

**IN THE COURT OF HAQ NAWAZ,**  
**DISTRICT JUDGE, ORAKZAI (AT BABER MELA)**

CIVIL APPEAL NO. : 12/13 OF 2025  
DATE OF ORIGINAL INSTITUTION : 27.02.2025  
DATE OF TRANSFER-IN : 29.05.2025  
DATE OF DECISION : 26.08.2025

TAJ MUHAMMAD S/O MAJAB KHAN, CASTE FEROZ KHEL,  
TAPA GHAIKAT KHEL, PO FEROZ KHEL, TEHSIL LOWER,  
DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

ABDUL MANAN S/O GULISTAN, CASTE FEROZ KHEL, TAPA  
GHAIKAT KHEL, PO FEROZ KHEL, TEHSIL LOWER, DISTRICT  
ORAKZAI AND ANOTHER

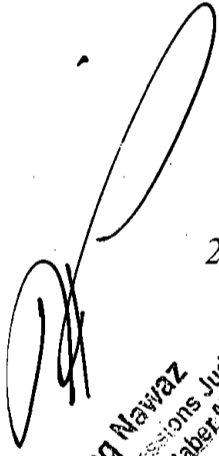
..... (RESPONDENTS)

**Present** : Mr. Haroon Khan Advocate for appellant.  
: Mr. Basit Hafeez Advocate for respondent No. 1.

JUDGEMENT  
26.08.2025

This civil appeal was preferred against the dismissal of Civil  
Suit No. 31/1 of 2023 by the Court of learned Civil Judge-II,  
Tehsil Court Kalaya through summary judgment dated  
10.02.2025.

2. The suit was filed by the appellant for declaration to the effect  
that he is owner of the barren land situated at Feroz Khel  
adjacent to residential house of the plaintiff in its front and  
back side with a piece of land situated at eastern side of the  
house of defendant No. 1 and the defendant No. 1 has got no  
concern with the suit property. The plaintiff also prayed for  
permanent and mandatory injunction against the defendant No.  
1 to restrain him from raising construction and causing  
interference in the suit properties. Possession of the suit lands

  
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was also sought for with demolition of structure, if raised during pendency of the suit.

3. According to averments of the plaint, the suit lands are the ownership in possession of the plaintiff since his forefathers. A jirga was taken place between the parties on 23.12.2017 which was decided in favour of the plaintiff and he was declared owner of the suit properties. However, the defendant, being influential person, is bent upon to claim ownership and cause interference by raising construction in the suit properties. The said acts are illegal and ineffective upon the rights of plaintiff. The defendant was asked time and again to refrain from his illegal acts, but he refused; therefore, the suit was filed.

4.

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The defendant No. 1 contested the suit by filing his written statement. He submitted that the suit properties are his ancestral ownership which consists upon a walnut orchard. he further submitted that a land adjacent to the suit property was given to the plaintiff by him in exchange whereafter the plaintiff started to claim ownership of the suit properties.

5. Pleadings of the parties were reduced to the following issues;
- I. *Whether plaintiff has got a cause of action?*
  - II. *Whether the plaintiff is owner in possession of the suit property since the time of his forefathers?*
  - III. *Whether previously a jirga was conducted between the parties to the suit on 23.12.2017, wherein plaintiff was*

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*declared as owner of the suit property by jirga members?*

IV. *Whether defendant No. 1 is owner in possession of the suit property since the time of his forefathers?*

V. *whether defendant No. 1 has exchanged some piece of land adjacent to the suit property with the plaintiff, due to which plaintiff illegally claim his ownership over the suit property?*

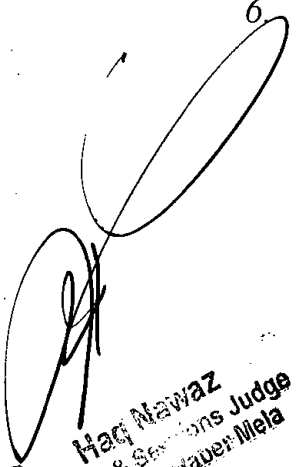
VI. *Whether the plaintiff is entitled to the decree as prayed for?*

VII. *Relief.*

6 The appellant/plaintiff appeared before the Court and recorded his statement as PW-1. He also produced two witnesses in his support. Whereafter the plaintiff submitted an application to declare PW-2 and PW-3 as hostile. The learned trial Court, while dismissing the said application, also dismissed the suit summarily through his impugned judgment by holding that there is no need to record evidence in defence. Feeling aggrieved from the said judgment and decree, the appellant preferred this appeal.

