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

Civil Suit No.	82/1 of 2023
Date of Institution:	29.04.2023
Date of Transfer In:	02.07.2024
Date of Decision:	28.07.2025

Shehzad Khan s/o Hashim Khan, presently R/O Bhana Mari,
Peshawar.

..... (Plaintiff)

VERSUS

1. Saad Khan s/o Khalid Khan, R/O Kocha Nasrullah Khan, Bhana Mari, Peshawar.
2. Deputy Commissioner, Orakzai.
3. Assistant Commissioner, Orakzai.
4. Tehsildar Lower Orakzai.
5. Patwari Halqa Lower Orakzai

..... (Defendants)

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

JUDGEMENT:

28.07.2025

This order is to decide instant suit filed by Mr. Shehzad Khan, the plaintiff, for declaration of title, and necessary injunctions, against Mr. Saad Khan and four others, the defendants.

Pleadings:

The claim as recounted in the plaint reads that plaintiff is owner in possession of suit land detailed in the plaint on the basis of agreed deed dated 10-04-22. The suit land

was the ownership of the defendants since generations who agreed to sale/transfer it to the plaintiff in presence of

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witnesses for a sale consideration. The plaintiff has since substantially improved the shape and form of the land by constructing new structures, and rebuilding old ones. It is alleged that due to the hike in land rates in the area, the defendant has had a change of heart, and wants to forcibly reclaim the suit land. The defendant was repeatedly requested to abide by the agreement and concede the entitlement of plaintiff to suit land but to no avail, hence the suit.

Defendant no 01, in addition to regular objection to the legal fitness of the suit, has also rebutted the factual claim of the plaintiff. The written statement denies the incidence of any agreement for sale of suit land, and also the validity of the sale deed dated 10-04-22. It adds that defendant is not owner of an inch in the suit land, as his father and predecessor in interest is still alive. It explains that defendant's father is plaintiff's cousin, and he is well aware of his being alive. The written statement adds that suit land is being acquired for judicial complex at Kalaya, which the plaintiff is opposed to. It further denies the claim of the plaintiff of being in possession of suit land by himself or through a tenant. Defendant claims that suit land is in the actual and constructive possession of his father.

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Defendant no 02 to 05 are public officials. They deny the incidence of any transaction between them and the

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plaintiff. Their written statement maintains that portion of the suit land is being acquired for Judicial Complex, and a portion has already been transferred to provincial government for construction of sports complex. Rest of the factual paras in the plaint are plainly denied.

Difference among the parties were distilled and reduced into the following issues:

Issues:

1. Whether the plaintiff has got cause of action?
2. Whether this court has got jurisdiction?
3. Whether the plaintiff is estopped to sue?
4. Whether the plaintiff is owner of the suit property, the description of which is briefly given in the heading of the plaint, measuring 50 Jerib on the basis of deed dated: 10.04.2022, attested on 15.04.2022?
5. Whether deed dated: 10.04.2022 is fake, bogus and based on malafide and has been prepared by the plaintiff in order to tease the defendant and no sale consideration has been received to the defendant?
6. Whether the suit property was purchased by the plaintiff from the defendant in presence of the marginal witnesses at the sale consideration of

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Rs.12,000,000/- and he is owner in possession of the same?

7. Whether the plaintiff has made improvement over the suit property?
8. Whether father of the defendant and uncle of the plaintiff namely Khalid Khan is alive and the defendant is not owner of an inch in the suit property which is in possession of the tenant Qadeem Khan since long?
9. Whether the plaintiff is entitled to the decree as prayed for?
10. Relief?

Thereafter, all sides were consecutively invited to produce their evidence in support of their respective stances. It is pertinent to mention that defendant no 01 was proceeded against as ex-parte on 30-04-25 when he defaulted on attendance.

Evidence: Witnesses/Exhibits

Mr. Shehzad Khan s/o Hashim Khan, the plaintiff himself appeared as PW-01, Muhammad Shah Riaz s/o Muhammad Sharif as PW-02, Ahmad Zeb Jadoon s/o Gul Badshah as PW-03 and Asif Naseem, Development Assistant

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DC Office, Orakzai as DW-01. They have exhibited the following documents;

- i. Iqrar Nama as Ex.PW-1/1.
- ii. Copy of CNIC of the plaintiff as Ex.PW-1/2.
- iii. Copy of CNIC of PW-02 as Ex.PW-2/1.
- iv. Copy of CNIC of PW-03 as Ex.PW-3/1.
- v. Notification u/s 04 of the Land Acquisition Act, 1894 as Ex.DW-1/1.

Reasons:

Reasoning of the court followed by a decision on each issue is as follows:

Issues No 04, 05 & 06:

These issues are taken together for the reason that pivot around the central claim of the plaintiff i.e. he is owner through purchase of suit land.

The trial proceeded as ex-parte against the private defendant, thus there is nothing in rebuttal to the evidence produced by the plaintiff. The plaintiff, who originally claimed title to suit land, was burdened to prove the sale deed on which his claim rests.

