

IN THE COURT OF MUHAMMAD JUNAID ALAM
CIVIL JUDGE-II, TEHSIL COURTS KALAYA ORAKZAI

Suit No.182/1 Neem of 2023

ORIGINAL DATE OF INSTITUTION.03.11.2021

DATE OF REMAND08.03.2023

DATE OF DECISION OF THE SUIT.....26.05.2025

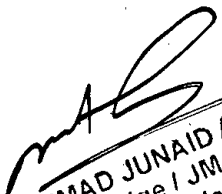
FAYAZ KHAN SON OF ALI MAJAN, RESIDENT OF
QOM MANI KHEL, TAPA SABZI KHEL, SATAR
SAAM DISTRICT ORAKZAI.

..... PLAINTIFF

VERSUS

1. RASHEED ALI SON OF NAZEER ALI AND
2. YASAR ALI SON OF SARDAR ALI, BOTH
RESIDENTS OF QOM MANI KHEL, TAPA
MASTALI KHEL, KALAYA DISTRICT ORAKZAI.

.....DEFENDANTS


MUHAMMAD JUNAID ALAM
Civil Judge / JM-II
Orakzai at Kalaya

**SUIT FOR RECOVERY OF RS-3,00,000/-(THREE
LACS)**

Counsels for plaintiff: Sana Ullah Khan Advocate


Counsel for defendants: Abid Ali Advocate

JUDGMENT

23.06.2025

Vide this judgment the Court intends to dispose of suit
captioned above.

2. It is a suit from the plaintiff against defendants for the recovery of Rs-3,00,000/- (Three Lacs Rupees).
3. Brief facts of the case are that plaintiff through instant suit had stated that plaintiff is the permanent resident of district Orakzai and hails from Qom Mani Khel. He together with defendant no. 02 owned and possessed a joint coal mine known as Fayaz Ali/Sheru group at Dawali, Lower Orakzai, wherein, plaintiff was shareholder to the extent of 1/16 share. He and defendant no. 02 sold the said coal mine to one Haji Haq Meer etc in lieu of Rs. 2,01,00,000/- (Two crore and one lac). Whereas, the plaintiff received his share of 1/16 out of the sale consideration. Later on, he came to know that defendant no. 02 has entered into a secret agreement with Haji Haq Meer group and defendant no. 02 has not sold his share to the said group. Defendant no. 02 remained as partner/co-sharer in the said coal mine due to which a dispute arose and for the resolution of the dispute, a jirga was held as a result of which Sheru group had to pay Rs. 5,00,000/- to the plaintiff. Defendant no. 01 stood guarantor of defendant no. 02 for the payment of the said amount in light of the jirga decision under the said jirga Rs. 2,00,000/- was paid to the plaintiff but Rs. 3,00,000/- is still outstanding against defendants. Defendants were asked time


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and again to pay the remaining amount of Rs. 3,00,000/- but in vain, hence, the instant suit.

4. After institution of the suit the defendants were summoned, who accordingly appeared and submitted their written statement with legal and factual objections, raised therein.
5. Out of controversies of the parties, as raised in their respective pleadings, the then incumbent Court framed the following issues on 10.10.2022.

1. Whether plaintiff has got a cause of action? OPP
2. Whether the suit of plaintiff is within time? OPP
3. Whether plaintiff is entitled to recovery of Rs. 3,00,000/- (three lac) as result of the Jirga decision held for the resolution of dispute between the parties? OPP
4. Whether suit of plaintiff is bad due to non-joinder and mis-joinder of the parties? OPD
5. Whether an amount of 6,00,000/- (six lac) is to be paid by plaintiff to defendants as royalty of the Dawali coal mine? OPD
6. Whether plaintiff is estopped to sue? OPD
7. Whether plaintiff is entitled to the decree as prayed for? OPP

Relief.

6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiff produced as many as three witnesses and thereafter closed his evidence with a


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note. Contrary to this the defendants also produced three witnesses and thereafter closed their evidence with a note.

7. Thereafter arguments were heard.

Counsel for the plaintiff argued that plaintiff is the permanent resident of district Orakzai and hails from Qom Mani Khel. He further argued that plaintiff and defendant no. 02 owned and possessed a joint coal mine known as Fayaz Ali/Sheru group at Dawali, Lower Orakzai. Plaintiff was shareholder to the extent of 1/16 share. He further argued that plaintiff and defendant no. 02 sold the coal mine to one Haji Haq Meer etc in lieu of Rs. 2,01,00,000/- (Two crore and one lac). Plaintiff received his share of 1/16 out of the sale consideration. Later on, plaintiff came to know that defendant no. 02 has entered into a secret agreement with Haji Haq Meer group and defendant no. 02 has not sold his share to the said group. Defendant no. 02 remained as partner/co-sharer in the said coal mine due to which a dispute arose and for the resolution of the dispute, a jirga was held as a result of which Sheru group paid Rs. 5,00,000/-. Defendant no. 01 stood guarantor of defendant no. 02 for the payment of the said amount in light of the jirga decision. He further adduced that the plaintiff succeeded to prove his stance through his evidence and furthermore nothing in rebuttal or contradictory has been


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brought on the record by the defendant. Hence prayed that the suit in hand may kindly be decreed in favour of plaintiff and against the defendants for the relief as claimed for.

8. Contrary to this learned counsel for the defendants argued that the plaintiff has got no cause of action. Furthermore, that plaintiff has not approached this court with clean hands, as each party of the coal mine has sold their shares vide sale agreement dated 23.03.2011 & 26.03.2011 and each shareholder had correctly signed/thumb impressed. Thus, plaintiff has failed to prove his stance through solid evidence. The plaintiff has filed a false suit against the defendants. Counsel for the defendants argued that defendants have succeeded to produce evidence in light and support of their stance as stated in the written statement. Hence, prayed that as plaintiff has failed to prove his case, hence the suit in hand may kindly be dismissed with costs.

9. In light of perusal of record, available evidence and valuable assistance of both the learned counsels for the parties the issue wise findings of the court are as under.


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ISSUE NO. 2:

Whether the suit of plaintiff is within time? OPP

Burden of proof regarding this issue was on plaintiff.

Per averments of plaint, there was a dispute between the parties which was referred to jirga as per culture, customs

and traditions of the locality and the jirga members delivered their verdict as per which defendant no. 02 was bound to pay Rs. 5,00,000/- to plaintiff. Defendant no. 01 stood guarantor for the payment of the said amount. As per Ex. PW-3/1, the jirga decision was delivered on 24.12.2019. Defendants refused to pay the suit amount to plaintiff, resultantly, suit in hand was filed on 03.11.2021. Hence, suit of plaintiff is held to be within time. Even otherwise, all Federal and Provincial Laws stood extended to the Newly Merged Districts in the year 2019. Hence, issue in hand is decided in positive.

ISSUE NO. 3:

Whether plaintiff is entitled to recovery of Rs. 3,00,000/- (three lac) as result of the Jirga decision held for the resolution of dispute between the parties? OPP


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Burden of proof regarding this issue was on plaintiff.

As per averments of plaint, there was a dispute between the parties which was referred to jirga as per culture, customs and traditions of the locality and jirga member delivered their verdict according to which defendant no. 02 was bound to pay Rs. 500,000/- to plaintiff. Defendant no. 01 stood guarantor for the payment of the said amount. Defendant no. 02 paid Rs. 2,00,000/- to plaintiff and the remaining amount of Rs. 3,00,000/- is still pending. To prove his stance, the plaintiff, produced the jirga members

of the jirga deed Ex. PW-3/1. As PW-01 Syed Riaz Hussain and PW-02 Ali Samand fully supported the claim of plaintiff. Defendants failed to bring on record contradictions in the statements of PWs. Furthermore, to prove the issue in hand plaintiff himself appeared as PW-03 in the witness box. He fully supported his stance as stated in the plaint. During cross examination nothing tangible has been extracted out of him despite lengthy cross examination.

Defendant no. 02 Yasar Ali himself was appeared before the court as DW-02. He supported his stance as narrated in their written statement. During examination in chief he stated that jirga bound me to pay Rs. 5,00,000/- (five lac) to the plaintiff.

جرگہ نے مجھ پر 5 لاکھ روپے ادا کرنے کی تحریر لکھ دی۔


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In light of the above findings the plaintiff has succeeded to prove the issue in hand through cogent, convincing and confidence inspiring evidence, hence accordingly the issue in hand is hereby decided in positive in favour of the plaintiff and in negative against the defendants.

