

**IN THE COURT OF MUHAMMAD JUNAID ALAM,**  
CIVIL JUDGE-II, KALAYA ORAKZAI

**Suit No. 11/1 of 2022**

DATE OF ORIGINAL INSTITUTION.....06.04.2021

DATE OF TRANSFER TO THIS COURT...25.06.2022

DATE OF DECISION OF THE SUIT .....23.08.2025


MUHAMMAD ALAM SON OF MALANG JAN AND 09  
OTHERS, ALL RESIDENT OF QOM STORI KHEL, TAPA  
MALA KHEL, MISHTI KALAY DISTRICT ORAKZAI

.....PLAINTIFFS

**VERSUS**

ANDALEEP KHAN SON OF MOMIN KHAN AND 16  
OTHERS, ALL RESIDENTS OF QOM STORI KHEL, KHWA  
DARA, TAPA MALA KHEL, DISTRICT ORAKZAI

.....DEFENDANTS

  
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Civil Judge / JM-II  
Orakzai at Kalaya

**SUIT FOR DECLARATION -CUM- PERPETUAL,  
MANDATORY INJUNCTION AND POSSESSION.**

**Counsel for plaintiffs: Mr. Iltaf Hussain and Khursid Alam  
Advocates**


**Counsel for defendants: Mr. Sana Ullah Khan Advocate**

**JUDGMENT**  
**23.08.2025**

Vide this judgment the Court intends to dispose of the instant  
suit filed by plaintiffs for declaration cum perpetual and  
mandatory injunction.

1. Brief facts of the case in hand according to the plaint are that  
plaintiffs are owners in possession of the suit property which

also consists of mountain known as *Tangi* alongwith field adjacent to Mishti Kallay from centuries. Further stated that defendants had previously claimed the suit mountain known which is known as *Tangi* and reported the same to Tehreek-i-Taliban and the same claim was dismissed vide verdict deeds dated 30.05.2009 & 23.05.2009, and the plaintiffs were permitted to construct a house and cultivate the suit property. Furthermore, stated that after end of the era of Talibnization defendants again dispossessed plaintiffs from the suit property, thereupon, the plaintiffs filed an application to the Assistant Commissioner, Lower Orakzai, subsequently the defendants were summoned, but defendants never appeared before the Assistant Commissioner, Orakzai. Thus the plaintiffs were permitted to cultivate the suit fields. Defendants were asked time and again to admit the legal claim of the plaintiffs, but they have refused the same, hence, instant suit has been instituted.

  
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2. After institution of the suit, the defendants were summoned. Defendant no.1 to 08 appeared before the Court and submitted their written statement, wherein they raised many legal and factual objections, while remaining defendants were placed and proceeded ex-parte.
3. Out of controversies of the parties, as raised in their respective pleadings, the Court framed the following issues

on 27.10.2023. But during the arguments this Court observed that previously framed issues are without an opportunity of determining the stance of defendants. Court deemed it appropriate to amend the issues as follows.

1. Whether the plaintiffs have got cause of action? OPP
2. Whether the present suit is maintainable in its present form? OPP
3. Whether plaintiffs are owners in possession of the suit property for centuries and further on 23.03.2019 they were also permitted to cultivate the same by the Assistant Commissioner? OPP
4. Whether suit property is ownership of the defendants and they are in possession of the same since the time of their fore-fathers? OPD
5. Whether the plaintiffs are entitled to the decree as prayed for?
6. Relief.

  
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Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as four (04) witnesses and thereafter, closed their evidence. Contrary to this contested defendants produced one witness and thereafter closed their evidence with a note.

