

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

**Suit No. 94/1 of 2022**

**Date of Original Institution.....06.07.2022**

**Date of Decision of the suit.....24.05.2025**

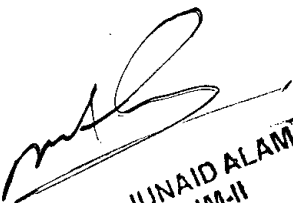
1. MST. WAWA DEEN SULTAN WIDOW OF ALI AYAZ,
2. DANISH ALI SON OF ALI AYAZ AND
3. MST. RABIA DAUGHTER OF ALI AYAZ, ALL RESIDENTS OF SATAR SAAM, PERRA, TEHSIL LOWER DISTRICT ORAKZAI.

**.....PLAINTIFFS**

**VERSUS**

1. MUHAMMAD NAWAZ SON OF SAID NABI,
2. ASIF ALI,
3. ATIF ALI, BOTH SONS ALI NAWAZ, RESIDENTS OF SATAR SAAM, PERRA, TEHSIL LOWER DISTRICT ORAKZAI.

**.....DEFENDANTS**

  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
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**SUIT FOR POSSESSION THROUGH  
PARTITION AND RECOVERY ETC**

**Counsel for plaintiffs: Mr. Abid Ali Advocate**

**Counsel for defendants: Mr. Sana Ullah Khan Advocate**

**JUDGMENT**

**24.05.2025**

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


2. Brief facts of the case in hand are that plaintiffs filed a suit against defendants for possession through partition to the effect that plaintiff no. 01 is the widow of Ali Ayaz, who got martyred in the year 2010. Furthermore, plaintiffs stated in their plaint that the martyr Ali Ayaz was awarded with *shuhada package*, pension and other gratuity, the amount of which was spent in joint house of the parties to the suit and also constructed a separate house with the same amount. They further stated that suit property consists of one house comprising of seven rooms alongwith veranda and attached washroom, fully detailed in the headnote of the plaint is still joint and un-partitioned between parties to the suit. Moreover, parties were residing in the joint house since, 18.05.2021. Lastly, defendant no. 01 dispossessed the plaintiffs from the house. Furthermore, plaintiffs held a jirga with defendants and it was decided that defendant no. 01 will construct two rooms alongwith veranda, washroom and courtyard outside the house within the period of eight months. Furthermore, defendant no. 01 would also pay Rs. 250,000/- to plaintiffs within five months. However, defendant no. 01 denied the jirga verdict and did not implement the same. Defendants are also reluctant to hand

  
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over listed equipment to plaintiffs. In this respect defendants were time and again requested to return their legal share and listed equipment to plaintiffs but thereafter, by exercising delaying tactics they finally refused to admit the stance of plaintiffs, hence instant suit has been instituted.


3. After institution of the suit, defendants were summoned and accordingly defendant no. 01 appeared before the court and marked his attendance and also submitted his written statement with legal and factual objections raised therein. While the other defendants were proceeded ex-parte.
4. Out of controversies of the parties, as raised in their respective pleadings, the Court has framed the following issues on 07.11.2022, while additional issues were framed today.

1. Whether the plaintiffs have got a cause of action?
2. Whether the plaintiffs are estopped to sue? OPD
3. Whether the suit of plaintiffs is time barred? OPD
4. Whether the plaintiffs are entitled to their shares in the undivided house consisting of 07 rooms alongwith veranda and attached bathroom which was constructed on the *shuhada* package which was given to the widow


  
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(plaintiff no. 01) of Ali Ayaz under the jirga verdict dated 12.03.2021 or jirga verdict dated 18.05.2021? OPP

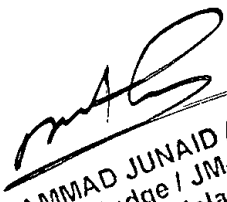
5. Whether plaintiffs are entitled to the recovery of an amount of Rs. 250,000/-? OPP
6. Whether plaintiffs are entitled to the household articles as per list attached? OPP
7. Whether the defendants agreed to construct two rooms house alongwith bathroom and boundary wall within 11 months and to pay an amount of two lacs and fifty thousand within 05 months through a jirga? OPP
8. Whether defendant no. 01 disobeyed the jirga verdict dated 12.03.2021 and dispossessed plaintiffs from their house? OPP
9. Whether a jirga dated 12.03.2021 held between the parties with their mutual consent and which is still acceptable to both the parties? OPD
10. Whether the rooms in the undivided house were constructed by defendant no. 01 with his own money and not with the amount of shuhada Package or under the jirga deed dated 12.03.2021? OPD
11. Whether the plaintiffs are entitled to the decree as prayed for?
12. Relief.

