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

Civil Suit No. 71/1 of 2022
Date of Institution: 17.11.2022
Date of Transfer In: 21.05.2024
Date of Decision: 29.05.2025

1. Muhammad Saeed
2. Muhammad Islam
3. Muhammad Jameel
4. Muhammad Shakeel *sons of Muhammad Kamal (deceased)*
5. Mst. Hamina
6. Mst. Zeenat Begum
7. Mst. Amina
8. Mst. Ajmira *daughters of Muhammad Kamal (deceased)*
9. Muhammad Rafique s/o Usman Khan
10. Saif Ullah s/o Muhammad Latif
All R/O Qoum Mamozai, Tappa Aadu Khel, Village Pakka, Burhan Nawasi, District Orakzai.
.....(Plaintiffs)

VERSUS

1. Wilayat Khan
2. Shaheed Rehman
3. Sher Rehman *sons of Sardar Khan (deceased)*
4. Mst. Haid Jana
5. Mst. Mewa Jana *daughters of Sardar Khan (deceased)*
6. Asif
7. Afzal *sons of Wali Khan*
8. Mst. Husan Banu *wd/o Sher Afzal (deceased)*
9. Taza Khan
10. Raza Khan *sons of Wali Khan*
11. Malang Khan *s/o Aqal Khan (deceased)*
..... (Defendants)

SUIT FOR DECLARATION AND PERMANENT INJUNCTIONS

JUDGEMENT:
29.05.2025

This order is to decide the suit withing the meaning of notice u/o 17-R-03 CPC given to the plaintiffs with fine of Rs. 1500/- on 24.04.2025, but evidence was not produced.

Senior Civil Judge
Orakzai
29 MAY 2025

Again on 15.05.2025 notice was given to the plaintiffs with fine of Rs. 1500/- within the meaning of order 17 Rule 3 CPC but of no use.

Pleadings:

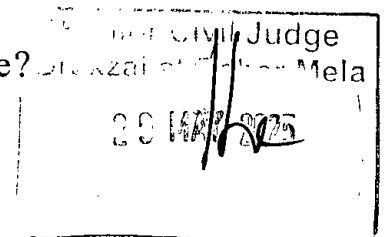
The claim as stated in the plaint is that the plaintiffs are the owners in possession of the suit property situated at "Pakka" the boundaries of which are mentioned in the headnote of the plaint, since their forefathers. That defendants are the tenants of the plaintiff and now they are refusing the ownership of the plaintiffs; hence, the present suit.

Written statement of the defendants begins with the regular objections to the legal validity of the suit, standing of the plaintiffs and competence of the forum for its trial. On facts, the defendants plainly deny the claim and version of the plaintiffs. They requested for dismissal of the suit.

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 cause of action?
2. Whether the suit is maintainable in its present form?
3. Whether the suit of the plaintiff is within time?
4. Whether this court has got jurisdiction?



5. Whether the plaintiffs are estopped to sue?
6. Whether the plaintiffs are coming as owners in possession of the property/green built and 02 houses situated at "Pakka" (point No. 01) and house No. 02 situated at point No. 02, the description of which is briefly given in the heading of the plaint, since their forefathers and the defendants have got no right to deny the ownership of the plaintiff?
7. Whether the defendants are coming owners in possession of the suit property since their forefathers?
8. Whether the plaintiffs have changed their stance in respect of the suit property in their initial plaint and amended plaints filed on 17.11.2022, which is fatal to their suit and amounts to mis-conduct?
9. Whether suit of the plaintiff is liable to be dismissed with special compensatory cost u/s 35-A CPC?
10. Whether the plaintiffs are entitled to the decree as prayed for?
11. Relief?

Reasoning/Ruling:

After all the legal formalities and framing of issues, parties were given the opportunity to produce their evidence

Senior Civil Judge
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but plaintiffs failed to do so despite several opportunities and notice u/o 17-R-03 was given to them on 24.04.2025 and 15.05.2025 with fine of Rs. 3000/-. On 21.05.2025, the plaintiffs again failed to produce their evidence and fine of Rs. 3000/- was imposed upon them with directions to produce their entire evidence till 10:00 AM but today he failed to produce evidence and made lame excuses.

Even today, he began his submissions at the bar by asking for leave for adjournment for one of his witnesses on the ground of a death in his family. When asked about the remaining 04 witnesses, he could not account for their absence.

The constitutional right of inexpensive and expeditious justice is a legal remedy available to both sides, and not just the plaintiff. The court is as duty bound to the defendant to relieve them of pending suits in a timely manner as it is bounden to the plaintiff to get him his due.

In the case at hand, the court tried all measures provided by law to persuade the plaintiffs into diligent and serious pursuit of their claim but to no avail. As evident from the record, the plaintiff is contumacious, and cannot be persuaded into meaningful pursuit of the case.

In these circumstances, the court is left with no other option but to close the right of evidence of plaintiffs.


26 MAY 2025
Orakzai District Court
Civil Judge
Mela

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Resultantly right of evidence of plaintiffs is closed under order 17 rule 3 CPC and the suit in hand is dismissed for lack of proof. Costs shall follow the event.

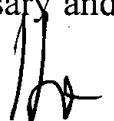
Case file be consigned to the record room after its necessary completion and compilation.

Announced
29.05.2025


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

CERTIFICATE

Certified that this judgment of mine consists of five (05) pages, each has been checked, corrected where necessary and signed by me.


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