

Case No. 02/12  
Case title: Lal Khan etc vs Hassan Khan etc

*In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.*

**IN THE COURT OF BAKHT ZADA**  
**ADDITIONAL DISTRICT JUDGE-I, ORAKZAI**  
**AT BABER MELA**

CIVIL REVISION NO. : 02/12 OF 2024  
DATE OF ORIGINAL INSTITUTION: 24.10.2024  
DATE OF TRANSFER IN : 27.11.2024  
DATE OF DECISION : 27.02.2025

1. LAL KHAN S/O SAROZAI
2. HAJI YOUSAF KHAN S/O ITBAR SHAH
3. NOOR MALKA S/O MEER DIL KHAN
4. MUHAMMAD YOUNAS S/O GHAIKAT KHAN
5. MUJEEB UR REHMAN S/O ZAFAR KHAN
6. HAJI DALIP KHAN S/O MOMIN
7. SYED MUHAMMAD S/O KHAN MUHAMMAD
8. AMEEN GUL S/O AHMAD GUL
9. AMEER JAN S/O STAR KHAN
10. GHILAF GUL S/O NADAR KHAN
11. ASHNA GUL S/O TIRAH GUL
12. TEHSEEN KHAN S/O NIAZ BAHADAR
13. NIAZMAT KHAN S/O ABDUL AKBIR
14. REHMAT KAREEM S/O SHARBAT KHAN
15. SAIF UL MALOOK S/O LAIR KHAN

ALL RESIDENTS OF CASTE STORI KHEL, TAPA MALA KHEL, TEHSIL  
LOWER, DISTRICT ORAKZAI.

.....(PETITIONERS)

**-VERSUS-**

16. MUHAMMAD HASSAN S/O JAVID HASSAN KHAN
17. JAVID HASSAN S/O ANAYAT ULLAH KHAN
18. MUHAMMAD BABAR KHAN S/O SAOOD KHAN
19. MUHAMMAD BEHRAM KHAN S/O SAOOD KHAN

ALL RESIDENTS OF BALA MANRI, PESHAWAR.

.....(RESPONDENTS)

**PRESENT:** MR. SANA ULLAH KHAN ADVOCATE FOR PETITIONERS  
: MR. MUHAMMAD SUFIAN MALIK FOR RESPONDENTS

**JUDGEMENT**  
**27.02.2025**

The instant Civil Revision is filed against the impugned order and judgment dated 08.08.2024 of the learned Civil Judge-I, Kalaya, Orakzai vide which the said court has dismissed application U/S 12(2) CPC filed by the petitioners/appellants for setting aside

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order/judgment dated 28.10.2018 passed by the court of Assistant Commissioners (Lower) Orakzai in suit No. 08/01, titled as "Hassan Khan Vs Stori Khel" instituted on 25.04.2018.

(2). Brief facts of the case are that respondent No. 1 filed an application (plaint) on 25.04.2018, before the court of Assistant Commissioner, Lower Orakzai, for appointment of Jirga for resolution of dispute over the suit property, namely "Khrasha Land". Summons to defendants caste "Stori Khel" were issued by Tehsildar, Lower Orakzai. Jirga was appointed and Jirga verdict was obtained. The Jirga verdict dated 23.10.2018 was attested by Assistant Commissioner, Lower Orakzai, and on the basis of which the land dispute was decided in favour of respondent No. 1, vide its judgment and decree/order dated 28.10.2018 by holding that the disputed property is the ownership of the respondents and they are entitled to the possession of the same.

(3). Being aggrieved from the judgment and decree/order dated 28.10.2018 of the Assistant Commissioner, Lower Orakzai, application U/S 12 (2) CPC was filed after suspension of FIGR, 2018 before the learned Civil Judge-I, Kalaya. After procuring attendance of the parties, the respondents submitted reply to the application u/s 12 (2) CPC. Issues were framed on 18.10.2022. After recording pro and contra evidence, the learned Civil Judge -I, Kalaya, Orakzai dismissed the application u/s 12(2) CPC vide its judgment and order dated 08.08.2024 and hence the instant civil revision.

(4). It is alleged that the dispute in respect of the suit land started between Tapa Mala Khel and Sadique Khan etc in the year 2005. That Sadique Khan filed a case titled "Sadique Khan VS Stori Khel"

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wherein Jirga of elders was appointed. Both the parties give authority to the Jirga. Four (04) persons from Tapa Mala Khel took oath on Holy Quran and Sadique Khal failed to appear before Jirga for oath and as per customs of the area the Jirga of elders declared him as "pard" (پٽ) in the year 2006 and application/suit of Sadique Khan was dismissed and since then the appellants/petitioners are in possession of the suit property as owners.

