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

Civil Suit No.	35/1 of 2023
Date of Institution:	30.09.2023
Date of Transfer In:	21.05.2024
Date of Decision:	30.05.2025

Piao Shah s/o Sahib Shah  
*R/O Qoum Mamozai, Tappa Abdur Raheem Khel, Askari Khel,  
Sama Mamozai, Tehsil Upper, District Orakzai*  
.....(Plaintiff)

**VERSUS**

1. Hakeem Badshah s/o Sahib Shah
  2. Mst. Beguma d/o Sahib Shah
  3. Mst. Sultan Bibi d/o Sahib Shah
- All R/O Qoum Mamozai, Tappa Abdur Raheem Khel, Askari  
Khel, Sama Mamozai, Tehsil Upper, District Orakzai*  
..... (Defendants)

**SUIT FOR DECLARATION OF TITLE, PARTITION AND  
CORRESPONDING INJUNCTION**

**JUDGEMENT:**

30.05.2025

This order is to decide a suit filed by Mr. Piao Shah, the plaintiff, for declaration of title, partition of the subject matter, and corresponding injunction against Mr. Hakim Badshah and others, the defendants.

**Pleadings:**

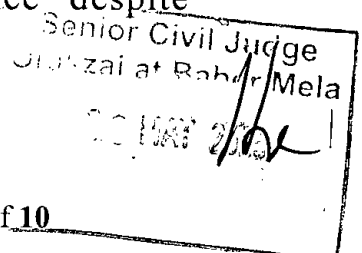
The claim as recounted in the plaint reads that plaintiff is owner of 3 Plots measuring 4 Jirabs, and a double storey residential building with 08 rooms. It is further related that plaintiff and defendants are brothers and co-sharers in equal proportions in the suit land. The plaintiff asserts that a

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portion of the land i.e. sthar pattey, and residential houses were divided between the plaintiff and defendant no 01, while rest of the suit land is jointly held till date. The land received for constructing houses was built upon by each side at its own expense. Thereafter, the plaintiff moved to District Swat, and defendant no 01, allegedly, occupied the lands and buildings forcibly, and to the prejudice of the plaintiff. Plaintiff prays for injunction to restrain defendant no 01 from interference with the portion exclusively held by the plaintiff, and he further prays for partition of the joint holding.

In the written reply, the defendant vehemently denies the claims and assertions of the plaintiff. In addition to the regular objections to the validity of the suit. Defendant concedes that the residential houses have already been divided and settled between the sides. He rebuts that the rest of the suit property is neither patrimonial, nor up for partition, as it is his exclusive entitlement. He denies the allegations of interference and counter asserts that he is only using and disposing land exclusively his own with which the plaintiff or any third person has no concern.

Rest of the defendants were proceeded against as ex-parte after they failed to make an appearance despite service.



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Differences in the pleadings of the contesting parties were distilled into the following issues;

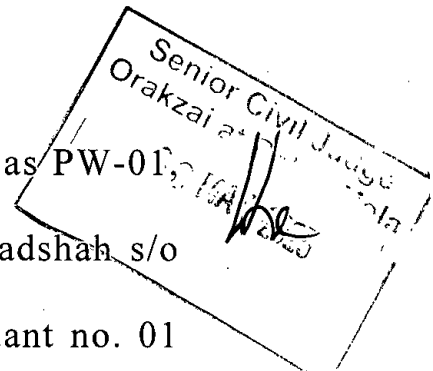
**Issues:**

1. Whether the plaintiff has got cause of action?
2. Whether the plaintiff is estopped to sue?
3. Whether the suit of the plaintiff is time barred?
4. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder?
5. Whether the plaintiff and defendant are co-sharers in the suit property which is to be partitioned in toto?
6. Whether defendant is owner in possession of his respective share and partitioned has already been affected to the extent of whole ancestral property?
7. Whether the plaintiff is entitled to the decree as prayed for?
8. Relief?

Thereafter, all sides were invited to produce evidence in respect of their respective claims.

