

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

CIVIL APPEAL NO. : 17/13 OF 2025
DATE OF INSTITUTION : 25.03.2025
DATE OF TRANSFER-IN : 29.05.2025
DATE OF DECISION : 19.06.2025

1. ASAL BADSHAH S/O ZAR BADSHAH
 2. HAJI KHIAL SYED S/O NOOR GHULAM
 3. MUNAWAR KHAN S/O HAWALDAR BATAK
- ALL R/O ALI KHEL, TEHSIL UPPER, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. MANZOOR ALI S/O SARDAR ALI
 2. HABIB ALI S/O KHIAL BA KHAN
- ALL R/O ALI KHEL, TEHSIL UPPER, DISTRICT ORAKZAI

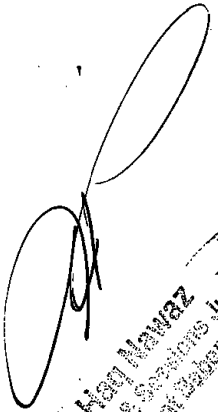
..... (RESPONDENTS)

Present : Muhammad Farooq Khattak Advocate for appellants.
: Khursheed Alam Advocate for respondents.

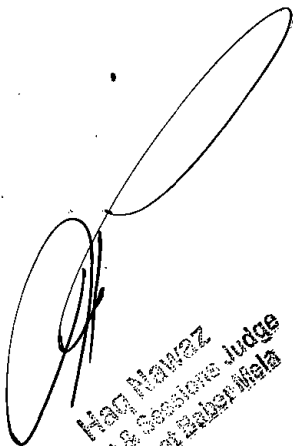
JUDGEMENT
19.06.2025

This civil appeal was preferred by the appellants/defendants against the judgment and decree dated 15.02.2025 passed by the Court of learned Senior Civil Judge, Orakzai, in Civil Suit No. 37/1 of 2023.

The suit was brought by the respondents/plaintiffs for declaration and permanent injunction to the effect that they are owners in possession of the suit property named as *Sardar Rawaz* consisting upon ten fields, measuring 10/12 Jirab, situated at Khanki Toye, described with four boundaries in headnote of the plaint. The appellants/defendants have got no concern with the suit property, but they are bent upon causing interference in the suit land by constructing a cricket ground.


Haq Nawaz
District & Sessions Judge
Orakzai (at Baber Mela)

3. According to averments of the plaint, the suit property was the ancestral ownership of the respondents/plaintiffs which was devolved upon them from their predecessors and they are in possession of the same since long. They further claimed that four fields out of the total ten fields, were inundated by a stream namely Khanki Teye. The appellants/defendants have established a cricket ground in two of the said fields. The respondents/plaintiffs have got no concern with the suit property but they are bent upon to possess the same forcibly by constructing the cricket ground and thereby causing interference in lawful possession of the respondents/plaintiffs which is against the law and facts. The appellants/defendants were repeatedly asked to refrain from their illegal acts, but they refused; therefore, the suit was filed.


Huzefa Nawaz
District & Sessions Judge
Quetta at Babel Nala

4. The appellants/defendants contested the suit by submitting their written statement. They submitted that the suit property is Qoumi Algada (Joint Ghair Mumkin Khwar/Stream) whereas boundaries of the suit property are known and specific. Pleadings of the parties were reduced to the following issues;

- I. *Whether the plaintiffs have got cause of action?*
- II. *Whether the plaintiffs are estopped to sue?*
- III. *Whether the suit of the plaintiffs is time barred?*

IV. *Whether the suit of the plaintiffs is bad for miss-joinder and non-joinder?*

V. *Whether the suit property measuring 10-12 Jirab and numbering 10 fields is ownership of the plaintiffs?*

VI. *Whether the defendants have levelled a portion of suit property for purpose of making a playground?*

VII. *Whether the disputed suit property is part of river bed and is bot the ancestral property of the plaintiffs?*

VIII. *Whether the plaintiffs are entitled to the decree as prayed for?*

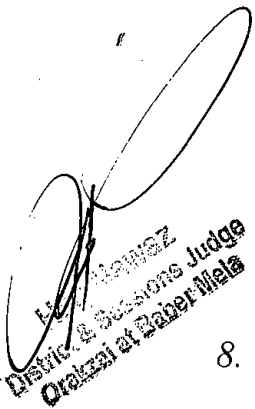
IX. *Relief.*

5. After recording pro and contra evidence and hearing both the parties, the learned trial Court decreed the suit through his impugned judgment and decree; hence, this appeal was filed.

6. I have heard learned counsel for the parties and perused the record.

7. The ownership of the suit property consisting upon ten fields in favour of the respondents/plaintiffs was not denied by the appellants/defendants in their written statement nor they claimed ownership of the disputed area of playground; however, they alleged it to be a joint *ghair mumkin*

khwar/Qoumi Algada. It was also admitted by the appellants/defendants in their evidence that the respondents/plaintiffs are original owners whereas the appellants/defendants are purchased owners to the extent of two fields adjacent to the suit property. Keeping in view the said facts, the learned trial Court concluded that the respondents/plaintiffs are owners of the land adjacent to the disputed land/playground and, if it is treated as *Shamilat*, the respondents/plaintiffs are A'aala Owners in closeness to it. It was further observed that the concept of *Sarseem* in *Shamilat* is of special utility and was meant to cater for such situations. Conversely, it was held by the trial Court that the appellants/defendants do not have any adjacent land to the suit property of which they might be A'aala Malikan; therefore, it is appropriate to restrain them from interference with possession of the suit land.


District & Sessions Judge
Orakzai at Pabai Mela

8. While going through the plaint, it was evident that the respondents/plaintiffs had sought declaration and permanent injunction in respect of ten fields specifically. They have further alleged that four fields of the total ten fields of the suit property were inundated by Khanki Toye and the appellants/defendants have converted two of the said fields into a playground. The respondents/plaintiffs had neither claimed their rights in respect of any adjacent property on the basis of *Shamilat/Sarseem* nor had they claimed their rights in respect of the playground in question being A'aala

Malikan/original owners of the adjacent property. Hence, the grant of decree of the adjacent property by considering it Shamilat/Sarseem of the adjacent owners being A'aala Malikan was beyond the pleadings. A decree must align with the specific prayers made in the plaint and any deviation from this can render the decree invalid.

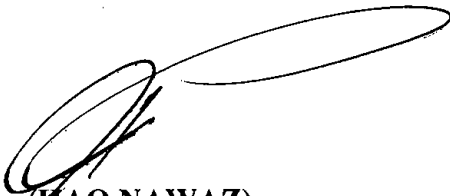
9. It is pertinent to note that one of the plaintiffs' witnesses (PW-1) stated in his cross examination that ten fields of the plaintiffs are surrounded by a boundary wall, whereas the other witness (PW-2) stated that the disputed playground is situated inside the boundary wall of ten fields. The respondents/plaintiffs have annexed a handmade site sketch with their plaint, showing six of the suit fields to be intact and the others to have been inundated by Khanki Tuye which were highlighted with a highlighter in the said sketch. The appellants/defendants, after recording evidence from both the sides, submitted an application for appointment of local commission to report about existence of the playground in the ghair mumkin khwar/stream and existence of the suit fields inside the boundary wall and a mountain. The said application was contested by the respondents/plaintiffs by submitting their written reply. Arguments were heard on the same; however, it was neither disposed of separately or discussed in the impugned judgment.

10. In view of the above facts and divergent stances of the parties in respect of establishment of the playground in the two

inundated suit fields or otherwise its existence in the ghair mumkin khwar outside the boundary wall of the ten suit fields, it was necessary to appoint a local commission to submit his report before the trial Court and thereafter the matter was proceeded in accordance with law.

11. Resultantly, the appeal is accepted. The impugned judgment and decree are set aside and the suit is remanded back to the trial Court with the directions to appoint local commission in accordance with the observations contained in Para 10 above and thereafter decide the case afresh strictly in accordance with law. Parties are directed to appear before the trial Court on 26.06.2025 for further proceedings. File of this Court be consigned to record room after its necessary completion and compilation.

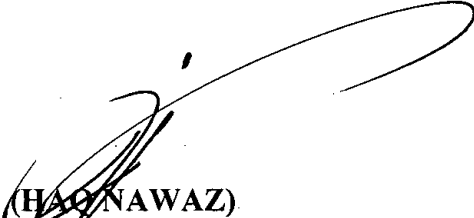
Announced:
19.06.2025


(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of six (06) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 19.06.2025


(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela