

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

Civil Suit No.	59/1 of 2022
Date of Institution:	07.06.2022
Date of Transfer In:	14.07.2022
Date of Decision:	29.07.2025

Fazal Habib s/o Aziz Rehman, R/O Chaman Jana, Qoum Stori Khel,
 District Orakzai

..... (Plaintiff)

VERSUS

1. Provincial Government through Chief Secretary Khyber Pakhtunkhwa.
2. Inspector General of Police, Khyber Pakhtunkhwa.
3. District Police Officer, Orakzai.
4. Deputy Commissioner, Orakzai.
5. Tehsildar Lower, Orakzai.
6. Zuilfiqar s/o Muhammad Shoaib, R/O Qoum Stori Khel, Chaman Jana, Tehsil Lower, District Orakzai.

..... (Defendants)

**SUIT FOR RECOVERY OF POSSESSION, RENTS
 ARREARS/MESNE PROFITS, AND NECESSARY
 INJUNCTIONS**

JUDGEMENT:
 29.07.2025

This order is to decide instant suit filed by Mr. Fazal Habib, the plaintiff, for recovery of possession, rents arrears/mesne profits, and necessary injunctions against Provincial government and others, the defendants.

Pleadings:

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The claim as recounted in the plaint reads that plaintiff comes from Stori Khel tribe of the district. His house is located on the mountain top in shape of large mansion

inhabited by 21 other families than his own. In 2009, their house was torched by militants, which was rebuilt at huge expense. When the mansion was ready for rehabilitation, Pakistan Army moved into it on the plea that it afforded tactical advantage due to its location. The plaintiffs moved out and have been living the life of Internally Displaced Persons IDPs.

In 2014, rent/lease amount was paid to them through local elders. Pakistan Army, at its departure from the building handed it over to FC, who, in turn handed it over to District Police, without the leave, consent or approval of the plaintiff. It is alleged that local police, the current occupant, is neither paying rent, nor is willing to hand over possession. Additionally, it is alleged, they are damaging the property. Eviction of the illegal occupants, recovery of mesne profits/rents, and necessary injunctions are prayed for in the suit.

Government officials arraigned as defendants no 01 to 05 submitted a joint written response to the plaint. In addition to regular objections to the validity of the suit, they rebutted the factual claims of the plaintiff. It is contended that Pakistan Army never expelled any local from their houses, rather the former built its own structures as posts to be manned for protection of the local community against miscreants.

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Defendants deny the incidence of any agreement with the plaintiff, and the payment of any amount in lieu of rent. All the allegations are denied as untrue, and in para 12 it is asserted that subject matter is property of the government.

Mr. Zuilfiqar, claiming to be co-sharer and current occupant of the building, was added as the 6th defendant vide order no 06 of 03-05-23. He has challenged the domicile of the plaintiff and has maintained that plaintiff hails from Afridi Tribe of Khyber Agency. Defendant claims that he is co-owner of the suit property along with other persons listed in Para no 05 of the written statement. He maintains that the bank cheques referred to and relied upon by the plaintiff were in fact issued to the defendant being owner of the suit property. He denies the claims to entitlement of plaintiff, and requests for dismissal of the suit with costs.

Differences distilled from the pleadings were reduced into the following issues:

Issues:

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

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2. Whether plaintiff is owner of the suit land who was compelled by circumstances of militancy to move out?
OPP
3. Whether plaintiff is entitled to recovery of possession, and rent/mesne profits for the period for which the subject matter has been in the possession of the defendants? OPP
4. Whether defendants have lawfully acquired the suit land, and are entitled to its possession? OPD
5. Relief?

Next, both sides were invited to produced evidence in respect of their claim or defense.

Evidence: Witnesses/Exhibits

Azmat Khan, special attorney for the plaintiff, appeared as PW-01, Aziz Ur Rehman s/o Khyal Zareen as PW-02, Awal Rehman s/o Khyal Zareen as PW-03, Muhammad Shahid, operation manager of HBL, Hangu as PW-04, Muhammad Riaz, record keeper Tehsildar Lower Orakzai as PW-05, Malak Janan, line officer, HQ Orakzai at Baber Mela, as DW-01, Qamar Zaman s/o Waris Khan as DW-02, Fazal Wadood s/o Abdul Hakeem as DW-03, Hafeez Uddin, Tehsildar Lower Orakzai as DW-04, Sikandar Hassan, DSP Legal Orakzai

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as DW-05, Asad Ullah, SDEO Orakzai as DW-06, Syed Ameer Shah Raza, record keeper, District Courts Orakzai as DW-07, Muhib Ali, SVP/OPS, National Bank Hangu as DW-08 and Hayat Muhammad, special attorney for defendant No. 06 as DW-09. They have exhibited the following documents;

- i. Special power of attorney of Azmat Khan as Ex.PW-1/1.
- ii. Map/site plan 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. Bank Statement, dated: 23.06.2025 of Political Agent, Orakzai as Ex.PW-4/1.
- vi. Record regarding "Loongi" as Ex.PW-5/1.
- vii. Copy of CNIC of DW-02 as Ex.DW-2/1.
- viii. Copy of CNIC of DW-03 as Ex.DW-3/1.
- ix. Letter No.1361/AC/L. dated: August 2020 consisting of 02 pages as Ex.DW-4/1.
- x. Statement of Malak Akhtar Shah etc as Ex.DW-4/2.
- xi. Statement of Malak Ajeeb Ur Rehman as Ex.DW-4/3.
- xii. Details of "Muajab" as Ex.Ex.DW-4/4.
- xiii. Documents regarding appointment as Ex.DW-6/1.
- xiv. Copy of decree as Ex.DW-7/1.

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- xv. Bank Cheques as Ex.DW-8/1 and Ex.DW-8/2.
- xvi. Service card of DW-08 as Ex.DW-8/3.
- xvii. Special power of attorney of DW-09 as Ex.DW-9/1.
- xviii. Affidavit of cultivators as Ex.DW-9/2.
- xix. Affidavit regarding statement of elders of Lower Orakzai as Ex.DW-9/3.

Reasons:

Issue wise reasoning of the court followed by decision on each issue 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 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.

These issues pertain 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.

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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 issues are decided for the plaintiffs.

Issue No. 02 & 03

These issues are extracted from the claims of the plaintiff that he, being owner of the suit property, is entitled to its recovery, and also to compensation in lieu of rent arrears and mesne profits etc. Since the two issues are inseparably connected, they are taken together for economy of time, ink, and mental effort.

As indicated above, these issues contain the claims of the plaintiff, therefore, the onus to prove these issues through evidence to the satisfaction of the court fell on the plaintiff. Below the court shall appraise the evidence to ascertain whether plaintiff successfully carried the burden or failed.

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- To supply a context, the controversy takes place in a recently merged District which implies that landed states are privately owned without an official record. First land settlement is yet to take place. Unlike older districts, revenue records about land rights are non-existent. In these circumstances, claims of title are to be proved through recourse to traditional means and modes of land ownership, and its proof.
- Plaintiff produced three witnesses including him. Other two witnesses happen to be real brothers of the plaintiff. It is curious to note that in the 14 suits with almost similar claim, the same 03 witnesses have come forth to take the witness stand.
- Another striking feature is the similarity of the direct statement of all three witnesses. Their direct statement is virtually the same with minor differences in phrasing.
- The two central pillars on which the claim of the plaintiff stands are that one Mr. Awal Rahman, who probably is their fellow tribesman, receives a 'Loongi' from the administration, and secondly that a cross cheque of Rs. 210,000 was paid to the plaintiff through local elders, allegedly, as compensation for rent arrears etc.

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- All witnesses concede in their cross-examination that there is no documentary evidence either on the cheque or in the corpus of case record to indicate that the cheques were paid in rent arrears, and were, therefore, an acknowledgement of the entitlement of plaintiff as owner.
- Why was the cheque then paid to the plaintiff? The only documentary material of an arguably neutral nature available on file is the inquiry report of the Assistant Commissioner available on file as DW4/1. The report, in brief, holds that present plaintiff was the tenant at will of the actual owners, and was evicted during the operation thus entitled to a share of compensation.
- Surprisingly, during the course of arguments, learned counsel for plaintiff denied knowledge of the inquiry proceedings categorically, despite the fact that the report indicates participation by both sides of the dispute.
- Interestingly, the original application which prompted the inquiry is annexed with the plaint by the plaintiff himself.

The applicant is Mr. Muqaddar Khan, who, as per statement of PW-02, is real brother of Azmat Khan, Aziz Ur Rehman and Awal Rehman.

The fact that the inquiry was initiated upon an application by Mr. Muqaddar Khan; that it concluded in holding the

plaintiff tenant; and that it was denied by the plaintiff during trial, not just tell about the nature of the payment, but also about the motivation of the plaintiff.

- Coming to the receipt of 'Loongi' remuneration by Mr. Awal Rahman, it should suffice to say that Loongi or Tribal Turban is an honorary title conferred upon an influential local who has not received it as being a successor to a traditional elder. It is a token of trust of the administration invested in a person who enjoys the support of locals.
- Loongi, by no stretch of interpretation, is a symbol or proof of entitlement to a particular piece of land. Loongi, when it is not received from an ancestor, is a strategic incentive of the local administration to co-opt for political purposes a local influential.
- Cumulatively read, the only piece of evidence relied upon by the plaintiff is at best vague. There is no proof on record that the cheque received as compensation was for payment of rent arrears. There is no indication of any tenancy arrangement on record. No local witness, other than plaintiff and his two brothers have come forward as witness despite the claim that 22 families have been unlawfully displaced. The inquiry by the local

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administration, unsuccessfully denied by the plaintiff, also finds against his entitlement as owner. The inquiry, despite being initiated on an application by a brother of the plaintiff, remains unchallenged till date. No petition, complaint, or application prior to the suit was filed by the plaintiffs.

- In view of the discussion above, the issue is decided against the plaintiff.

Issue No. 04

The issue poses the question as to whether defendant illegally acquired possession of suit land. Witnesses for plaintiff allege that local police and impleaded defendant are in unlawful possession of the suit property and are unwilling to hand it over. In the last few lines of his cross-examination, PW-01 denies the suggestion that suit land has been given to impleaded defendant.

Mr. Malik Janan, line officer, in his statement as DW-01 states that suit land was originally occupied by Pakistan Army who handed it over to FC, and then it was conveyed to local Police. About its current status, he claims ignorance as to who is currently occupying it.

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Similarly, in the cross-examination, DW-09 states that plaintiffs being tenants have been paying rentals regularly since 2009.

In view of the discussion above, the court, on the issue of alleged illegal occupation of the suit property by the defendants, is unconvinced of both the affirmative and the negative. Article 2(6) of the QSO order provides a third kind of proof other proved and disproved.

It reads:

“a fact is said to be not proved when it is neither proved nor disproved”.


Since the burden to prove illegal occupation of the defendant rested with the plaintiff, in case of the issue being unproved, it is decided against him.

Relief:

Plaintiff has failed to prove his claim through cogent and reliable evidence. The fact in issue remains unproved. Suit is dismissed; no relief is merited. Costs shall follow the event.

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

Announced
29.07.2025


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CERTIFICATE

Certified that this judgment of mine consists of thirteen (13) pages, each has been checked, corrected where necessary and signed by me.



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