

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

Civil Suit No.	93/1 of 2022
Date of Institution:	17.09.2022
Date of Decision:	31.07.2025

Shandi Gul s/o Saian Shah, *R/O Drey Sotey, Qoum Mala Khel, Tappa Char Khela, Tehsil Upper, District Orakzai.*

..... (Plaintiff)

VERSUS

1. Zyarat Gul s/o Saleem Muhammad
 2. Ghazi Khan s/o Piao Khan
- Both R/O Drey Sotey, Qoum Mala Khel, Tappa Char Khela, Tehsil Upper, District Orakzai.***

..... (Defendants)

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

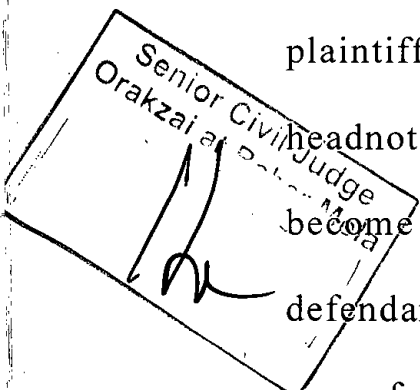
JUDGEMENT:

31.07.2025

This order is to decide instant suit filed by Mr. Shindi Gul, the plaintiff, for declaration, injunction, and recovery of possession through partition, against Mr. Ziarat Gul and one other, the defendants.

Pleadings:

The claim as recounted in the plaint reads that plaintiff is a co-sharer in suit property that is detailed in the headnote of the plaint. The arrangement of joint holding has become a problem for him. It explains that plaintiff and defendant no 02 belong to the same clan, while defendant no 01 come from another group. It is alleged that defendant no 01 has



illegally occupied the suit land. It is claimed that the plaintiff has a preferential right to purchase the suit land. It is conceded the plaintiff and defendant no 02 are joint-owners. It is prayed the partition of suit land be decreed among the owners, and defendant no 01 be restrained from illegal interference with suit land.

Defendant no 01, in addition to the regular objections to the fitness of the suit, also raised a different version of the matter. He submits that suit land was owned originally by Mr. Syed Khan, who agreed to exchange it with plaintiff for plot owned by the latter but situated next to the residence of the former. He adds that a written deed to the effect executed and an additional amount was paid as consideration for the excess measurement of the plot. Defendant claims he is exclusive owner of the suit land, and therefore, the question of partition does not arise. He requests for dismissal of the suit.

Differences between the sides were distilled and reduced into the following issues:

Issues:

- i. Whether the plaintiff has got a cause of action?
- ii. Whether the suit of the plaintiff is time barred?

- iii. Whether the suit property is the exclusive ownership of the plaintiff and the defendant No. 01 have noting to do with the same?
- iv. Whether the plaintiff is entitled to the decree as prayed for?
- v. Relief.

Thereafter, both sides were invited to produce their evidence.

Evidence: witnesses and exhibits

Mr. Tajmin Gul s/o Manak Khan appeared as PW-01, Mr. Israfeel Khan s/o Malak Ghamai as PW-02, Mr. Shandi Gul, the plaintiff himself as PW-03 and Mr. Zyarat Gul, the defendant No. 01 as DW-01. They have exhibited the following documents;

- i. Jirga deed as Ex.PW-3/1.
- ii. Copy of CNIC of DW-01 as Ex.DW-1/1.

Reasons:

Issue-wise reasoning of the court followed by a decision on each issue is as under:

Senior Civil Judge
Orakzai at Peshawar
Mela

Issue No 02:

This issue poses the regular questions about the validity of the legal form suit. They raise the questions of 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.

Issue No 03:

This issue contains the principal claim of the plaintiff that he is owner to the extent of his share in the suit land, and defendant no 01 is an alien who has forcibly and illegally occupied suit land.

Senior Civil Judge
Orakzai District Court
Mardan

It must be admitted at the outset that the nature of the claim of the plaintiffs is vague and unclear. In the headnote of the plaint, he claims to be co-sharer, and then in the same headnote he alleges that defendants have got nothing to do with suit land. The suit, among other prayers, contain one for partition, which is sought against co-sharers.

In Para 03 of the plaint, it is maintained that as per law and customs, plaintiff has a preferential right to purchase the suit plot. These observations were necessary to provide a better perspective on the claim, and the proof.

Now the court shall proceed to appraise and weigh the evidence produced in favor of the claim:

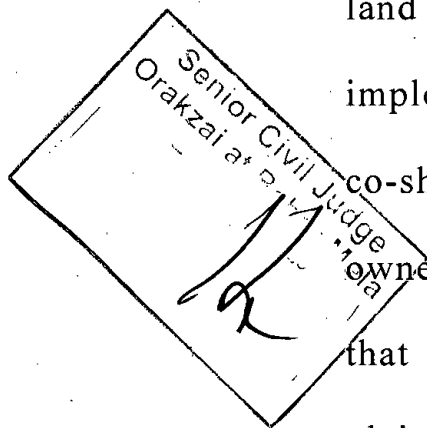
- Plaintiff enlisted 07 witnesses but chose to produce only 03 witnesses. Of the three witnesses, two testified in respect of an alleged mediation proceedings carried between the sides. They did not shed any light on the actual claim of the plaintiff i.e. he is owner or co-owner and defendant is a stranger.
- Mr. Shindi Gul, the plaintiff, testifying as PW-3, concedes that his witnesses had nothing to say about his entitlement to suit property.
- About the suit being one for partition, plaintiff concedes that his brothers and cousins, who are co-owners with him, are not impleaded in the suit. He further adds that he has not filed a suit for partition against his cousins and brothers, the actual co-sharers.
- Defendant no 01 has maintained that suit land was exchanged with actual owner Mr. Saeed Khan. Plaintiff,

Senior Civil Judge
Orakzai at P. Mela
[Signature]

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who did not implead Mr. Saeed Khan as a party in a partition suit, submits that if Mr. Saeed Khan appears and admits that he had exchanged suit land, he would withdraw.

- Now, if the suit land is entitlement of plaintiff and defendant no 02, or of his brothers and cousins, why would plaintiff give it up on an admission from Mr. Saeed Khan, is a serious singularity.
- Defendant no 01 took the witness stands as DW-01. He related the entire matter as averred in the plaint that suit land was exchanged for a plot and additional amount with Mr. Saeed Khan, the owner. The portion of the statement was not challenged during cross-examination.
- Cumulatively read, the witnesses other than plaintiff himself did not utter a word about his entitlement to suit land as claimed. In a suit for partition, plaintiff omitted to implead his brothers and cousins whom he admits to be co-sharers. Despite claiming the suit property being co-owned by him and defendant no 02, the plaintiff states that if Mr. Saeed Khan acknowledges the exchange with plaintiff, he is willing to withdraw the suit.
- In view of the discussion above, the issue is decided against the plaintiff.



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Issues No 01 and 04:


These issues deal with the cause of action, and the entitlement to relief. The court through trial of the claim has arrived at the conclusion that plaintiff did not have a valid cause for action. He failed to prove his claim. As such, he is not entitled to any relief from the court. Issues decided accordingly.

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.

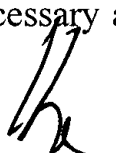
Case file be consigned to the record room after its necessary completion and compilation.

Announced
31.07.2025


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

CERTIFICATE

Certified that this judgment of mine consists of seven (07) pages, each has been checked, corrected where necessary and signed by me.


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