  
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5. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as three witnesses and thereafter closed their evidence. Contrary to this, defendant no. 01 also produced three witnesses and thereafter closed their evidence with a note.
6. Both the learned counsels for the parties to the suit then advanced arguments. Learned counsel for the plaintiffs opened the arguments and argued that plaintiff is the widow of Ali Ayaz, who got martyred in the year of 2010. Furthermore, the plaintiffs stated that martyr Ali Ayaz was awarded *shuhada* package, pension and other gratuity funds, which was spent in the joint house and also constructed a house. Plaintiffs further alleged that a house consisting of seven rooms alongwith veranda and attached washroom is still joint and un-partitioned. Moreover, parties resided in the joint house till 18.05.2021. It is alleged that defendant no. 01 dispossessed the plaintiffs from their joint house. Furthermore, stated that a jirga was conducted between parties to the suit and it was decided that defendant no. 01 would construct two rooms alongwith veranda, washroom and boundary wall outside the existing house within stipulated eight months' time. Furthermore, counsel for the plaintiffs argued that

  
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defendant no. 01 had to pay Rs. 250,000/- to plaintiffs but defendant no. 01 disobeyed the Jirga verdict, and the defendants are even reluctant to hand over listed articles to plaintiffs. In this respect defendants were time and again requested to return the legal share of plaintiffs and listed equipment to plaintiffs but after exercising delaying tactics they finally refused to admit the stance of plaintiffs, hence instant suit has been instituted. Counsel for the plaintiffs argued that the plaintiffs have succeeded to prove their stance through cogent, convincing and reliable evidence and further nothing solid in rebuttal is available on the record, hence prayed that the suit in hand may kindly be decreed in favor of plaintiffs and against the defendants for the relief as prayed for.

  
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7. Contrary to this learned counsel for the defendant no. 01 argued that plaintiffs have got no cause of action. He further added that defendant no. 01 has neither constructed a house with the *shuhada* package of martyred Ali Ayaz nor he know anything about the pension and other gratuity of martyr Ali Ayaz. He further argued that at the time of partition in the year 2014, four rooms were constructed, whereas, one room was for plaintiffs while the remaining were for defendants. He also argued that defendant no. 01

constructed two rooms alongwith veranda and spent handsome amount of nineteen lacs. He further stated that plaintiff no. 01 is residing with her parents for last 09 years and he has got no objection if she came to her room. He further alleged that plaintiffs failed to prove their stance through cogent and convincing evidence. While, the defendants have succeeded to produce evidence in light and support of their stance as stated in their written statement. Hence, prayed that as plaintiffs failed to prove their case, accordingly the suit in hand may kindly be dismissed.

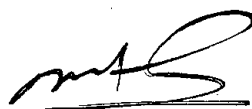
8. In light of perusal of record, available evidence and valuable assistance of both the learned counsels for the parties the issue wise findings are as under.

**ISSUE NO. 2 & 3:**

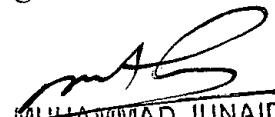
**Whether the plaintiffs are estopped to sue? OPD**

**Whether the suit of plaintiffs is time barred? OPD**

Issue no. 02 & 03 are interlinked, hence, taken together for discussion. Estoppel needs cogent, convincing and reliable evidence which is lacking on the part of defendants. Furthermore, contention of defendants is that suit of plaintiffs is not within time. Period of limitation for filing declaratory suit under Article

  
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120 of Limitation Act, is six years. Furthermore, after the 25<sup>th</sup> Constitutional (Amendment) Act, 2018, all Federal and Provincial Laws stood extended to the newly merged districts. Suit of plaintiff is held to be within time. Hence, issue is decided in positive in favor of plaintiffs against defendants.

  
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**ISSUE NO. 04:**

**Whether the plaintiffs are entitled to their shares in the undivided house consisting of 07 rooms alongwith veranda and attached bathroom which was constructed on the shuhada package which was given to the widow (plaintiff no. 01) of Ali Ayaz under the jirga verdict dated 12.03.2021 or jirga verdict dated 18.05.2021?**

**OPP**

Plaintiffs have stated in their plaint that plaintiffs are entitled to their shares in the undivided house which consists of 07 rooms alongwith veranda and attached washroom, which was constructed with the *shuhada* package of martyr Ali Ayaz and further entitled to the recovery of an amount of Rs. 250,000/-. To prove their stance plaintiffs produced one Haq Meer son of Ghulam Faqeer, who appeared as PW-01 in the witness box and



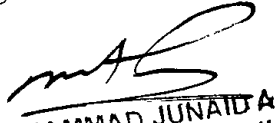
deposed in light and support of stance of plaintiffs as stated in the plaint. During cross examination he stated that it is correct that neither child of martyr Ali Ayaz nor his widow (plaintiff no. 01) has thumb impressed/signed the jirga verdict dated 18.05.2021.

مبینہ فیصلہ جرگہ 18.05.2021 میں علی نواز ولد سید نبی کے اولاد یا بیوہ کا بھی دستخط یا انگوٹھا ثبت نہ ہے۔

He further stated that he does not know the about contents of plaint.

He further stated that CNIC number i.e. 21603-3904034-2 of plaintiff no. 01 is correctly mentioned on the alleged jirga verdict.

یہ درست ہے کہ مبینہ فیصلہ 18.05.2021 میں کی تحریر میں مدعیہ دادا دین سلطان کا شناختی کار

  
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ڈنمبر 2160339040342 درست طور پر درج ہے۔

Ali Sadiq son of Bakht Meer appeared as PW-02, who deposed in light and support of the stance of plaintiffs as stated in the plaint. He stated that he was the Jirga member of alleged Jirga verdict dated 18.05.2021. He further stated that after scribe of jirga verdict and he took the same to the plaintiff no. 01 for thumb impression to her brother home.


دادا دین سلطان کے انگوٹھے کے لئے تحریر بھائی کے گھر لے کر گیا۔

During cross examination he stated that the Jirga members took statement in writing from both the parties prior to conduct of the jirga. Self-stated that they took statements of the parties in the said Jirga. He further stated that they have conducted Jirga on the free will of both the parties.

جرگہ ممبران دونوں فریقین سے تحریری بیانات لیتے ہیں۔ جو کہ جرگہ شروع ہونے سے پہلے لیتے ہیں از خود

کہا کہ اس جرگہ میں ہم نے تحریری بیان لئے تھے۔ مبینہ جرگے کے لئے ہم نے بیان نہیں بلکہ واق لیا تھا۔

He further stated that the widow of martyr Ali Ayaz and her children were not present in the alleged jirga.

جرگہ مبینہ فیصلہ میں علی نواز کے زوجہ اور اولاد شامل نہ تھے۔  
  
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He further stated that plaintiff no. 01 after the martyrdom of Ali Ayaz, resided with defendant no. 01 Muhammad Nawaz and later on shifted to her father house.

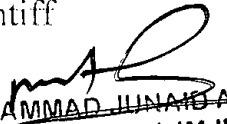
مدعیہ شوہر کے شہادت کے بعد کچھ عرصہ تک محمد نواز کے ساتھ تھی بعد ازاں میکے چلے آئی۔

One Ijad Ali appeared and deposed as PW-03, who stated that his brother-in-law was martyred in the year 2010 and his sister resided with defendants till 2015. He further deposed in light and support of the stance of plaintiffs as stated in the plaint. He produced Jirga verdict dated 18.05.2021 which is Ex. PW-3/1, special power of attorney

Ex. PW-3/2 and copy of his CNIC which is Ex. PW-3/3. During cross examination he deposed that it is correct that the CNIC number of plaintiff no. 01 mentioned on the Ex. PW-3/1 is incorrect. He also stated that the CNIC number of defendant no.01 Muhammad Nawaz mentioned on the Ex. PW-3/1 is also incorrect. It is also correct that at the time of marriage of Muhammad Nawaz and martyr Ali Ayaz their house consists of seven rooms.

یہ بھی درست ہے کہ محمد نواز، علی نواز ان کی ماں، ایک بیٹھک اور ٹوٹل سات کرے بوقت شادی تھے۔

It is also correct that the room of his sister, the plaintiff no. 01 is locked.

  
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In light of the above evidence produced by plaintiffs to prove the issues in hand, it has been noticed that all the PWs deposed in light and support of the stance of plaintiffs as stated in the plaint and furthermore, during cross examination the opposite party failed to contradict the witnesses in material particular and thus nothing in rebuttal or contradictory has been brought on the record. Moreover, such questions were put to the witnesses which were otherwise admissions on the part of defendants.

During cross examination of PW-01 stated that at the time of dispute over the suit property plaintiff and defendant no. 01 resided jointly and lived together. It also


pertinent to mention here that these answers/statements of PWs were not even rebutted through suggestions. On the other hand, all the DW-01 admitted that there was exist a dispute over the family partition. DW-01, further admitted the stance of plaintiffs that he will construct two rooms, one washroom alongwith veranda for the son of martyr Ali Ayaz. Furthermore, DW-01 admitted that defendant no. 01 also started construction of new house for plaintiffs. It is also pertinent to mention here that DW-01 stated that the suit property (house) was partitioned through Jirga verdict dated 12.03.2021, while defendant no. 01 stated that he constructed the house and no family partition has been made. Moreover, DW-01 stated that defendant no. 01 had processed the Jirga verdict dated 12.03.2021. It is also worth mentioning here that DW-03, the contesting defendant no. 01 has admitted that plaintiff no. 01 has reported the matter to the local police and charged him, while on the other hand defendant no. 01 had denied the second jirga, which was conducted in the PS.

  
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In light of the above discussion, as plaintiffs have succeeded to prove the issue in hand regarding the jirga verdict dated 12.03.2021, through cogent, convincing and reliable evidence, hence accordingly the issue in hand is

hereby decided in positive in favour of plaintiffs and against the defendants to the extent of jirga verdict dated 12.03.2021.

**ISSUE NO. 05 to 08:**

  
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**Whether plaintiffs are entitled to the recovery of an amount of Rs. 2,50,000/-? OPP**

**Whether plaintiffs are entitled to the household articles as per list attached? OPP**

**Whether the defendants agreed to construct two rooms house alongwith bathroom and boundary wall within 11 months and to pay an amount of two lacs and fifty thousand within 05 months through a jirga? OPP**

**Whether defendant no. 01 disobeyed the jirga verdict dated 12.03.2021 and dispossessed plaintiffs from their house? OPP**

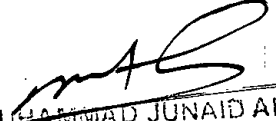
Issues no. 05 to issues no. 08 are interlinked, hence; taken together for discussion. Plaintiffs have stated in their plaint that plaintiffs are entitled to their shares in the undivided house which consists of 07 rooms alongwith veranda and attached washroom, which was constructed on the *shuhada* package of martyr Ali Ayaz and further entitled to the recovery of an amount of Rs. 250,000/-. To prove their stance plaintiffs produced one Haq Meer son of Ghulam Faqeer who appeared as PW-01 in the witness box and deposed in light and support of stance of plaintiffs as

stated in the plaint. However, during cross examination of all the PWs did not utter a single word regarding the issues in hand. It is also pertinent to mention here that plaintiffs by passed the first Jirga and held the second Jirga dated 18.05.2021. It is also worth mentioning here that plaintiffs had not mentioned the Jirga verdict dated 12.03.2021 in their plaint and concealed the facts from the court. Moreover, the plaintiffs mentioned in their plaint the jirga verdict dated 18.05.2021, whereas plaintiff's witnesses emphasized on first Jirga verdict dated 12.03.2021. Furthermore, plaintiffs failed to implement Jirga's verdict dated 18.05.2021 and 12.03.2021, hence, they filed the instant suit for partition. Additionally, it is also on the record that plaintiffs had not mentioned the report, which was reported to the local police in the PS, in the plaint, whereby plaintiff's witnesses focused in the evidence on the report filed in the PS. It is also pertinent to mention here that PW-01 has admitted in his cross examination that on the Jirga verdict dated 18.05.2021, there exists no sign of Ali Nawaz (brother of defendant no. 01). Furthermore, PW-01 stated that partition had already been made between the parties; therefore, plaintiffs have filed the suit with no prayer for partition.

