in the written statement. However, during cross examination he contradicted his statement that it is correct that defendant no. 01 has not purchased the suit property rather it is ancestral property. Self-stated that suit property was in possession of other persons and defendant no. 01 returned the same through enmities and jirgas with use of huge costs. But contradicted that he do not know about the losses over the suit property.

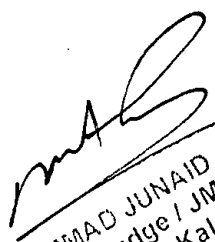
  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

One Walayat Khan son of Karim Khan was produced and examined as DW-02, who deposed in light and support of issue in hand. During cross examination he admitted that it is correct that one Meer Akber is the father of parties to the suit. Self-stated that defendant no. 01 was alone in all the jirgas which were conducted over the suit property and enmity. He further stated that he was not a Jirga member regarding the suit property. Self-stated that he was present with his uncle

and he was a Jirga member. He also admitted that the suit property was the ancestral property not purchased one. Also, stated that it is also correct that every brother and sister have the right in every inch of the ancestral property.

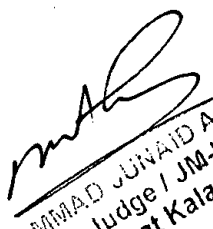
One Umar Hayat son of Seen Akbar appeared as DW-03. Who deposed in light and support of issue in hand. During cross examination he admitted that suit property is ancestral property of the parties to the suit. He also admitted that no private partition has been made between parties to the suit.

DW-04 Sami Ullah, defendant no. 01 himself appeared in the witness box. He produced the jirga verdict dated 08.09.1990, the sketch of fields and special power of attorney which are Ex. DW-4/1 to Ex. DW-4/3 respectively. He stated in his examination in chief that the suit property was left by his father before 1947 and the same remained in possession of Seen Akbar for about 50 years. However, Seen Akbar always denied to hand over the possession of the suit property. Thereafter, many jirgas were held with him, jirga member administered special oath on Holy Quran. Later on, Jirga forgave the oath on Quran and return the possession of the suit property to defendant no. 01. During cross examination he admitted that it is correct that the suit property is inherited one and the same devolved from one

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

Ghulam Haider the predecessor of the parties to the suit. He contradicted his stance as stated in the written statement and said that the suit property was ancestral property and it was not purchased. He further admitted that the suit property has not been partitioned. He stated that he has no receipt of buying and selling of 12 tola gold which were utilized for conducting jirgas. He further stated that jirgas were conducted after death of his father. The dispute over the suit property was for three years.

In light of the above evidence produced by defendants, in order to prove the issue in hand, it has been noticed that all the DWs had supported the stance of defendants in their respective examination chief but in their cross examination some material contradiction and admissions were brought on the record by the opposite party. Defendants in their written statement stated that the suit property is not ancestral property rather the suit property has been gained by the defendant no. 01 & 03 through enmities and jirgas. When DW-01 appeared in the witness box he deposed in his cross examination that the suit property is ancestral property while it was not purchased. Similarly, DW-02 strengthens the stance of DW-01, and has also stated in his cross examination the suit property is ancestral. Defendants previously stated in

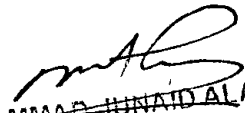
  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

the written statement that defendant no. 01 sold 12 tola gold ornaments of his wife and with the same amount he conducted jirgas and gained the suit property. But on the other hand, DW-01 stated in his cross examination that he do not know about the expenses incurred by defendant no.01 over the suit property. DW-02 stated in his cross examination that it is correct that if real brother do not pay the expenses/losses of jirgas over the any property then his right to inheritance is not effected. Furthermore, it is also pertinent to mention here that all DWs did not utter a single word regarding special oath on Holy Quran. It is also worth mentioning here that all the DWs admitted that the suit property was ancestral property and contradicted over losses on jirgas, special oath on Holy Quran and enmity.

In light of the above discussion the court holds that the defendants failed to prove the issue in hand through their cogent, convincing and reliable evidence, hence issue in hand is hereby decided in negative against defendants and in favour of plaintiff.

**ISSUE NO. 01**

**Whether the plaintiff has got a cause of action? O.P.P**

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

In wake of issue wise findings above, the plaintiff has got a cause of action as the suit property is ancestral property and

joint ownership of the parties and the plaintiff has legal and shari share of 1/4<sup>th</sup> in the suit property being the legal heir of Meer Akber. Hence, the issue in hand is decided in positive in favour of plaintiff and against the defendants.

**ISSUE NO.04:**


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

In wake of the issue wise findings above, the plaintiff has succeeded to prove his case through solid, reliable and convincing evidence and admission of DWs, thus, plaintiff is entitled to the decree as prayed for, hence the issue in hand is decided in positive in favour of plaintiff and against the defendants.

**Relief:**

As per the issue wise findings above the instant suit is hereby decreed in favor of plaintiff for the relief as prayed for. No order as to costs. File be consigned to the record room after its necessary completion, compilation and scanning.

**Announced**  
11.03.2025

  
**Muhammad Junaid Alam,**  
Judicial Magistrate-II,  
Tehsil Courts Kalaya, Orakzai

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

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

**Dated: 11.03.2025**



**Muhammad Junaid Alam,**  
Judicial Magistrate-II,  
Tehsil Courts Kalaya, Orakzai