

IN THE COURT MUHAMMAD JUNAID ALAM CIVIL JUDGE-II, TEHSIL COURT
KALAYA.

Petition No 27/6 of 2025.

Date of Institution 19.06.2025.

Dated of Decision 30.07.2025.

Jalal Gul S/O Jalil Shah resident of Qoum Feroz Khel, Tappa Jaisal Khel, Tehsil Lower, District Orakzai.....Petitioner.

Versus

Ahmad Khan S/O Zakarya Khan resident of Qoum Qoum Feroz Khel, Tappa Jaisal Khel, Tehsil Lower, District Orakzairespondent.


PETITION FOR SETTING ASIDE EX-PARTE DECREE DATED 16.11.2024 PASSED
IN SUIT NO. 42/1 OF 2024.

ORDER 04
30.07.2025

Special attorney for petitioner along with counsel present. Respondent namely Ahmad Khan in person present. Arguments on behalf of counsel for respondent already heard. Arguments on behalf of counsel for petitioner heard today and record perused.


Brief facts of the case are that petitioner has filed the instant application for setting aside ex-parte decree dated 16.11.2024 passed in suit No. 42/1 of 2024.

Petitioner has contended that suit No. 42/1 of 2024 was filed against him and 13 others by present respondent and the same was ex-parte decreed vide ex-parte order dated: 16.11.2024. Further contended that the petitioner was not served upon in accordance with law, as the petitioner was abroad at that time. Therefore, the petitioner be given an opportunity to defend his valuable rights. That when petitioner got knowledge of ex-parte decree there and then he had approached the court for setting aside ex-parte decree passed against him.


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


Respondent/decreed holder contested the application by filing reply. He denied the version of petitioner and contended that petitioner was duly served upon and that petition is badly time barred and therefore, is liable to be dismissed.

Brief facts of suit No. 06/1 of 2021 as narrated in the plaint are that plaintiff has filed the instant suit for declaration cum perpetual injunction to the effect that plaintiff and defendants belong to tribe Feroz Khel, Tappa Jaisal Khel. That the property of the tribe Feroz Khel consists of 48 shares out of which Tappa Jaisal Khel has 30 shares while parties to the suit has 15 shares each out of 30 shares of Tappa Jaisal Khel. Furthermore, the 15 shares of plaintiff is divided as 05 shares of Ahmad Shah tabar, 03 shares of Feroz Khan tabar, 05 shares of Mehmood tabar while the remaining 02 shares was purchased by one late Malik Safi Ullah from Dammano. That plaintiff had previously purchased one share from Malik Safi Ullah Khan in the year 1988 in lieu of Rs. 50,000/- as sale consideration and since the year 1988 plaintiff is in possession of that portion of suit property and thus plaintiff is owner to the extent of 1/15th share in the suit property. Similarly, the one Haji Qudrat Shah had also purchased the remaining one share from Malik Safi Ullah. Plaintiff time and again requested defendants to give his share in the joint property but they refused, hence, the present suit.


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

After institution of the suit, defendants were summoned and as per report of process server, defendants namely Abdul Mat Khan, Isa Khan, Niaz Muhammad Aqal Zameer and Fazal Ameen served personally and Ali Baz Khan and Muhammad Raheem served through their brothers while defendants Jalal Gul (present petitioner), Rasheed Muhammad, Hazrat Bilal, Ismail, Ahmad Khan, Ameen were reported being not residing at Orakzai.


Petitioners/defendants were proceeded ex-parte and ex-parte decree dated: 16.11.2024 was passed after recording ex-parte evidence of respondent/plaintiff. As per Order-V, Rule-15 CPC, where defendant cannot be found and he has no agent to accept the service of the summon on his behalf, service may be made on any adult male member of the family of the defendant who is residing with him. There are certain conditions for service on adult male member to be valid. There should be some material on record that defendant could not be found and has no authorized agent. The adult should be the member of the family and residing with him under one roof. There is nothing in the report of serving officer which could show that any effort whatsoever was made by him to find out petitioners/defendants. Per report of serving officer dated: ___/___/_____petitioner had shifted to Peshawar but respondent/plaintiff did not submit correct address of the said petitioner. Record shows that vide order dated: 10.09.2024, counsel for plaintiff stated at the bar the petitioner/defendant No.1 is settled abroad but respondent/plaintiff did not mention name of the country where petitioner/defendant No.1 is settled. Neither the plaintiff provided the correct address of the present petitioner/defendant. Furthermore, affixation was made without court order and also made at the wrong address. Similarly, during the execution proceedings, summon/notice was not served on petitioner/JD.


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

As far as limitation is concerned, where defendants are duly served, application for setting aside ex-parte decree would be governed by Article 164, of Limitation Act 1908. The time for setting aside ex-parte decree in such a case is 30 days from the date of decree but when notice for appearance is not duly served, such application would be governed by Article 181, of Limitation Act. As mentioned above, summon/notice were not personally

served on the petitioner. If the ex-parte order was void and against the mandatory provisions of law, limitation would not stand in the way of court in deciding the same. Resultantly, petition in hand is hereby accepted and ex-parte decree dated: 16.11.2024. Suit No. 42/1 of 2024 is set aside. Muharrir is directed to do the needful. The instant file along with requisitioned record be consigned to record room. Copy of this order be placed on main file of suit No. 42/1 of 2024.

Announced
30.07.2025


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