ISSUE NO. 04 & 06:


Whether suit of plaintiff is bad due to non-joinder and mis-joinder of the parties? OPD

Whether plaintiff is estopped to sue? OPD

Both the issues are interlinked, hence, taken together for discussion. Burden of proof regarding this issues were on defendants. All the parties which are necessary to be impleaded in the instant suit are rightly and correctly arrayed in the plaint. Similarly, no party has been detected by the defendants to be improperly or unnecessarily enlisted in the suit. Similarly, estoppel needs cogent, convincing and reliable evidence which is lacking on the part of defendants, therefore issues are decided in negative against the defendants.

ISSUE NO. 5:

Whether an amount of 600,000/- (six lac) is to be paid by plaintiff to defendants as royalty of the Dawali coal mine? OPD


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The defendants in their written statement had asserted that each shareholder had sold their shares vide sale considerations dated 23.03.2011 & 26.03.2011. Furthermore, a jirga was convened with plaintiff dated 24.12.2019, wherein plaintiff had to paid Rs. 6,00,000/- (six lac) as royalty of the Dawali coal mine. To prove their stance defendants produced one Gul Hassan son of Ghulam Nabi as DW-01 in the witness box and stated on oath that in light and support of the issue in hand. During cross

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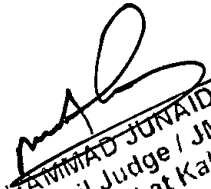
examination he deposed that the coal mine no. 02 at Dawali was purchased in lieu of Rs. 2,01,00,000 (two crore & one lac). Self-stated that 20,00,000/- (twenty lacs) was paid to plaintiff Fayaz Ali. It is correct that I have no receipt of handing over the mentioned above amount to plaintiff. He further stated that he has no knowledge regarding the jirgas previously held between the parties.

Defendant no. 02 Yasar Ali himself was appeared before the court as DW-02. He supported his stance as narrated in their written statement. During examination in chief he stated that jirga bound me to pay Rs. 5,00,000/- (five lac) to the plaintiff.

جرگہ نے مجھ پر 5 لاکھ روپے ادا کرنے کی تحریر لکھ دی۔

During cross examination he stated that it is correct that he paid Rs. 2,00,000/- (two lac) to the plaintiff. Self-stated that the said amount was taken forcefully by plaintiff.

از خود کہا کہ وہ رقم زبردستی لی ہے۔


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 Civil Judge / JM-II
 Qazai at Kalaya

It is correct that I signed the Ex. PW-3/1. Self-stated that the sign on the Ex. PW-3/1 is not of mine. He stated that I lodged the report in the PS for snatching the said amount. I have not claimed for the alleged amount in the Court. I had not sent any Jirga to the plaintiff regarding the alleged amount.

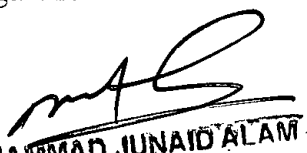
In light of the above evidence produced by defendants it has been noticed that during examination in chief he stated that jirga bonded him to pay Rs. 5,00,000/- (five lac) to the plaintiff. When the said PW cross examined and stated in his cross examination that he paid two lacs rupees to the plaintiff. This statement of said DW is otherwise an admission of the fact on the part of defendants that he paid two lacs to the plaintiff out of five lacs. He further stated in his cross examination that he has not claimed in the Court regarding two lacs rupees. Furthermore, it was stated by the defendant no. 01 that the coal mine was sold. So, the question of royalty does not arise at all.

In light of what has been discussed above as defendants failed to prove the issue in hand through cogent, convincing and reliable evidence, hence accordingly the issue in hand is hereby decided in negative against the defendants and in favor of plaintiff.

ISSUE NO. 1

Whether plaintiff has got a cause of action? OPP

In wake of issue wise findings above, the plaintiff has got a cause of action, hence accordingly the issue in hand is hereby decided in positive in favor of plaintiff and against the defendants.


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ISSUE NO.7:

Whether plaintiff is entitled to the decree as prayed for?

OPP

In wake of the issue wise findings above, plaintiff is entitled to the decree as prayed for, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiff and against the defendants.


Relief:

In nutshell of the detailed discussion upon various issues, the suit of plaintiff is hereby decreed in his favor for the relief as prayed for. No order as to costs.

File be consigned to record room after its necessary completion.

Announced.


26.05.2025


Muhammad Junaid Alam,
Civil Judge-II,
Tehsil Courts Kalaya, Orakzai

C E R T I F I C A T E

Certified that this judgment consists of eleven (11) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 26.05.2025


Muhammad Junaid Alam,
Civil Judge-II,
Tehsil Courts Kalaya, Orakzai