

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

CIVIL APPEAL NO. : 21/13 OF 2025
DATE OF INSTITUTION : 26.03.2025
DATE OF TRANSFER-IN : 29.05.2025
DATE OF DECISION : 13.06.2025

1. HAJI GUL HABIB S/O HAJI KHIAL BADSHAH, C
 2. HAJI WILAYAT KHAN S/O HAJI MALANG
 3. KHAN WADA S/O KHAN
 4. PIR BADSHAH S/O LAL BADSHAH
 5. JALAL KHAN S/O KHANAI
- ALL R/O IBRAHIMZONA, MADO NAWASI, TAPA HAIDER
KHEL, CASTE MISHTI KHE, TEHSIL CENTRAL, DISTRICT
ASTE ALI KHEL, TAPA JASRAT KHEL, ORI BAR, TEHSIL
UPPER, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. ABDUL BADSHAH S/O KHIAL BADSHAH,
 2. SAIF UR REHMAN S/O SARWAR KHAN
 3. MUSHARAF KHAN S/O SULTAN SHAH
- ALL R/O CASTE MAMA KHEL, TAPA KHYDER KHEL,
TEHSIL CENTRAL, DISTRICT ORAKZAI
4. FAROOQ S/O DILAWAR
 5. MUHAMMAD YOUSAF S/O ADBUL MALIK
 6. HABIB REHMAN S/O JANAN
- ALL R/O CASTE DAD KHEL, TAPA KHYDER KHEL,
CENTRAL, DISTRICT ORAKZAI

.....(RESPONDENTS)

Present : Mr. Lal Habib Advocate for the appellants.
: Mr. Sana Ullah Khan Advocate for the respondents No. 5 and 6.

JUDGEMENT


13.06.2025

This civil appeal was preferred by the appellant against the Order dated 03.03.2025 passed by the Court of learned Civil Judge-II, Tehsil Kalaya, District Orakzai, whereby the plaint in civil Suit No. 1/1 was rejected under Order 7 Rule 11 CPC.

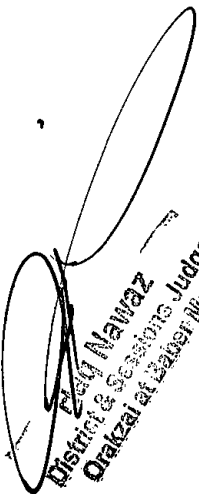
2. The representative suit was brought by the appellants on behalf of Mado Nawasi for declaration of their shares on the basis of per family in accordance with local customs with regard to Mardagan and Babarana Mountains situated

near Khyber Top, described with four boundaries in headnote of the plaint with the submission that they are joint owners in the suit mountains with the defendants who belong to Caste Mama Khel and Dad Khel. They also prayed for permanent and mandatory injunction to restrain the respondents/defendants from cutting trees and causing interference in the suit mountains. They further sought rendition of accounts in Prayer "B" of the plaint with regard to 600 pine trees cut down by the respondents. In alternative, they prayed for disposal of the case on the basis of decision of the Commissioner Kohat dated 18.01.2016. Possession through partition was also sought in Prayer "D" of the plaint.

3. The suit was contested by the respondents by submitting their written statement. Pleadings of the parties were reduced to issues. During the course of evidence, the respondents submitted their application under Order 7 Rule 11 CPC which was contested by the appellants through their reply.
4. The learned trial court, after hearing both the parties, accepted the application through his impugned Order; hence, this appeal was filed.
5. I have heard learned counsel for the parties and perused the record.


Hani Nawaz
District & Sessions Judge
Quetta

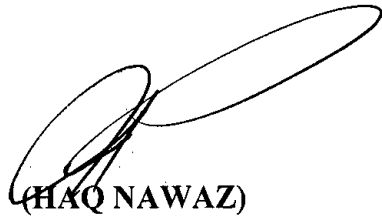
6. The respondents in their application under Order 7 Rule 11 CPC have alleged that the appellants have claimed the suit mountains on the basis of their ancestral ownership whereas father of the appellant/plaintiff No. 3 is still alive. They also raised objection on the form of suit.
7. The learned trial court while agreeing with the contention of the respondents, in their application under Order 7 Rule 11 CPC, regarding no locus standi of the plaintiff No. 3, during the lifetime of his father, further held that description of the suit property is not given in the plaint and the Court has got no jurisdiction to entertain the present suit which comes under the jurisdiction of Revenue Court.
8. So far, the question of bringing the suit by the plaintiff No. 3 in the lifetime of his father is concerned, there is no such objection against the other plaintiffs. Therefore, all the plaintiffs cannot be non-suited for the reason that one of them has got no locus standi. The respondents, at the most, may apply before the trial Court for deletion of his name from the panel of plaintiffs, if advised so. The description of the suit mountains has specifically been provided in headnote of the plaint.
9. It is pertinent to note that there is no settlement record in District Orakzai and the Honourable Peshawar High Court, Mingora Bench (Dar-ul-Qaza Swat) in its judgment dated 25.01.2021, has held in a similar case that the bar provided


Haid Nawaz
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under Section 172 of the Revenue Act against the Civil Court is not applicable in such eventuality. It was further held that Civil Courts shall be fully competent to entertain suits for partition of joint immovable properties in respect of such land, which had not yet been documented according to Chapter-VI of the Revenue Act.

10. In view of the above discussion, the appeal is accepted. The impugned Order is set aside and suit of the appellants is remanded back to the trial Court with the directions to proceed with the same in accordance with law. Parties are directed to appear before the Court of learned Civil Judge-II, Tehsil Kalaya, on 21.06.2025. File of this Court be consigned to record room after its necessary completion and compilation.

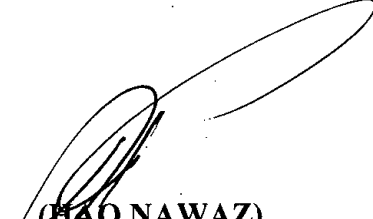
Announced:
13.06.2025


(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of four (04) pages.
Each page has been read, corrected wherever necessary and signed by me.

Dated: 13.06.2025


(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela