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

CIVIL APPEAL NO. : 1/13 OF 2025
DATE OF INSTITUTION : 17.02.2025
DATE OF DECISION : 25.06.2025

1. BABU KHAN S/O MEHBOOB KHAN
2. MUHAMMAD ZAHOR
3. MUHAMMAD FAROOQ
4. MUHAMMAD ILYAS
5. MUHAMMAD IRSHAD
6. MUHAMMAD ROHAN
ALL SONS OF BABU KHAN
7. MAJOR KHAN S/O ZAMEEN SHAH
8. FAISAL KHAN
9. ZAHID KHAN
10. SHAHID KHAN
11. AZIZ ULLAH
12. ZABI ULLAH
13. SHAHZAB ULLAH
ALL SONS OF MAJOR KHAN
14. NOORAB KHAN S/O ZAMEEN SHAH
15. AZEEM KHAN S/O NOORAB KHAN
16. NAIMAT KHAN S/O MAID KHAN
17. YOUSAF KHAN S/O NAIMAT KHAN
18. GHUNCHA GUL S/O HAKAM KHAN
19. MUNEER KHAN
20. SAIF ULLAH
BOTH SONS OF OLAS KHAN
21. KAJAL KHAN S/O MEHBOOB ALI
22. AMIR KHAN
23. AJMIR KHAN
BOTH SONS OF KAJAL KHAN
24. ASHRAF KHAN S/O AJEEB KHAN
25. ADIL KHAN
26. ARIF KHAN
27. RAFIQ KHAN
SONS OF ASHRAF KHAN
28. SHERIN KHAN S/O AJEEB KHAN
29. MUHAMMAD SADIQ
30. SABIREEN KHAN
BOTH SONS OF SHERIN KHAN
31. AMJAD KHAN S/O SABIREEN
32. MUHAMMAD YASEEN
33. MUZAMIL KHAN
34. BASHIR KHAN
SONS OF AJEEB KHAN
35. AKHTAR REHMAN S/O SHER REHMAN
ALL RESIDENTS OF TURAB GARHI ALAF KHEL, DISTRICT
ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. ALI SARJAN S/O MIR ASGHAR JAN
2. KHIAL BAHADAR S/O GUL BAHADAR
3. ABDUL KABIR S/O KHIAL BAHADAR
4. KHIAL MAN GUL S/O KHIAL GUL

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5. GHANI GUL S/O AKHIAN GUL
 6. NIAZ BAHADAR S/O MASTA JAN
 7. MUHAMMAD JAMEEL S/O NIAZ BAHADAR
 8. MUHAMMAD ZAMAN S/O AQAL JAN
 9. MUHAMMAD YASEEN S/O AQAL JAN
 10. LAL BAHADAR S/O SEFAT SHAH
 11. SAR KHAN S/O GUL JANAN
 12. ISMAIL S/O QUDRAT KHAN
 13. SABAT GUL S/O LAL BAHADAR
 14. RAHIB GUL S/O LAL BAHADAR
 15. MIR ASGHAR S/O SAID ASGHAR
 16. SHER AKBAR S/O SHER ASGHAR
 17. KHAN AFZAL S/O AKBAR JAN
 18. GUL GHAMEY S/O JANAS KHAN
 19. QUDRAT KHAN S/O JANAS KHAN
 20. FAZAL GHAMEY S/O GUL GHAMEY
 21. SHER KHAN S/O GUL JANAN
 22. SPEEN GUL S/O NAZAR GUL
 23. KHANA GUL S/O NAZAR GUL
- ALL RESIDENTS OF TURAB GARHI ALAF KHEL, DISTRICT ORAKZAI

..... (RESPONDENTS)

Present : Mr. Javid Muhammad, Jalal Uddin, Malak Mehran and Insaf Ali
Advocates for appellants.
: Ihsan Ullah Advocate for respondents.

