

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

CIVIL APPEAL NO. : 33/13 OF 2025  
DATE OF INSTITUTION : 03.06.2025  
DATE OF DECISION : 02.09.2025

KHADI KHAN S/O LAJBAR KHAN AND OTHERS, ALL  
RESIDENTS OF CHAPPAR MISHTI, CASTE MISHTI, TAPA  
MAMAZAI, PO MISHTI MELA, MARGHIO CHAN, TEHSIL LOWER,  
DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

SAEED ULLAH S/O ABDUL MALIK, CASTE MISHTI, CHAPPAR  
MISHTI, DISTRICT ORAKZAI AND OTHERS

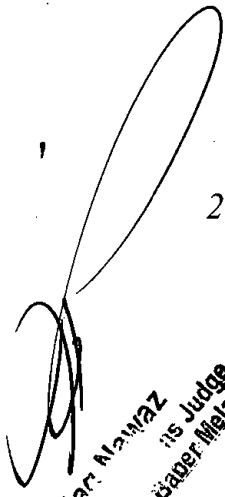
..... (RESPONDENTS)

**Present** : Mr. Basit Hafiz Advocate for appellants.  
: Noor Karim Advocate for respondents.

**JUDGEMENT**  
02.09.2025

This civil appeal was preferred by the appellants against the  
judgement and decree dated 19.04.2025 passed by the Court of  
learned Civil Judge-II, Tehsil Court Kalaya, District Orakzai,  
whereby Civil Suit No. 63/1 of 2023 was dismissed.


2. The suit was brought by the plaintiffs for declaration along with  
mandatory and perpetual injunction to the effect that the  
plaintiffs are owners in possession of 3-1/2 Jirab of the suit  
property measuring 10 Jirab in total, described with details in  
headnote of the plaint, situated near Saida Talab Chappar  
Mishti, District Orakzai. They also sought possession of the suit  
land to the extent of their share through partition in relief 'B' of  
the plaint.
3. As per averments of the plaint, the appellants/plaintiffs and the  
respondents/defendants belong to Caste Mishti and they are  
relative inter se. Both the parties are joint owners of the suit

  
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land which is yet to be partitioned between them. The defendants are illegally interfering in the suit property by encroaching upon share of the plaintiffs. They are bent upon to raise construction and have started digging for the said purpose. The illegal acts of the defendants are ineffective upon the rights of the plaintiffs. The plaintiffs requested the defendants to refrain from their said acts but instead of admitting the rights of plaintiffs, they turned violent resulting into registration of report in the local police station. Ultimately, the suit was filed.


4. The defendants No. 1, 5 and 7 contested the suit by filing their written statement. Rest of the defendants were proceeded against ex-parte. Pleadings of the parties were reduced to the following issues;

- I. Whether the plaintiffs have got a cause of action?*
- II. Whether plaintiffs are owners in possession of three and half jeerab in unpartitioned suit property measuring 10 jeerab, fully detailed in the headnote of the plaint and defendants are forcibly raising construction over the valuable portion of suit property?*
- III. Whether defendants No. 1, 5 and 7 are owners in possession of the suit property and are further mining coal from the suit property since 1995?*
- IV. Whether the plaintiffs are entitled to the decree as prayed for?*

  
**Haq Ali Wazir**  
District & Sessions Judge  
Orakzai District, Peshawar

*V. Relief.*

5. After recording pro and contra evidence and hearing both the parties, the learned trial Court dismissed the suit through his impugned judgment. Hence, this appeal was preferred.
6. I have heard learned counsel for the parties and perused the record.
7. The contesting defendants, in their written statement, have denied any relationship between the parties. They also alleged the construction of Paida Khan Pond (تالاب) in the suit land with the construction of a dug well. They have also alleged possession of the suit property since long with extraction of a coal mine from the year 1995 with the expenditure of huge amount.
8. During the course of evidence, none of the PWs have uttered a single word in their statements before the Court regarding any relationship between the parties. The appellants alleged 3-1/2 Jirab of the suit land amounting to 1/3 share of the total suit property measuring 10 Jirab, but no basis has been shown in the plaint as well as in the statements of PWs for determination of such share. The PW-1 has admitted possession of the suit land by the defendants in his cross examination. The PW-2 has admitted the coal mining in the suit land by the defendants since 1995. He also admitted that the defendants have concreted the Paida Khan Pond in the suit land. Similarly, PW-3 has also admitted both the said facts in his cross examination.

  
Haid Ali Nawaz  
District & Sessions Judge  
Orakzai & Lower Mela

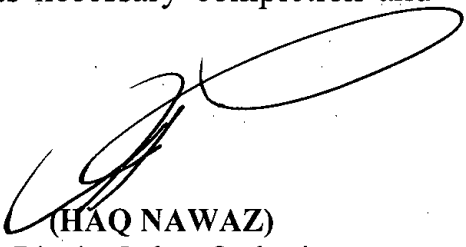
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9. The plaintiff No. 1, in his cross examination before the Court as PW-5, has also admitted possession of the suit land by the defendants since long. He further submitted that he was not made party in a previous suit by Sanab Haji, in respect of the suit land, as he was having no ownership rights. The plaintiff No. 1 further stated that the respondents have not given any share to him in the coal mining. He also admits the extraction of coal by the defendants from the suit land since 2008.

10. The plaintiff No. 3, in his statement before the Court as PW-6, also admitted the coal mining by the defendants in the suit land since 1995 and submitted that the mining became successful in the year 2008. He alleged that the suit property was exchanged by his father with the father of defendants, Khial Mar Khan and Muhammad Jan, but he further stated that the said fact was not mentioned in the plaint.

11. In view of the above facts and circumstances, the plaintiffs/appellants have miserably failed to establish their right to the extent of 1/3<sup>rd</sup> share in the suit land through evidence. Therefore, the learned trial Court has rightly dismissed the suit of the plaintiffs/appellants. This appeal, being devoid of merits, is dismissed. File of this Court be consigned to record room after its necessary completion and compilation.

**Announced:**  
02.09.2025

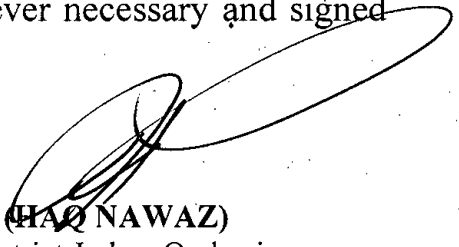
  
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**CERTIFICATE**

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 02.09.2025

  
(HAQ NAWAZ)  
District Judge, Orakzai  
at Baber Mela