7. I have heard learned counsel for the parties and perused the record.

8. The learned counsel for the appellant relied upon PLJ 1998 Lahore 950 and submitted that a witness can be declared


  
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hostile during or after recording his cross examination. The said judgment provides as follow;

*"Article 150 of Qanun-e-Shahadat Order, 1984 confers on Court a wide discretion, and it seems that Court will be justified in allowing a party calling a witness to put such questions to him as might be put in cross examination by adverse party, where evidence given by witness is unfavourable to party calling him, or is contrary to evidence which witness was expected to give. Judge should permit such statements to be tested by cross examination, if evidence is to be relied upon. However, permission to cross examine a witness should not be given to party calling the witness when object of such cross examination is to cover up lacunae in evidence. Witness proved execution of documents but in cross examination he made a contradictory statement that pronote was executed regarding certain payments between plaintiff and son of defendant. He made a statement out of context and contradictory to what he stated in examination in chief. Learned trial Court rightly allowed witness to be cross examined by plaintiff."*

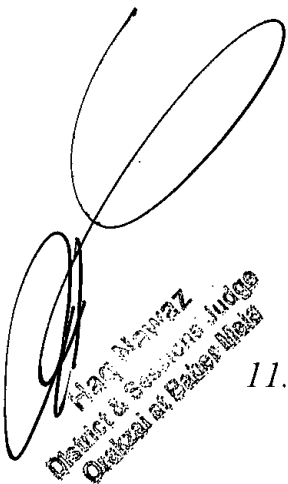
  
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9. In the present case, the plaintiff alleges the ownership in possession of barren lands in front of his house and its back

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side along with a piece of barren land towards eastern side of the house of defendant No. 1. On the other hand, the defendant No. 1, in his written statement, submitted that the suit land is a walnut orchard which is his ownership in possession since long and the plaintiff is claiming ownership of the same after the exchange of another piece of land with him adjacent to the suit land.

10. In his cross examination, the plaintiff himself admitted as PW-1 that there is walnut orchard on the suit land which fact contradicts his stance of claiming ownership of a barren land. He was also unable to produce the original jirga verdict of 2017 before the Court, during the course of his statement, in support of his claim. The photocopy of the said jirga dated 23.12.2017, available on record, is also not a final verdict rather it was terms for jirga proceedings with no further proceedings and none of the jirga members were produced before the Court.

  
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District & Sessions Judge  
Quetta

11. Both the PW-2 and PW-3 in their cross examination, not only admitted walnut orchard on the suit properties but also admitted possession as well as ownership of the defendant for the last 50/60 years. In such circumstances, the application by the plaintiff for declaration of PW-2 and PW-3 as hostile, after recording their cross examination, in my humble opinion falls under the exception provided in the Judgment relied upon by counsel for the appellant that permission to cross examine a witness should not be given to party calling the witness when

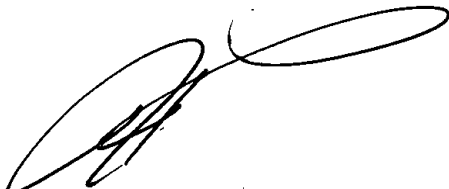
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object of such cross examination is to cover up lacunae in evidence. The learned trial Court has, therefore, rightly turned down the application of the plaintiff for declaring PW-2 and PW-3 as hostile and dismissed the suit summarily as no need was left to proceed further in the matter after the statements of PW-2 and PW-3.

12. In view of the above facts, it is held that the impugned judgement of the trial Court is exceptional which needs no interference; therefore, the appeal in hand is dismissed. File of this court be consigned to record room after its necessary completion and compilation.

**Announced:**  
26.08.2025

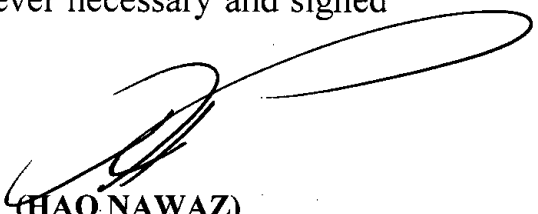


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**CERTIFICATE**

Certified that this judgment consists of ~~six~~ (06) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 26.08.2025



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