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- Plaintiff produced Mr. Ahmed Zeb and Mohammad Shah Riaz, marginal witnesses of agreement deed dated 10-04-22. They consistently affirmed the position held in the plaint and maintained in evidence that the suit land was purchased by him from defendant no 01 through sale deed of 10-04-22 for a sale consideration of Rs. 120, 00,000/-.
- The legal requirement of two marginal witnesses prescribed by the QSO stands met in the case. Defendant has annexed a certificate purportedly from his Supervising Officer to the effect that he was on duty at Multan during the period in the which the agreement took place.
- However, written statement omits to mention or rely on the said alibi. Moreover, the certificate was never verified from the issuing authority, nor was it subjected to examination owing to the fact that the defendant defaulted on attendance. Per evidentiary standards in place for proof of claim, plaintiff has established the contract for purchase of land, and conveyance of possession.
- Another key point in the matter is the claim of the defendant that he is not owner of an inch as his predecessor and father is still alive. It no where denied in the corpus of the case record. In fact, plaintiff examined

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by the court post-trial conceded that defendant's father is alive but sick. The court was informed that defendant's father has been restricted due to mental sickness for the last five years. Further, that he has other siblings.

- It is customary in the region for the eldest son locally available to step into the shoes of his deceased or ailing parent for conduct of public affairs. It is not improbable, considering the body of evidence, that defendant no 01 might have entered into a contract for sale of land on behalf of his ailing father. As per local culture, it is both feasible and regular.
- However, in formal law, no one can sell or convey a title better than he/she possesses. Section 07 of the transfer of property act specifically prescribes two essential requisites for a sale. The person entering into an agreement for sale must be both competent and entitled. Competency in law, usually, refers to age of majority and sanity of mind. However, entitlement is a relevant essential in the present context.
- Clearly, during the time of sale, in strict legal terms the defendant was not 'entitled' to the land he might receive as his share in the patrimony. But legacy opens only on demise of the predecessor, and nobody can claim any

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right to a land owned by his predecessor in the latter's life time.

- In view of the statement, defendant no 01 entered into a contract for sale of suit land for a sale consideration which he duly received. Per local customs, he could do that as his father was virtually disable for purpose of legal transactions.
- Now, during the trial on the same land, he is taking the defense of formal law to defeat the plaintiff. Obviously, defendant cannot be allowed to pick and choose between local customs and formal law as and when it benefits him.
- In these circumstances, the court is inclined to hit the golden mean of customary and formal law. The agreement for sale is upheld but only to the extent of defendant's potential share in the estate of his father. With the sale agreement, plaintiff has effectively stepped into the shoes of the defendant to extent of the suit land.
- However, as stipulated in the agreement, if the subject matter of sale agreement exceeds the share of the defendant in the legacy of his father, plaintiff shall be entitled for value of the deficient measure.

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- The issues are decided in these terms. Considering there is no revenue record in place yet in the district, defendant no 01 shall execute a registered deed to acknowledge the interests established in agreement dated 10-04-22.

Issue No 07:

Issue no 07 is about the claim that plaintiff improved the structural outlook of the suit land by raising new constructions and upgrading existing ones. Pleadings omit to supply any details about the nature and extent of the improvements.

Similarly, plaintiff as witness re-affirms the claim that he has made improvements to suit land but opts against supplying details of the items constructed or the costs incurred on the development.

In these circumstances, when the trial was proceeded ex-parte against the private defendants, there is nothing to rebut the claim. However, as indicated above, the plea and proof are only about improvements, without their concrete details. No financial estimates were either claimed or proved.

So, the issue is decided in plaintiff's favor only to the extent of improvements, without confirming their details.

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Issue No 08:

The issue contains three questions about defendant's father being alive, entitlement of defendant in the suit land, and possession of suit land through tenant.

Plaintiff has conceded before the court the fact that defendant's no 01 is alive but senile and immobile due to age and sickness. About entitlement of plaintiff, per formal law, he does not have any during the life of his predecessor in interest, his father. For detailed discussion, please visit the discussion under issue no 04. 05, 06.

About the claim vis-à-vis possession through tenants, defendant defaulted on attendance, and thus failed to produce any evidence. This part of the issue remains unproved.

Issue is decided in the terms above.

Relief: Issue No 09:

Plaintiff has prayed for a decree of declaration of title and corresponding injunctions. His claim is based on a sale agreement executed between him and defendant no 01. He claims that sale consideration was paid and possession was received in the presence of witnesses.

Declaration of right is sought and granted against a fully matured and pre-existing legal right. Legal right is an

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interest recognized by law. Private agreements on the other hand create equitable interests which, when duly attested by a public body, attains the status of right.

Throughout the province, register of rights as maintained by the revenue office, or registration of sale deed carried by the registrar's office, is received as adequate proof of official acknowledgment of rights of a party.

Generally, the remedy available with a court for a party claiming interests in landed property under a sale agreement is specific performance of the contract. The defaulting party is judicially compelled to discharge his part of the promise.

However, in the newly merged areas, particularly the district of suit land, revenue record is non-existent, as no settlement has taken place yet. Similarly, upon telephonic inquiry from the Deputy Commissioner's office, office of the registrar is not functional either.

The court is thus constrained to fashion a relief from the available options commonly offered. In the circumstances of the case, a declaration in personam is granted to plaintiff against defendant no 01.

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Plaintiff shall have and enjoy all rights in respect of suit property previously held by defendant no 01. The latter is restrained from illegal interference with suit land.

Plaintiff is entitled to suit land to the extent of defendant no 01s share of it in the legacy of his father. Issue is decided in these terms.

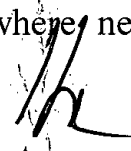
Case file be consigned to the record room after its necessary completion and compilation.

Announced
28.07.2025


(Ijaz Mahsood)
Senior Civil Judge,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment of mine consists of twelve (12) pages, each has been checked, corrected where necessary and signed by me.


(Ijaz Mahsood)
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Orakzai at (Baber Mela)