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

Civil Suit No.	05/1 of 2025
Date of Institution:	07.01.2025
Date of Decision:	29.07.2025

1. Ahmad Jan s/o Sarwar Jan.
2. Eid Muhammad s/o Sarwar Jan.
3. Nasrullah Jan s/o Akbar Jan.
4. Muhammad Zaman s/o Akbar Jan.
5. Muhammad Khan s/o Akbar Jan.

***All R/O Qoum Mamozai, Tappa Ado Khel, Latoo, Kach Garhi,  
Tehsil Upper, District Orakzai.***

..... (Plaintiffs)

**VERSUS**

1. Sher s/o Yaqub Khan.
2. Jalil Khan s/o Abdul Malik.
3. Ismail Khan s/o Jalil Khan.
4. Jamal Khan s/o Kamal Khan.
5. Mehmood Khan s/o Taj Muhammad.

***All R/O Qoum Mamozai, Tappa Ado Khel, Tehsil Upper, District  
Orakzai.***

..... (Defendants)

**SUIT FOR DECLARATION OF TITLE, AND NECESSARY  
INJUNCTIONS**

**JUDGEMENT:**

29.07.2025

This order is to decide instant suit filed by Mr. Ahmed Jan and 04 others, the plaintiffs, for declaration of title, and necessary injunctions Mr. Sher and 04 others, the defendants.

**Pleadings:**

The claim as recounted in the plaint reads that plaintiffs are born members of the Mamozai sub-tribe. They are

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owners in possession through generations of suit land measuring approx. 80 kanals territorially detailed in the plaint. They occupy residential houses on suit land. Defendants have no rights to interfere with peaceful possession of the suit land. A complaint was lodged with police against the unwarranted interference but to no avail. It is alleged that defendants were requested extra-judicially but they would not stop, hence the suit.

The written statement, in addition to the regular objections to the fitness of the suit, has also denied the stance and claim of the plaintiffs. It contends that plaintiffs do not belong to Mamozai tribe, rather they are from Ali Khel tribe, and are emigrant-tenants in the district. The written statement further asserts that per local customs each tribe occupies and owns a particular portion in which outsiders can live as tenants, but not as owners. Defendants request for dismissal of suit with special costs.

Difference between the sides were distilled and reduce into the following issues.

**Issues:**

- i. Whether the suit is bad for legal defects i.e. cause of action, limitation, legal standing, non-joinder etc. and is not maintainable its present form?

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- ii. Whether plaintiffs are born members of the Mamozai tribe, and are owners in possession of suit property through generations?
- iii. Relief.

Thereafter, both sides were invited to produce their respective evidence.

**Evidence: witnesses and exhibits**

Mr. Khwaja Gul s/o Zareen Gul appeared as PW-01, Mr. Baghi Shah s/o Din Shah as PW-02, Rehmin Ali s/o Din Akbar as PW-03, Mr. Nasrullah Jan, plaintiff No. 03 and special attorney for plaintiffs as PW-04, Mr. Sher Ali Khan, defendant No. 03 and special attorney for the defendants as DW-01, Mr. Gul Dad Khan s/o Noorbat Shah as DW-02 and Mr. Said Malook s/o Habib Khan as DW-03. They have exhibited the following documents;

- i. Copy of CNIC of PW-01 as Ex.PW-1/1.
- ii. Copy of CNIC of PW-02 as Ex.PW-2/1.
- iii. Copy of CNIC of PW-03 as Ex.PW-3/1.
- iv. Special power of attorney of the plaintiffs as Ex.PW-4/1.
- v. Copy of CNIC of PW-04 as Ex.PW-4/1.



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- vi. Picture regarding grave of grandfather of PW-04 as Ex.PW-4/3.
- vii. Copy of domicile certificate of the son of PW-04 as Ex.PW-4/4.
- viii. Special power of attorney of the defendants as Ex.DW-1/1.
- ix. Copy of CNIC of DW-01 as Ex.DW-1/2.
- x. Written deed as Ex.DW-1/3.
- xi. Affidavit scribed by elders of Mamozai tribe as Ex.DW-1/4.
- xii. Copy of CNIC of DW-02 as Ex.DW-2/1.

**Reasons:**

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

**Issue No 01:**

This issue poses 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

  
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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.

The issue pertains 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, 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 issue is decided for the plaintiffs.