5. Both the counsels for the parties then advanced arguments. Counsel for the plaintiffs opened the arguments and argued

that that plaintiffs are owners in possession of the suit property which consists of mountain known as *Tangi* alongwith field adjacent to Mishti Kallay for the centuries. Further argued that defendants had previously claimed over the suit mountain which known as *Tangi* whereby, the plaintiffs reported the same to Tehreek-i-Taliban, who dismissed the claims of defendants vide deeds dated 30.05.2009 & 23.05.2009 and permitted the plaintiffs a house and cultivate the suit property. That after end of the era of Talibnization defendants again illegally dispossessed the plaintiffs from the suit property. Thereby the plaintiffs filed an application to Assistant Commissioner, Lower Orakzai and defendants were summoned, but defendants did not appear before the office of Assistant Commissioner, Lower Orakzai. Thereupon the Assistant Commissioner, Orakzai plaintiffs permitted the plaintiffs to cultivate the suit fields. He lastly argued that the plaintiffs have succeeded to prove their stance through cogent, convincing and reliable evidence and further nothing in rebuttal is available on the record, hence prayed that the suit in hand may kindly be decreed in favour of plaintiffs against the defendants for the relief as prayed for.

  
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6. Contrary to this learned counsel for the contested defendants argued that plaintiffs have got no cause of action. He further

adduced that the suit of plaintiffs is time barred and the plaintiffs have also not come to the court with clean hands. Furthermore, argued that plaintiffs had not clearly mentioned the description of the suit property in the plaint. He also argued that plaintiffs had no shares/ownership in the suit property, as the defendants are sole owners in possession of the suit property since the time of their fore-fathers and therefore, plaintiffs have no concern with the same. He further adduced that no jirgas had been held with plaintiffs and no decision had been made and not even in the office of Assistant Commissioner Lower Orakzai. He further argued that jirga verdicts etc presented by the plaintiffs are forged and bogus. Learned counsel further contended that the plaintiffs have failed to prove their stance through cogent and convincing evidence. Hence, prayed that the suit in hand may kindly be dismissed.

7. In the light of perusal of record, available evidence and valuable assistance of both the learned counsels for the parties the issue wise findings of the court are as under.

  
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**ISSUE NO. 02**

**Whether the present suit is maintainable in its present form? OPP**

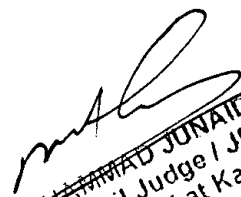
The onus of proof of the issue under discussion was on the shoulder of plaintiffs. Law requires that plaintiff should claim

entire relief. Suit has to be framed so to afford ground for final decision upon the subject in dispute and to prevent further litigation. It is pertinent to mention here that plaintiffs have not mentioned the proper description of the suit property. Furthermore, plaintiffs have not mentioned correctly the shares of each plaintiff in the plaint. It is also worth mentioning here that plaintiffs have not fulfilled the essentials of representative suit order 1 Rule VIII CPC. Hence, nothing on record could shows that suit of plaintiffs is competent in its present form. Therefore, it is held that the suit of plaintiffs is not competent in its present form. Issue decided in negative against plaintiffs.

**ISSUE NO. 03:**

**Whether plaintiffs are owners in possession of the suit property for centuries and on 23.03.2019 they were also permitted to cultivate the same by the Assistant Commissioner? OPP**

Burden of this issue was placed on the shoulder of plaintiffs. Plaintiffs in their plaint have claimed that plaintiffs are owners in possession of the suit property consists of mountain known as *Tangi* alongwith field adjacent to Mishti Kallay, for the centuries. To prove their stance plaintiffs produced one Taimoor Syed, soldier clerk of Assistant Commissioner Lower Orakzai as PW-01. He produced the orders and application for redressal to the Assistant

  
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Commissioner Lower Orakzai pertaining the suit property, which are Ex. PW-1/1 and Ex. PW-1/2 respectively. He also produced his service card which is Ex. PW-1/3. During cross examination he admitted that defendants had not been mentioned in the application Ex. PW-1/1. Also, admitted that defendants had not received any notice. Self-stated that defendants had refused the same.