JUDGEMENT
25.06.2025

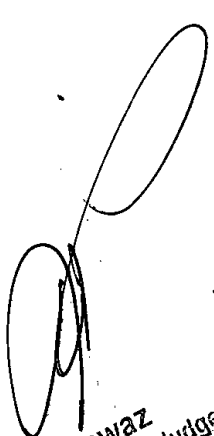
This civil appeal was preferred by the appellants against the Order dated 15.01.2025 passed by the Court of learned Senior Civil Judge, Orakzai, whereby Misc. Application No. 42/6 of 2024 in Civil Suit No. 99/1 of 2024, for the grant of temporary injunction, was dismissed with directions to bailiff to visit the site, prepare a comprehensive report on the nature of land and what stands on it and also take photographs. The defendants were directed to submit an affidavit within 07 days to the effect that any modifications with possession or title of the suit land shall be at their risk and cost and subject to outcome of the suit.

2. The appellants/plaintiffs in their representative suit have alleged that the suit mountains (five in numbers), described with full details in headnote of the plaint, situated at Turab

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(SD)

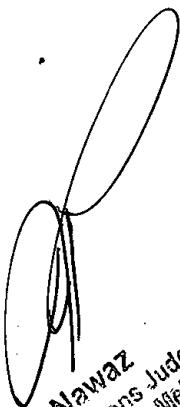
Garhi District Orakzai, are jointly owned by them with the defendants being joint legal heirs of Turab Shah. They further alleged that the landed property of the said Turab Shah was divided between the parties whereas the mountains, being Shamilat, are still joint. The respondents are bent upon to change nature of the suit mountains, cut trees therefrom and transfer it by way of lease and raise construction. The appellants asked the respondents to refrain from their illegal acts, but they refused; therefore, the suit was filed for permanent and mandatory injunction. Possession, in the shape of demolition of construction, in case the same were raised during pendency of the suit, was also prayed for. An application for the grant of temporary injunction till disposal of the civil suit was also submitted.


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3. Both the suit and application were contested by the respondents by submitting their written statement and written reply. The learned trial Court, after hearing both the parties, disposed of the application as mentioned above. Hence, this appeal was preferred.
4. I have heard learned counsel for the parties and perused the record.
5. The ownership of Turab Shah, in respect of the suit mountains, is not denied in the written statement. However, the relationship of appellants with the said Turab Shah was denied. Both the parties submitted their respective pedigree tables with

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their pleadings. According to the pedigree table of the appellants, the predecessor-in-interest of the parties Turab Shah was succeeded by his two sons namely Sadar Khan and Zohrab Shah. Sadar Khan was further succeeded by Lat Khan and Doran Khan. The appellants are the legal heirs of Lat Khan. Whereas Zohrab Shah was succeeded by his four sons namely Mere Baba, Ali Baba, Mashke Baba and Naseem Ullah who were succeeded by the respondents. On the other hand, the respondents, in their pedigree table, have shown Mere Baba and his three brothers to be the sons of Turab Shah instead of his grandsons. Thus, the two sons of Turab Shah namely Sadar Khan and Zohrab Shah, as depicted in the pedigree table of the appellants, were excluded in the pedigree table of respondents.


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6. There is no revenue record or official pedigree tables available in the district; therefore, both the parties shall prove their respective pedigree tables through their evidence during the course of trial. As the ownership of the suit mountains by Turab Shah was not denied in the written statement nor addresses of the parties as residents of Turab Garhi was denied; therefore, the appellants are having a prima facie arguable case in their favour. The refusal of injunction and transfer of the suit mountains on lease etc., may cause irreparable loss to the appellants in the shape of multiplicity of litigations in case the suit is succeeded subsequently. Similarly, the balance of convenience also lies in their favour.

7. Resultantly, the appeal is accepted. The impugned Order is set aside and the respondents are restrained from alienation of the suit mountains in favour of anyone else in any shape, raising construction and cutting trees in the suit mountains for a period of six months or disposal of the suit, whichever is earlier. File of this court be consigned to record room after its necessary completion and compilation.

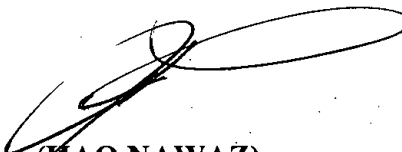
Announced:
25.06.2025


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CERTIFICATE

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 25.06.2025


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