**Issue No 02:**

This issue encapsulates the principal claim of the plaintiffs that they are born members of the Mamozai tribe, and are owners in possession of suit property through generations. Defendants deny their claim and counter assert that plaintiffs are emigrants into the territory of Mamozai Tribe, and have been living there as tenants at will.

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Before the court embarks upon the appraisal of evidence, a little background into tribal customs in respect of land ownership seems in order. Tribes, sub-tribes, and families/clans usually occupy disparate portions of land mass of the district. Outsiders are generally not allowed inside the distinct geographical territory of a particular tribe or subtribe. However, under the traditional value of 'Melmastya' needy persons, or those fleeing violence or aggression are provided safe havens regardless of their tribal identity. These observations about tribal customs are duly confirmed by witnesses for plaintiffs.

Having laid the customary backdrop, the court shall now proceed to examine the evidence for the claim that plaintiffs are members of Mamozai tribe who owns suit land through generations. The merits of the claim will be contrasted with the defense that plaintiffs are emigrants from another tribe who are living on Mamozai territory as tenants at will. Possession is not contested, rather entitlement as owners is under dispute.

Plaintiffs carried the burden to establish their claim that are owners in possession of the suit property through generations. They produced four witnesses including plaintiff

no 01, who is also attorney for rest of the plaintiffs. Below the

court shall examine the merits of the evidence produced by plaintiffs in favor of their claim.

- The first point that caught the court's attention is that all three witnesses for the plaintiffs consistently stated in respect of possession without hinting at or mentioning the fact of entitlement. For instance, PW-01 states that he has seen the plaintiffs residing on suit land for the last 60 years, but is not in knowledge as to who owns the land.
- In his cross-examination, in a question about the time of purchase of suit land by plaintiffs, the witness did not answer that they own it through generations, rather he expresses ignorance of the date of its purchase by plaintiffs.
- Similarly, plaintiff's witness no 02 states that he is unaware as to whether plaintiffs belong to Ali Khel tribe or not, and as to who gave them suit land. The principal defense of defendants is that plaintiffs do not belong to Mamozai tribe.
- Similarly, plaintiff witness no 03 is also ignorant of the fact as to whether suit land was inherited, purchased, or received as gift by the plaintiffs.



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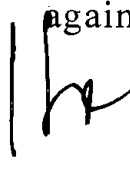
- Plaintiff no 01 took the stands as PW-04. He concedes that he is unaware as to how the land came to their possession. He further concedes that he has not produced any witness from tribe Mamozai in his support.
- Although the plaintiffs carry a CNIC and domicile of the Mamozai region, the fact that plaintiff had not listed a single witness from the Mamozai Tribe to support his claim struck the court as odd.
- Another interesting peculiarity that arrested the court's consideration is a voluntary statement by plaintiff witness no 01. To contextualize, defendants maintain that in tribal societies, each subtribe occupies a particular territory, and aliens—persons from other tribes--- are generally not allowed to own land in the territory. They maintain that plaintiffs are from Ali Khel tribe living in Mamozai territory.
- After answering in affirmative a question that each sub-tribe possesses a particular territory in the land mass of the district, plaintiff witness no 01 volunteers that Ali Khel tribe inhabits land in the territories of other tribes.
- Why did the witness volunteer to assert that Ali Khel tribe has lands in the territories of other tribes, when the

party for whom he is a witness claims to be from



Mamozai Tribe, is a question that prompted in the court's mind. Especially, when it is the opposing sides position that plaintiffs are from Ali Khel tribe but are living as tenant in Mamozai.

- A reasonable inference could be that witness was conscious of the fact that plaintiffs are from Ali Khel but are claiming land entitlement in Mamozai. He made an effort to establish before the court that Ali khel did own land in Mamozai region.
- Cumulatively considered, plaintiffs claim to be from Mamozai tribe but they could not produce a single witness from their tribe. Instead, the produced witnesses from Ali Khel tribe, of which the defendants allege them to be members.
- All witnesses for the plaintiffs testified on the point of possession, but none, including the plaintiff could refer to or mention entitlement as owners. Possession was never controverted in the first place. Plaintiff himself conceded his ignorance about the mode of accrual of title to them.
- In view of the discussion above, the court unconvinced about the claim of the plaintiffs. The issue is decided against them.

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**Relief: Issue No 03:**

Plaintiffs failed to establish their principal claim of being owners in possession of suit land through generations. They are not entitled to any relief. Costs shall follow the event.


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

**Announced**  
**29.07.2025**

  
**Ijaz Mahsood)**  
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**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,  
Orakzai at (Baber Mela)