یہ درست ہے کہ Ex. PW-1/1 میں سالان کی طرف سے دیئے میں درخواست میں کسی مخالف فریق کا نام

موجود نہ ہے۔ یہ بھی درست ہے کہ مدعا علیہم کو کوئی نوٹس موصول نہیں ہوئی ہے۔ از خود کہا کہ مدعا علیہم

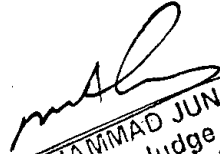
لینے سے انکاری تھے۔

He also admitted in his cross examination that there are no order sheets of Assistant Commissioner, Lower Orakzai under which the defendants had been proceeded ex parte. It is admitted that no orders are available regarding jirga appointment.

یہ درست ہے کہ اسٹنٹ کمشنر اور کزی کے کسی بھی آڈر میں مدعا علیہم کا نام یا انکو یا یکطرفہ کرنے کا بھی کوئی

بھی ذکر موجود نہ ہے۔ یہ بھی درست ہے کہ اسٹنٹ کمشنر کے کسی حکم میں سرکاری جرمہ مقرر کرنے کا حکم

موجود نہ ہے۔

  
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He also admitted in his cross examination that the names of defendants are not mentioned in the order of Assistant

Commissioner Orakzai, wherein AC Orakzai decided anything against them.

یہ درست ہے کہ اسٹنٹ کیشنر کے کسی بھی حکم میں مدعا علیہم کا ناموجود نہ ہے کہ ان کے خلاف اسٹنٹ

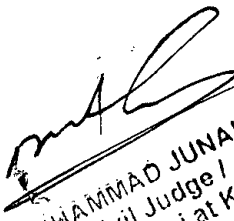
کیشنر نے کوئی فیصلہ دیا ہو۔

The court observed that application which is exhibited as Ex. PW-1/1 is filed on 01.04.20019 while order sheets Ex. PW-1/2 regarding the same applications are dated 06.03.2019 and 13.03.2019 etc. Therefore, the court holds that the record presented by the PW-01 is prima facie bogus and fabricated one and thus not admissible under Q.S.O 1984.

One Muhammad Alam, special attorney for plaintiffs appeared before the court and deposed as PW-02, who stated on oath in light and support of as earlier stated in the plaint. He produced his special power of attorney which is Ex. PW-2/1. He stated in his examination in chief stated that a jirga was held on 23.08.1984, wherein the jirga members/elders demarcated the boundaries between plaintiffs and defendants properties at *Dabb Sar, Ghat Kanrrey*, which are still existed.

He also produced the copy of jirga deed which is Ex. PW-2/2.

During cross examination he stated that he has belong to Qom Mishti. He further admitted that plaintiffs had no

  
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property in the area of Mishti Mela. Self-stated that property in the Mishti was sold by the predecessor of plaintiffs.

میں مشتی قوم سے تعلق رکھتا ہوں۔ قوم مشتی میلہ میں مدعیان کا کوئی جائیداد وغیرہ نہ ہے۔ از خود کہا کہ مذکورہ

جائیداد مدعیان کے اباواجداد نے فروخت کیا۔

He also admitted that it is correct that in the alleged deed dated 30.05.2009, neither names of fathers of plaintiffs have been mentioned nor their signatures are there.

یہ درست ہے کہ مبینہ تحریر 30.05.2009 میں کسی بھی مدعا علیہم کے والدین کے نام بھی موجود نہ ہے اور نہ

ہی ان کے دستخط موجود ہیں۔

Further admitted that no names of the present defendants are mentioned in the alleged deed dated 30.05.2009.

یہ بھی درست ہے کہ تحریر مبینہ 30.05.2009 میں کسی بھی مدعا علیہم وغیرہ کے نام موجود نہ ہے۔

Also admitted that it is correct that he has no *Mojab* from government/ the then political administration.