- (5). It is alleged that respondent No. 1 has got the impugned Judgment/decreed and order dated 28.10.2018 in his favour by committing fraud and misrepresentation. That no summons/notice have been served upon the defendants/appellants and the impugned order has been passed without considering the record and statements of PWs. It is alleged that neither a single person has been cited as defendants in suit No. 08/01, nor any notice has been served upon the opposite party. Furthermore, the order sheets of case No. 08/01 are silent about initiating any Ex-parte proceedings and appointment of Jirga of elders. That the notices/summons are fake which lacks the names of the persons on whom the same were to be served, rather the name of caste "Stori Khel" is mentioned in the column of defendants.

That caste "Stori Khel" is consisted of three (03) "Tapa jat" namely

- (1) Anjani, (2) Mala Khel and (3) Lalbi Khel. The defendants/appellants belong to Tapa Mala Khel, but no notice/summon is served upon any elder of Tapa Mala Khel, rather Tehsildar, Lower under his signature has issued several notices/summonses in the name of "Stori Khel" which is based on malafide, fraud, misrepresentation. One of the summons available on record has been issued for 14.04.2018 i.e., prior to the institution of

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suit. That there are two different versions of order and judgment dated 28.10.2018 available on the case file wherein one is handwritten, while the other is computer printed which are the result of collusion of the respondents. That another suit bearing No. 42/01 titled "Sadique Khan VS Stori Khel" on the same subject matter has been pending adjudication since 16.04.2015 wherein the present respondent No. 1 and respondent No. 2 are parties and they have participated in the proceedings by submitting application. The said suit was dismissed as withdrawn at the application of the counsel for the present respondents on 12.10.2019.

- (6). That finding of the learned Civil Judge-I, Kalaya on the issues are wrong, against law and facts on record. That neither any service of the defendants/present appellants have been procured in accordance with law nor any evidence has been recorded in suit No. 08/01 and the impugned Judgment in the said suit is passed without providing opportunity of hearing to the defendants/present appellants. They prayed for setting aside judgement and order dated 08.08.2024 of the learned Civil Judge-I, Kalaya and judgment and decree dated 28.10.2018 in suit No. 08/01 by acceptance of the instant civil revision.

- (7). After hearing arguments of the learned counsel for the parties available record perused which shows the following;

I. **Firstly**, although no record of the previous suit pertaining to the years of 2005/06 titled "Sadique Khan Vs Stori Khel" in respect of the same subject matter is available, before this court, but respondent No. 1 has admitted in his application (plaint) of suit No. 08/01 that previously the matter in issue was decided by the political

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authority (Tehsildar Lower) in the year 2006. If it was so, whether the subsequent suit was not barred u/s 11 of the Civil Procedure Code 1908, particularly while entertaining suit No. 08/01 under FIGR, 2018 to which the provision of Civil Procedure Code, 1908 are expressly applicable. It is also on record that another suit bearing No. 42/01 titled "Sadique Khan VS Stori Khel" on the same subject matter has been pending adjudication before APA Lower, Orakzai since 16.04.2015 which was transferred to the court of Senior Civil Judge, Orakzai on 25.06.2019 after merge of the Erstwhile FATA and the present respondents No. 1 and 2 have taken active part in the proceedings of the said suit, which was dismissed as withdrawn with permission to bring fresh suit at the application of the counsel for the present respondents on 12.10.2019, meaning thereby that the said suit was also instituted by the present respondents, furthermore, at the time of institution of suit No. 08/01, under FIGR, on 24.04.2018 and passing of order and judgment in the said suit on 28.10.2018, suit No. 42/01 was already pending adjudication before the court of APA, Lower/Assistant Commissioner, Lower Orakzai. The question arises that why the present respondents file suit No. 08/01 during the pendency of the suit No. 42/01 on the same subject matter between the same parties. The court of Assistant Commissioner, Lower Orakzai, decided suit No. 08/01 in five (05) days after writing its first order sheet on 23.10.2018, while on the other hand suit No. 42/01 instituted on 06.04.2015, was still pending adjudication at the time of deciding suit No. 08/01. Suit No. 42/01 titled "Sadique Khan VS Stori Khel" was dismissed as withdrawn with permission to bring fresh suit at the application of the counsel for the present respondents

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on 12.10.2019, but till date no fresh suit has been instituted, which is a clear instance of fraud and misrepresentation on record.

It is pertinent to mentioned here that suit No. 08/01 has been decided by the Assistant Commissioner Lower, while acting under FIGR, 2018. Section 10 of FIGR is reproduced below for ready reference;

*Section 10: Civil reference to the counsel of elders, where the Deputy Commissioner is satisfied from any information that a civil dispute exists between the parties which is likely to cause breach of peace, he may, for the settlement thereof make an order and writing stating the grounds for his being so satisfied, refer the dispute within fifteen (15) days to the counsel of elders, for findings of facts in accordance with Riwaj, which shall give its findings on facts within ninety (90) days on the issue and dispute, after making necessary inquiry and hearing the parties and their witnesses.*

So, in the present case, the procedure mentioned for submission of findings of the Jirga of elders, in accordance with *Riwaj* was ninety (90) days, but the same has been violated in the present case,

where the decision of counsel of elders has been obtained on the same date on which the Jirga was appointed by the Assistant Commissioner.

Section 2(c) of the FIGR, 2018 has defined "counsel of elders" which is reproduced below for reference;

*Section 2(c) "counsel of elders" means in the FATA, a counsel of three or more (in odd number) respectable elders appointed by the deputy Commissioner or the Judge, as the case may be, and presided*

*over by Assistant Commissioner vested with power u/s 30 of the court.*

In the above definition the number of members of the counsel of elders has been determined as three or more which should be in Odd Numbers, while in the present case in violation of section 2 (c) the joint statement of six (06) persons as members of so-called counsel of elders have been recorded instead of obtaining findings/decision of Jirga with detail of proceedings. Learned trial court while recording its findings on issue No. III has ignored these facts and legal provision of FIGR, 2018 which are part of record and cannot be ignored.

**II. Secondly,** the Assistant Commissioner Lower while acting under FIGR 2018 after repeal of the Frontier Crime Regulation, 1901 has mentioned in the last two lines of his order/judgment dated 28.10.2018 that *"previous Jirga and other documents are abolished"* so, whether he was competent to cancel the previous Jirga pertaining to the year 2006 with a stroke of pen without hearing the other party, after lapse of twelve years and in absence of any appeal filed against the same, furthermore, he was not supposed to have discarded the same in suit No. 42/01 titled "Sadique Khan VS Stori Khel" which was also pending adjudication at the time of passing order and judgment dated 28.10.2018. The said order of the Assistant Commissioner was passed without jurisdiction because FCR, 1901 was not in field at the time of order/judgment dated 28.10.2018. All these shows that the authority has been exercised arbitrarily by the Assistant Commissioner, Lower Orakzai.

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**III. Thirdly,** the Assistant Commissioner in his first order sheet of suit No. 08/01 on 23.10.2018, but neither attendance of the present appellants/petitioners has been marked, nor they have been proceeded Ex-parte. The Jirga members were appointed on 23.10.2018 and their verdict is also submitted and accepted by the Assistant Commissioner on the same date which speaks volumes of the undue efficiency of the court and Jirga members. In fact, the court was in hurry to issue decree in favour of the respondents before fixation of writ petition *No. 3098-P/2018 titled "Ali Azeem Afridi Vs Federation of Pakistan and Others"* before the Worthy Peshawar High Court, Peshawar vide decision of which FIGR, 2018 was suspended on 30.10.2018 i.e., two days before the passing of decree and judgment dated 28.10.2018, furthermore, the whole proceedings have been completed in five days in absence of the defendants/appellants.

**IV. Fourthly,** the best example of the fraud on record can be seen by perusing the copies of summons issued to the defendants/petitioners (Caste Stori Khel). Admittedly, the application (plaint) of suit No. 08/01 has been filed on 24.04.2018 as per endorsement of the Assistant Commissioner, Lower, Orakzai on the same, but one of the summon has been issued for 14.04.2018, which is issued before the institution of suit. The said summons are neither thumb impressed by any person or representative of caste Stori Khel, Tapa Mala Khel, nor the same bears the name of any elder/representative of the said caste from whom the service of summon has been done. The learned trial court has recorded its findings on the issue of service of the present appellants in suit No.

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08/01 by considering only the extracts of the oral statements of PWs recorded during the course of evidence in the trial u/s 12 (2) CPC, for example, in the impugned judgment dated 08.08.2024 the court has relied on the following extract of the statement of PW-3, regarding service of the defendants.

"جو کہ قوم ستوری ہتھ ملا خیل کے باشندے ہیں، یہ کہ میں مسیاں خاجی میناگل، آصف شاہ اور ملک جان کو جانتا ہوں، یہ درست ہے کہ ہمارے قوم ستوری خیل ہتھ ملا خیل کے مشران ہیں، یہ درست ہے کہ مڑکورہ بالا کسان اور صدیق خان کے مابین کئی جرگے ہو چکے ہیں، یہ درست ہے کہ مابین فریقین مختلف عدالتوں میں جسمیں میں اے-پی-اے، اور کمیشنر کی عدالتیں شامل ہیں۔ 2006 میں جو جرگہ ہوا تھا اس سے میں باخبر ہوں جس میں قرآن ہوا تھا۔ مجھے 2018 کے فیصلوں کا علم نہیں ہے"

The above extract of statement of PW-3 along with extracts of statements of PW-2 and PW-4 are not conclusive evidence about the service of defendants in suit No. 08/01. The learned trial court has totally ignored the documentary evidence in shape of summons and proceedings of the suit No. 08/01, which is not the mandate of law on the subject.

V. **Fifthly**, the perusal of case file of suit No. 08/01 shows that neither the attendance of the defendants/appellants has been marked of order sheet, nor they have been proceeded Ex-parte. There is no written statement available on the case file on behalf of defendants/appellants, but still the court of Assistant Commissioner framed issues in the said case file on 22.10.2018. So, the questions arises that from where the issues have been framed. The said act of the court of Assistant Commissioner, Lower has made the whole proceedings against law as well as doubtful. The learned trial court has not recorded any findings on this point.

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**VI. Sixthly,** after framing of issues, the court was bound have provided opportunity of evidence to the parties in accordance with section 10 of FIGR, 2018, but in the present case no evidence has been recorded at all, which rendered the order/judgment dated 28.10.2018 against law on the subject.

**VII. Seventhly,** the Jirga verdict submitted by the Jirga members is also silent about, the place of sitting of the Jirga, the details of proceedings carried out by the Jirga members, the attendance of the defendants/present petitioners, their names, the process of obtaining authority (واک اختیار) from the parties and most importantly the process of taking oath on the Holy Quran have been skipped and instead of a shortcut way of recording joint statements of the Jirga members was adopted, which is not in the shape of Jirga decision, rather the same is in shape of joint statements and personal opinion of the said Jirga members, furthermore, the number of the said Jirga members is six (06) who have signed the joint statement which is even number in violation of section 2 (c) of FIGR, 2018, wherein it is mentioned that the the number of Jirga members should be Odd in numbers. No opportunity of cross examination has been provided to the opposite party on the joint statement recorded by the Jirga members on the basis of which the Assistant Commissioner, Lower Orakzai has decided the whole case, meaning thereby that the defendants were not present in the court.

(8). Keeping in view the above discussion, the instant revision petition is hereby accepted and the impugned judgment and order dated 08.08.2024 of the learned trial court being devoid of merits is hereby set aside. Application u/s 12 (2) CPC succeeded and

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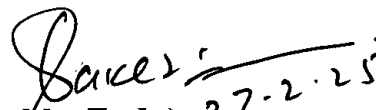
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consequently order/judgment and decree dated 28.10.2018 is set aside and the case is remanded back to the learned trial court with the directions to obtain amended plaint from the plaintiffs, wherein they should implead all the necessary parties by name, who are in possession of the suit property and against whom they are seeking relief, furthermore the measurement/quantum, description and boundaries of the suit property be also mentioned properly to ascertain the same in accordance with law. No order as to cost.

- (9). Record of the case along with copy of this order be sent to the learned trial court for proceedings in accordance with law. File of this court be consigned to record room within the stipulated period after completion and its compilation.

**Announced**

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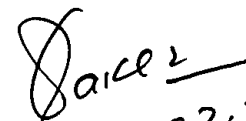
  
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**CERTIFICATE**

Certified that this judgment consists of eleven (11) pages.  
Each page has been read, corrected wherever necessary and  
signed by me.

Dated: 27.02.2025

  
(Bakht Zada) 27.2.25

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at Baber Mela