**Witnesses/Exhibits:**

Piao Shah, the plaintiff himself appeared as PW-01, Khan Muhammad s/o Sher Haider as PW-02, Gul Badshah s/o Said Malak as PW-03, and Hakeem Badshah, defendant no. 01



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himself as DW-01. They have exhibited the following documents;

- i. Pictures as Ex.PW-1/1
- ii. Report to police Ex.PW-1/X-1

### **Reasoning**

Issue wise reasoning of the court followed by a ruling on each issue, and ultimately on the suit, is as follows:

#### **Issue No. 02, 03 and 04:**

These issues pose the regular questions about the validity of the legal form and frame of suit. They raise the questions of estoppel, non-joinder, and limitation.

During the course of trial, the defense could not successfully establish the fact of the suit being hit by any of these legal bars and defects. Given that jurisdiction of civil courts was extended to the area in 2019, the question of limitation rarely arises, as the law provides 06 years for claims of declaration of title.

These issues pertain to the questions of estoppel and joinder of parties. Estoppel is a bar on holding a position during a trial that is against a previously established position. During the course of trial, no previously held position was agitated specifically to attract the bar of estoppel. Similarly,

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the court too, during its examination of the case record and evidence, could not find a positive instance of the suit being hit by estoppel.

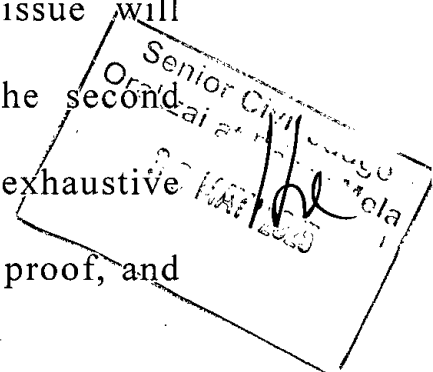
Similarly, throughout the course of trial, defendants did not mention any necessary party that might have been left out. The court could not find any fatal defect on that score. The issues are decided for the plaintiffs.

**Issue No 05, and 06:**

These two issues are intertwined and therefore taken together for clarity of perspective, and economy of words, ink, and breath.

The first issue poses the question as to whether the suit property is a jointly held entitlement of the parties that is yet to be partitioned. The second issue enquires into the position held by the defense that is that each side is in possession of his or her property through partition of the patrimonial estate.

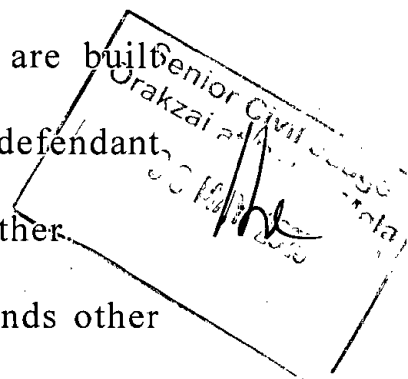
Discussion and decision on the first issue will effectively dispense with the need for deciding the second issue. The court shall attempt to weave an exhaustive description of the issue, the evidence adduced in its proof, and the ruling.



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It is pertinent to mention that women siblings and co-sharers of the contesting sides were impleaded, and subsequently proceeded against as ex-parte after they failed to make attendance.

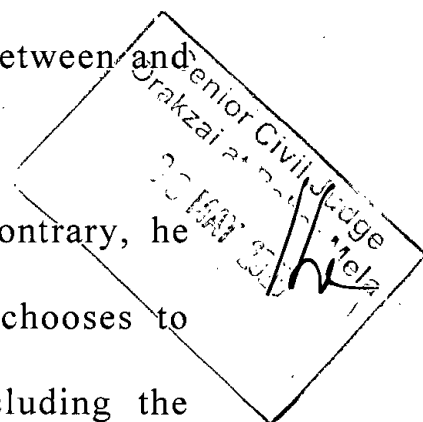
- Plaintiff claims that being heirs to a common predecessor in interest, both sides are co-sharers in the suit property. He adds that a portion of the joint holding was handed over to them during the lifetime of their father, on which they constructed houses at their own expense.
- Defendant no 01 concedes the claim to the extent of co-heirship, but denies the assertion that jointly held estate remains to be divided among the sides. He counter-claims that all jointly owned land has already been divided and each side is in possession of his/her respective share.
- In response to the first question in cross-examination, the plaintiff testifying as PW-1 has conceded that land on which the houses are built was handed over to the plaintiff and defendant through a jirga during the lifetime of the father.
- During his statement, he has stated that lands other than those handed over for construction of houses



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were retained by the predecessor during his lifetime, and on his demise, defendant no 01 occupied them.