یہ درست ہے کہ میرا کوئی قومی موجب ضلعی انتظامیہ یعنی سابقہ پولیٹیکل انتظامیہ میں موجود نہ ہے۔

Plaintiffs produced one Zain Akbar son of Khial Mat Shah in the witness box as PW-03, who stated on oath in light and support of the stance of the plaintiffs as narrated in the plaint.

During cross examination he stated that he has no concern with the suit property. He belongs to Qom Mishti. He further

  
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stated in his cross examination that plaintiffs had no *Mojab* from the government.

آراضی متد عویہ کے ساتھ میرا کوئی واسطہ تعلق نہ ہے۔ میں قوم مشتی سے تعلق رکھتا ہوں اور مدعیان کا کوئی مو جب حکومت کی طرف سے نہ ہے۔

He said that he never come as witness/elder to the office of Assistant Commissioner, Orakzai.

میں کبھی بھی مدعیان کے ساتھ اسسٹنٹ کمشنر اور کزنی کی عدالت میں بطور گواہ / مشر نہیں آیا ہوں۔

He also admitted that it is correct that he has not appeared before the court for recording evidence regarding fields. He further stated that two persons namely Muhammad Alam and Hamesh Gul have filed the instant suit in the Court. Plaintiffs have no property in the Qom Mishti.

یہ درست ہے کہ میں کھیتوں کی بابت گواہی کے لئے نہیں آیا ہوں۔ عدالت میں مقدمہ دو افراد محمد عالم اور

ہمیش گل نے دائر کیا ہے۔ مدعیان کا قوم مشتی میں کوئی جائیداد نہیں ہے۔

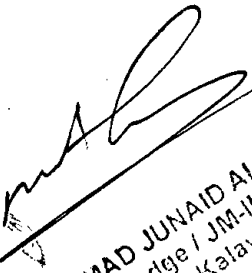
Plaintiffs produced one Muhammad Gulab son of Muhammad Akbar in the witness box as PW-04, who stated on oath in light and support of the stance of the plaintiffs as narrated in the plaint. During cross examination he stated that the suit mountain situated at Khwa Dara lies within the limits boundary of Qom Stori Khel. He further stated that he has no knowledge about the alleged mountain, the whether it is the ownership of Qom Stori Khel or not.

  
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پہاڑ مند عویہ واقع خواہ درہ قوم ستوری خیل کی حدود میں آتا ہے۔ مجھے یہ علم نہ ہے کہ مبینہ پہاڑ قوم ستوری خیل کی ہے یا نہیں۔

In light of the above evidence produced by the plaintiffs to prove the issue in hand, it has been noticed that although PWs deposed in light and support of the stance of plaintiffs as stated in their plaint. However, during cross examination all the PWs were contradicted in material particulars and negated the stance of the plaintiffs. A brief of said contradictions and negations is mentioned as under;


As for as the Ex. PW-1/1 is concerned, it is pertinent to mention here that PW-01 in his cross examination stated that plaintiffs have not mentioned the defendants in the alleged application, which was Ex. PW-1/1. It is also correct that defendants had not received any notice regarding the alleged application filed by plaintiffs. It is also correct that ex-parte orders against the defendants are not mentioned in the entire order sheets of Assistant Commissioner, Lower Orakzai. It is also correct that no orders are available regarding Jirga appointment. He also admitted in his cross examination that it is correct that the names of defendants are not mentioned in the orders of Assistant Commissioner, Orakzai nor in any decision made against defendants. The court also observed that the record

  
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produced from the office of AC is fabricated one as the order sheets dates are prior to the date of filing of the application. Furthermore, when PW-02, the plaintiff himself appeared in the witness box and admitted in his cross examination that in the alleged deed dated 30.05.2009, the names of defendants have not been mentioned, which means that the deed has not been executed with the defendants.