  
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In light of the above discussion, as plaintiffs have failed to prove the issues in hand through cogent, convincing and reliable evidence, hence, accordingly the issues in hand are hereby decided in negative.

**ISSUE NO. 09:**

  
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**Whether a jirga dated 12.03.2021 held between the parties with their mutual consent and which is still acceptable to both the parties? OPD**

Burden of this issue was on the shoulder of defendants. Defendants stated in light and support the issue in hand. To prove their stance, defendant no. 01 in his cross examination admitted in these words that it is further correct that as per Jirga verdict dated 12.03.2021, I was responsible for construction of two rooms, one washroom alongwith veranda for the wife and sons of martyred Ali Ayaz.

یہ درست ہے کہ ہمارے مابین 2021 میں ایک جرگہ ہوا تھا۔ جو کہ 12.03.2021 کو ہوا تھا۔ یہ درست

ہے کہ بروئے جرگہ کہ علی آواز کے بچوں کے لئے 210,000 روپے مقرر کئے تھے۔ یہ درست ہے کہ

بروئے جرگہ مجھ پر علی آواز کے زوجہ اور بیٹوں کے لئے دو عدد کمرے، ایک لیٹرین اور ایک برآمدہ بنانے کا

مجھ پر ذمہ ڈالا گیا تھا۔

Further admitted that it is correct that the room of plaintiff no. 01 is still locked and the household items are present there in the room and she may take the same.

مدعیہ کا کمرہ تاحال بند پڑا ہے اور مدعیہ کا سامان اس میں موجود ہے اور لے کے جائے۔

Furthermore, PW-03 admitted in his cross examination that a jirga was convened between the parties on 12.03.2021.


جرگہ 12.03.2021 کو ہوا تھا۔

In light of the above discussion as defendants succeeded to prove the issue in hand through their cogent, convincing and reliable evidence and furthermore nothing in rebuttal or contradictory has been brought on the record by the opposite party during cross examination, hence issue in hand is hereby decided in positive in favour of defendants and against plaintiffs.

**ISSUE NO. 10:**

**Whether the rooms in the undivided house were constructed by defendant no. 01 with his own money and not with the amount of shuhada Package or under the jirga deed dated 12.03.2021? OPD**

Defendant no. 01 has stated in his written statement that he had neither constructed a house with the *shuhada* package of martyr Ali Ayaz nor he knew something about

  
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the pension and other gratuity of martyr Ali Ayaz. He further stated that at the time of partition in the year 2014, four rooms were constructed, wherein one room was for plaintiffs while remaining were for defendants. He further stated that defendant no. 01 constructed two rooms alongwith veranda and spent handsome amount of nineteen lacs. He said that plaintiff no. 01 is residing with her parents for the last 09 years and he has got no objection if she returns to her room. To prove his stance defendants produced one Zahid Ali son of Manzar Ali as DW-01. He produced copy of Jirga verdict dated 12.03.2021 which is Ex. DW-1/1. During cross examination he deposed that it is correct that it was decided in the Jirga that defendant no. 01 will construct two rooms and one washroom alongwith veranda outside of the house for son of martyr Ali Ayaz. Self-stated that Jirga verdict dated 12.03.2021 was not specifically performed due to the fact that plaintiff reported to local police against the said jirga verdict.

  
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یہ درست ہے کہ ہم نے یہ فیصلہ بھی کیا تھا کہ علی آیار کے بیٹے دانش کیلئے گھر کے باہر دو کمرے ایک

لیٹرین اور برآمدہ عا علیہ محمد نواز بنائے گا۔ از خود کہا کہ فیصلہ محررہ بالا مدعیان کی رپورٹ کی وجہ سے پایا

مکمل تک نہ پہنچا اور ویران ہو گیا۔

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It is correct that signatures/thumb impressions were obtained on Ex. DW-1/1 in his presence.

یہ درست ہے کہ Ex. DW-1/1 پر دونوں فریقین کے دستخط میرے سامنے ہوئے۔

It is correct that defendant Muhammad Nawaz was acted upon the jirga verdict i.e. Ex. DW-1/1 and dug out foundation of a house.

یہ درست ہے کہ Ex. DW-1/1 پر محمد نواز نے عمل درآمد شروع کیا تھا اور مکان مدعیان کے لئے

بنیاد کھود کر کام شروع کیا تھا۔

  
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One Shamsheer Ali son of Sarwar Khan, produced as

DW-02. He was the Jirga member held on 12.03.2021, and in the jirga it was decided that house would be partitioned in three shares. During cross examination he stated that the sons of Ali Nawaz (brother of defendant no. 01) had got their shares according to Ex. DW-1/1.