- The other two witnesses are Jirga members who mediated between the sides for partition of a share of property of their father, then alive.
- Defendant has, perhaps unwittingly and unintentionally, supplied varying versions of his position, for instance, he fails to mention or supply details in his pleadings of the assertion that a portion of the land is his purchase property, and inherited.
- Interestingly, during his statement, he claims that a portion labelled as 'Mama Pattey' is his purchased, and thus exclusive entitlement. This claim does not find any place in his pleadings or direct statement.
- Then again, throughout his written statement, with emphatic reiteration, he maintains that all jointly held property has already been divided between and held by the rightful owners.
- In his statement as a witness, to the contrary, he offers up his willingness if the court chooses to order partition among the co-heirs including the women heirs. Similarly, a little ahead in his cross-



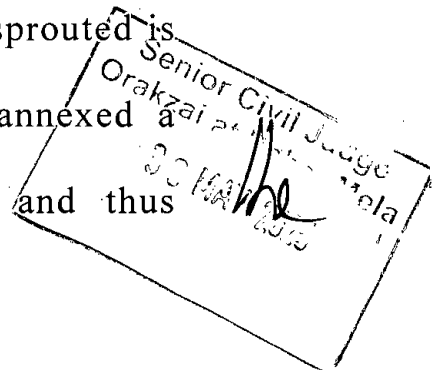
examination, he concedes that two plots of jointly owned land are still in his possession, and are yet to be partitioned. Similarly, near the end of his statement, he submits his willingness to partition the jointly owned land.

- The discussion above sufficiently settles the issues under consideration: the court understands that suit land held between the sides is patrimony bequeathed from their common predecessor in interest. A portion of the land was given to the male children for construction of houses, while the remaining is in the form of fields that are yet to be formally partitioned. Suit land is co-shared between heirs, including the women heirs of the late predecessor in interest, and is yet to be partitioned among them. Issues are decided accordingly.

#### **The Controversy about the the Passage/Gates:**

The seed from which the current dispute sprouted is the allegation that defendant no 01 had forcibly annexed a passage separating his house from the plaintiff, and thus blocked the entrance to his Hujra.

Given that the suit contains a prayer for possession through partition, which ensues the equal and equitable





partition of jointly held property. The court before which final decree proceedings will be held is required by law that all share-holders get their due in terms of actual entitlement, as well as passages and improvements etc.

Presently, since no issue was formed on the matter, the court is disinclined to comment or determine the correctness of the positions held by both sides, respectively.

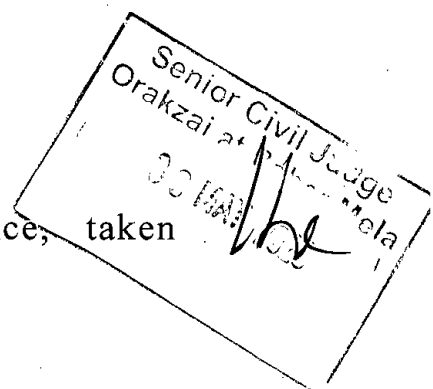
**Petition For Appointment Of Commission:**

An application by the plaintiff for appointment of local commission to dig further facts about the matter was stored in storage until final arguments. Since the suit is for partition among co-sharers, and their shares have been broadly settled, the court does not see an instant need for sending a commission at this stage. The court in the proceedings for final decree might need to send a commission, which will be more conducive to proper disposal of the matter. Application is disposed accordingly.

**Issue No 01, 07 & 08:**

All these issues are interlinked, hence, taken together for discussion.

Plaintiff, along with the defendants, being co-heirs to a common predecessor, are jointly entitled to their Shari

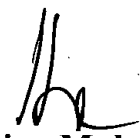


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Shares in the suit property. Being a merged district, the actual measurement of the land, in absence of revenue records, can only be determined through a local commission. The court shall determine the actual measurement of their entitlement as per law during the final decree proceedings. These issues are disposed of accordingly.


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

**Announced**  
30.05.2025

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

**CERTIFICATE**

Certified that this judgment of mine consists of ten (10) pages, each has been checked, corrected where necessary and signed by me.

  
**(Ijaz Mahsood)**  
Senior Civil Judge,  
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