As for as the possession of the suit mountain is concerned, it is noted that PW-04 in his cross examination stated that the said mountain comes in the limits of Qom Stori Khel. It means that the said mountain does not belong to the plaintiffs.

As for as the permanent residence of plaintiffs is concerned, it is pertinent to mention here that PW-02, the plaintiff/attorney for plaintiffs stated in his cross examination that they belong to Qom Mishti. It is also noted that PW-03, also admitted in his cross examination that he belongs to Qom Mishti. Similarly, PW-02, the plaintiff no. 01 Muhammad Alam appeared before the court and stated in his cross examination that he belongs to Qom Mishti. It is worth mentioning here that, plaintiffs belong to Qom Mishti then how can they claim property at Qom Stori Khel, allegedly being their ancestral property.

  
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*Mojab* was a kind of honorary stipend paid by the government to the land owners of the tribal area who belongs to that specific Qom.

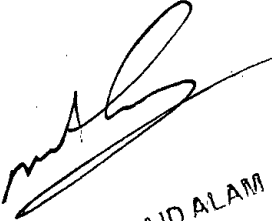
As far as the *Mojab* is concerned, it is pertinent to mention here that PW-03 stated in his cross examination that plaintiffs have no *Mojab* from the government/the then Political Administration. PW-02 appeared before the court and also admitted that he has no *Mojab*/stipend from the Government/political Administration. It is pertinent to mention here that bonafide residence of the Qoms/tribes get their *Mojab*/stipend (موجب) from the government. It is worth mentioning here that plaintiffs belong to Qom Mishti and they will get *Mojab*/stipend (موجب) from the government as bonafide resident of their Qom Mishti, but they cannot claim it in the Qom Stori Khel.

In given circumstances, the above statements of PWs are in material contradiction to the stance of plaintiffs as stated in the plaint. The plaintiffs had stated in their plaint that they are owners in possession of the suit property, while during cross examination all the PWs negated that stance and had deposed that the suit mountain is in possession of defendants and also stated that the plaintiffs belong to Qom Mishti who have ownership in the area of Qom Stori Khel.

  
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The statements made by PWs in their respective cross examinations, leads this court to held that the suit mountain was in possession of defendants and its not the ownership in possession of the plaintiffs. Furthermore, plaintiffs had previously stated in their plaint that Assistant Commissioner, Orakzai had permitted plaintiffs to cultivate the suit field, while during recording of evidence all the PWs have not uttered a single word regarding the same. Furthermore, plaintiffs did not annex with their plaint the decision of Assistant Commissioner, Orakzai as stated in the plaint. Moreover, plaintiffs stated in their plaint that they had claimed the suit property in the court of Taliban in the year of 2009, but this court rejects the decision of Taliban being a banned groups of outlaws.

In light of the above discussion, it held that all the PWs were contradicted in material particulars and even negated the stance of the plaintiffs. Therefore, the court safely holds that the plaintiffs have badly failed to prove the issue in hand through cogent, convincing and reliable evidence, hence accordingly the issue in hand is hereby decided in negative against the plaintiffs and in favor of the defendants.



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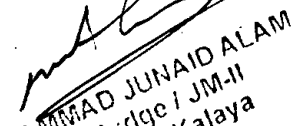
**ISSUE NO. 04:**

**Whether suit property is ownership of the defendants and they are in possession of the same since the time of their fore-fathers? OPD**

The onus of prove of this issue is on the defendants. The defendants in their written statement have stated that they are owners in possession of the suit property since the time of their forefathers. They further stated that plaintiffs are neither owner of the suit property nor they have got any concern with the same. They also narrated that no jirga whatsoever have been held between the parties to the suit. To prove their stance defendant no. 01 and special attorney for rest of the defendants was appeared in the witness box and deposed as DW-01. He deposed on oath in light and support of the stance of defendants as stated in the written statement. During cross examination he deposed that they have not annexed any jirga with their written statement. Self-stated that no jirga was held between parties to the suit.

