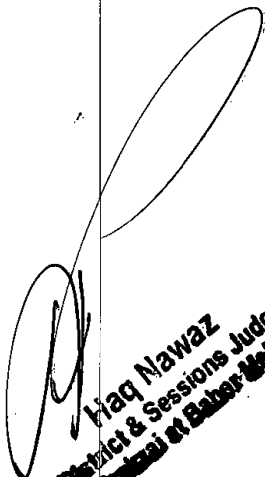
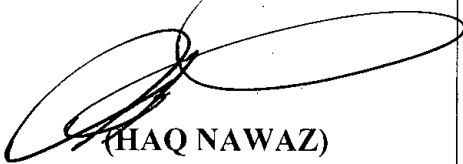


7
IN THE COURT OF DISTRICT JUDGE, ORAKZAI AT BABER MELA

Case Title: Dost Muhammad VS Taj wali etc

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
Order No.11	21.07.2025	<p>Appellant present in person. Fazal Haq as attorney for respondent No. 1 present. Arguments heard and record perused.</p> <p>This appeal was preferred by the appellant/plaintiff against the order dated 18.03.2025 whereby the Court of learned Civil Judge-II, Kalaya dismissed Civil Suit No. 65/1 of 2023.</p> <p>The suit was brought for possession through pre-emption in respect of barren (بئج) land of 1.5 Kanal situated adjacent to the house of the appellant/plaintiff towards north. According to averments of the plaint, the property in question was purchased by the respondents/defendants on 12.04.2023 from the cousins of plaintiffs, namely Mumtaz and others. The appellant came to know about the said transaction through his uncle Abdullah Majeed on 25.05.2023. He then and there pronounced his intention to pre-empt the sale transaction and thereby performed Talb-e-Muwasibat. He, later on, sent notice Talb-e-Isha'at to respondent on the same day. When the respondent refused to accept the claim of appellant, he instituted the suit and thereby performed Talb-e-Khasumat.</p> <p>The case was fixed for plaintiffs' evidence on 18.03.2025 when the learned trial Court held through the impugned order that the suit was not maintainable. It was observed that the plaintiffs had earlier filed a similar suit titled as "Muhammad Yousaf VS Taj Wali etc." which was dismissed. It was further observed that the present suit should have been filed against Mumtaz Khan s/o Lal Bat Khan, from whom the respondents have purchased the suit property.</p> <p>After hearing both the parties and perusal of the record, it was found that the earlier suit was brought by one, Muhammad Yousaf s/o Guli Jan against the respondents for possession through pre-emption in which the present appellant/plaintiff Dost Muhammad was shown to be informer of the sale transaction struck on 23.12.2022. In this respect,</p>


Fazal Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

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<p>Contin. Order No.11</p>		<p>the respondent had earlier submitted an application before the trial Court on 16.09.2023 for rejection of the plaint. The application was contested by the appellant/plaintiff. The learned trial Court, while dismissing the said application on 28.10.2023, observed that the previous suit No. 4/1 of 2023 was dismissed on 22.05.2023 due to non-deposit of pre-emption money and the present plaintiff was not party to the earlier suit; however, he was shown to be informer of the sale transaction challenged in the said suit. The learned counsel for the appellant denied the said fact that the plaintiff was informer with regard to the said transaction in the said suit and his name was given without his consultation. Hence, it was erroneously observed in the impugned order that the earlier suit was filed by the present plaintiff.</p> <p>Secondly, the vendor Mumtaz s/o Lal Bat Khan's involvement is not essential for the adjudication of a pre-emption claim against the vendee respondent, as the rights of the pre-emptor are independent of the vendor's status in the transaction.</p> <p>In view of the above, the appeal is accepted. The impugned order is set aside and the case is remanded back to the trial Court for further proceedings in accordance with law. The parties are directed to appear before the trial Court on 28.07.2025. Copy of this Order be sent to the trial Court for information and compliance. File of this Court be consigned to record room after its necessary completion and compilation.</p> <p><u>Announced:</u> 21.07.2025</p> <div style="text-align: right;">  (HAQ NAWAZ) District Judge, Orakzai at Baber Mela </div>