علی نواز کے بیٹوں کو گھر کے اندر دو کمرے، لیٹرین، اور برآمدہ حسب تحریر Ex. DW-1/1 مل چکی

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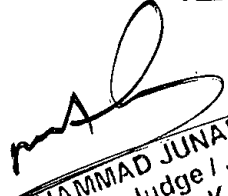
Muhammad Nawaz son of Syed Nabi, himself appeared as DW-03. He produced copy of his CNIC which is Ex. DW-3/1. He deposed on oath in light and support of stance as stated in the written statement. During cross examination

he stated that it is correct that a Jirga was held dated 12.03.2021 between the parties. It is correct that Rs. 210,000/- was fixed for the son of martyred Ali Ayaz. It is further correct that as per Jirga verdict dated 12.03.2021, defendant no. 01 was responsible for construction of two rooms, one washroom alongwith veranda for the wife and sons of martyred Ali Ayaz.

یہ درست ہے کہ ہمارے مابین 2021 میں ایک جگہ ہوا تھا۔ جو کہ 12.03.2021 کو ہوا تھا۔ یہ درست

ہے کہ بروئے جگہ کہ علی آواز کے بچوں کے لئے 210,000 روپے مقرر کئے تھے۔ یہ درست ہے کہ

بروئے جگہ کہ مجھ پر علی آواز کے زوجہ اور بیٹوں کے لئے دو عدد کمرے، ایک لیٹرین اور ایک برآمدہ بنانے کا

  
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مجھ پر ذمہ ڈالا گیا تھا۔


It is correct that the room of plaintiff no. 01 is still locked and the household items are present there in the room and she may take the same.

مدعیہ کا کمرہ تاحال بند پڑا ہے اور مدعیہ کا سامان اس میں موجود ہے اور لے کے جائے۔

Now in light of the above evidence produced by defendants to prove the issue in hand, it has been noticed that all the DWs had supported the stance of defendants in their respective examination chief and in their cross examination nothing contradictory or in rebuttal has been brought on record by plaintiffs.

In light of the above discussion as defendants succeeded to prove the issue in hand through their cogent, convincing and reliable evidence and furthermore nothing in rebuttal or contradictory has been brought on the record by the opposite party during cross examination, hence issue in hand is hereby decided in positive in favour of defendants and against plaintiffs.

**ISSUE NO. 01**

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

**Whether the plaintiffs have got a cause of action? OPP**

In wake of issue wise findings above, the plaintiffs have got a cause of action only to the extent of jirga verdict dated 12.03.2021, hence issue in hand is hereby decided partially in positive in favour of plaintiffs and against defendants.

**ISSUE NO.11:**

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

In wake of the issue wise findings above, plaintiffs are entitled to the partial decree as prayed for in the evidence regarding jirga deed/verdict dated 12.03.2021, hence, accordingly the issue in hand is hereby decided partially in positive in favour of plaintiffs and against the defendants.


**Relief:**

As per the detailed discussion upon various issues, the suit of plaintiffs is hereby partially decreed to the extent of jirga deed/verdict dated 12.03.2021, partition of one house consists of seven rooms alongwith veranda and attached bathroom owned by defendant no. 01 and prayers of the plaint are dismissed. No order as to costs. File be consigned to record room after its necessary completion.

**Obiter Dicta:**

It is very strange and astonishing fact that jirga verdict dated 12.03.2021 has not been mentioned anywhere in the pleading of the parties, but the whole evidence of both the parties revolves around the said jirga verdict dated 12.03.2021. Hence, the suit is decided on the basis of the said jirga verdict accordingly.


**Announced**  
24.05.2025

  
**Muhammad Junaid Alam,**  
Civil Judge-II,  
Tehsil Court Kalaya, Orakzai

**C E R T I F I C A T E**

Certified that this judgment of mine consist upon twenty-one (21) pages. Each page has been read over, checked and signed after making necessary correction therein.

**Dated: 24.05.2025**

  
**Muhammad Junaid Alam,**  
Civil Judge-II,  
Tehsil Court Kalaya, Orakzai