میں نے اپنے جواب دعویٰ کیساتھ کوئی جرگہ وغیرہ جمع نہیں کیا ہے۔ از خود کہا کہ چونکہ ہمارے مدعیان کے

ساتھ کوئی جرگہ وغیرہ نہیں ہوا ہے۔

  
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He further stated that it is correct that he has no private ancestral property near the suit property. Self-stated that near

the suit property native property of Qom Stori Khel is situated wherein he also has share.

یہ درست ہے کہ جائیداد متد عویہ کے قریب میرا کوئی ذاتی جائیداد موجود نہ ہے۔ از خود کہا کہ قومی جائیداد مو

جود ہے۔ اسمیں میرا باقاعدہ حصہ ہے۔

In light of the above evidence produced by defendants to prove the issue in hand, it has been noticed that the single DW, the defendant no. 01 had supported the stance of defendants in his examination in chief and in his cross examination nothing contradictory or in rebuttal has been brought on record by plaintiffs.

In light of the above discussion as defendants succeeded to prove the issue in hand through their cogent, convincing and reliable evidence and furthermore nothing in rebuttal or contradictory has been brought on the record by the opposite party during cross examination, hence issue in hand is hereby decided in positive in favour of defendants and against plaintiffs.

#### **ISSUE NO. 1**

#### **Whether the plaintiffs have got cause of action? OPP**

In wake of issue wise findings above, the plaintiffs have got no cause of action as they are neither owners or possession holders of the suit property. And even they do not belong to Qom Stori Khel, thus they have no concern with the suit

  
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property, hence the issue in hand is decided in negative against the plaintiffs and in favour of defendants.

**ISSUE NO.05:**

**Whether plaintiffs are entitled to the decree as prayed for? OPP**

In wake of the issue wise findings, it is pertinent to mention here that plaintiffs sought declaration of the suit property and they also narrated in the plaint that Assistant Commissioner, Orakzai have declared them as owners of the suit property, but the plaintiffs have sought declaration from this Court again which comes under the ambit of Res-Judicata, otherwise, the record presented is fake and fabricated. Evidence produced by the plaintiffs have itself negated the stance of the plaintiffs regarding its possession and ownership. It is also worth mentioning here that plaintiffs belong to caste Mishti, therefore, according to law and tribal traditions they can have no property in the Qom Stori Khel. Furthermore, the Jirga verdict dated 23.05.2009, was convened by Taliban, which is a government banned organization, therefore, not acceptable to the court, as per law. Furthermore, plaintiffs stated in the plaint that Assistant Commissioner permitted them to cultivate the suit property but in this regard no decision/decreed is annexed with the plaint only order sheet are annexed which are not genuine.

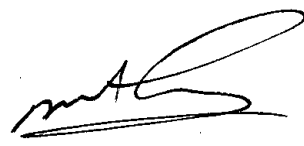
  
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Furthermore, during course of arguments it was revealed that plaintiffs have constructed house in the year of 2009, whereas, plaintiffs contended in their plaint that they are owners in possession of the suit property in centuries. It shows that they are not true in their stance. Thus, plaintiffs are not entitled to the decree as prayed for as they failed to prove their stance through cogent, reliable and convincing evidence, and they have no cause of action, hence, the issue in hand is decided in negative against plaintiffs and in favour of defendants.

**Relief:**

As per issued wise findings above the instant suit of plaintiffs is hereby dismissed. No order as to costs. File be consigned to the record room after its necessary completion, compilation and scanning.

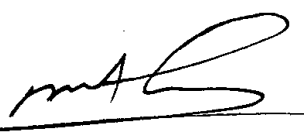
**Announced in open Court**  
23.08.2025

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

**C E R T I F I C A T E**

Certified that this judgment of mine consist upon eighteen (18) pages. Each page has been read over, checked and signed after making necessary correction therein.

**Dated: 23.08.2025**

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