

(65)

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

Civil Suit No.....08/1 of 2025

Date of Institution:13.01.2025

Date of Decision:09.09.2025

1. Rehan Ali s/o Ali Man Shah
2. Malak Asif Ali s/o Manzar Ali
3. Malak Naushad Ali s/o Abdul Hassan
4. Malak Muzamil Hassan s/o Muhammad Mehdi
5. Gul Nawaz s/o Raheem Ali
6. Malak Sirab Hussain s/o Hilal Hussain
7. Kinan Ali s/o Kiptan Ali
8. Nazim Ali s/o Liaqat Ali
9. Muhammad Shoaib s/o Ali Samad
10. Manzar Ali s/o Nawab Khan
11. Liaqat Ali s/o Moeen Ali
12. Ali Samad s/o Muhammad Ali
13. Inswar Ali s/o Waris Ali
14. Qabil Hassan s/o Ghulam Nabi

All R/O Qoum Mani Khel, Tehsil Lower, District Orakzai.

..... (Plaintiffs)

VERSUS

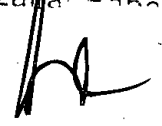
1. Yonus Khan s/o Mir Janan
2. Arman Shah s/o Akbar Shah
3. Muhammad Janan s/o unknown

All R/O Qoum Mishti, Tehsil Lower, District Orakzai.

4. Fazal Haji (Contractor), R/O Qoum Sheikhan, Orakzai.
5. Akbar Khan R/O Swat
6. Mado R/O Qoum Mishti, Tehsil and District Orakzai.
7. Deputy Commissioner Orakzai.
8. Assistant Commissioner, Tehsil Lower Orakzai.

..... (Defendants)

Senior Civil Judge
Orakzai at Baber Mela



**SUIT FOR DECLARATION OF TITLE AND
CORRESPONDING INJUNCTIONS**

JUDGEMENT:


09.09.2025

This order is to decide instant suit filed by Mr. Rehan Ali, and 13 others in representative capacity as the plaintiffs, for declaration of title and corresponding injunctions against Mr. Younas Khan and 7 others, the defendants.

Pleadings:

The claims as recounted in the plaint reads that plaintiffs come from Qaum Mani Khel, a sub-tribe in the Orakzai agency, and suit land, as detailed in the headnote of the plaint, is joint ownership of their tribe. That per tribal traditions, each tribe collectively held land to signify their entitlement against other tribes. Members within a tribe divide it among themselves per need and circumstance. It is reported that the controversy was previously reported to the then political administration who proceeded to clarify the lines demarcating the entitlement of Mani Khel and other neighboring tribes. However, it is alleged, the defendants periodically violate the demarcation and interfere with the title and possession of the plaintiffs. The plaint requests for a restraining order against the defendants.

Defendants no 1,2,4,5 and 6 submitted a joint written statement. They concede the fact of the suit land having

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been divided between the tribes, but counter assert that the disputed portion falls in their possession since decades. It is reported that the mines belonging to the defendants were first excavated in the year 1997 and have been in the custody and control of the defendants since. They contend that plaintiffs are filing false claims merely to harass the defendants.

Defendants no 07 and 08 are government officials. They filed a joint written statement wherein they offered their services to conduct an inquiry commission if the court please to direct. They neither affirmed nor denied the factual assertions made by either side.

Differences between the sides were distilled into the following issues:

Issues:

1. Whether the suit is bad for legal defects i.e. cause of action, limitation, legal standing, non-joinder etc. and is not maintainable in its present form?
2. whether the plaintiffs, in their representative capacity, are owners in possession of the suit property, and defendants are beyond their rights in interfering with it?
3. Relief?

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[Signature]

Thereafter, both sides were requested to produce their respective evidence. It is pertinent to mention that private defendants defaulted on attendance during trial and were

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proceeded against as ex-parte. Only official defendants contested the trial.

Witnesses/Exhibits:

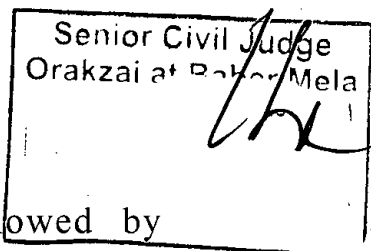
Mr. Mehboob Ali s/o Isam Ali appeared as PW-01, Tajmin Ali s/o Safdar Ali as PW-02, Surat Ali s/o Mukhtiar Ali as PW-03, Sajjad Ali s/o Faqir Ghulam as PW-04, Hassan Ali s/o Ali Mehdi as PW-05, Naushad Ali s/o Abdul Hassan as PW-06 and Shafi Ullah, representative of Assistant Commissioner and Deputy Commissioner Orakzai as PW-07. They have exhibited the following documents;

- i. Copy of CNIC of PW-01 as Ex.PW-1/1.
- ii. Copy of CNIC of PW-02 as Ex.PW-2/1.
- iii. Copy of CNIC of PW-03 as Ex.PW-3/1.
- iv. Copy of CNIC of PW-04 as Ex.PW-4/1.
- v. Copy of CNIC of PW-05 as Ex.PW-5/1.
- vi. Special Power of attorney as Ex.PW-6/1.
- vii. Copy of Publication as Ex.PW-6/2.
- viii. Sketch of the suit land as Ex.PW-6/3.
- ix. Copy of CNIC of PW-06 as Ex.PW-6/4.

Reasoning:

Issue wise discussion of the court followed by decision on each issue, and ultimately on the suit is as follows:

Issue No. 01:



This issue poses the regular questions about the validity of the legal form and frame of suit. They raise the questions of non-joinder and 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. Instantly, the court is seized of complaint against persisting periodical interference.

Throughout the course of trial, defendants did not mention any necessary party that might have been left out. The court could not find any fatal defect on that score. The issue is decided for the plaintiffs.

Issue No. 02:

This issue pertains to the core issue that whether the plaintiffs, in their representative capacity, are owners in possession of the suit property, and defendants are beyond their rights in interfering with it.

Since the suit was proceeded as ex-parte against the private defendants, there is nothing in rebuttal of the evidence produced by the plaintiffs. The evidence goes unchallenged. Although the private defendants filed their written statements to assert their stance of the matter, however, they failed to participate in the trial. They did not produce any evidence to

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[Signature]

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substantiate the position they took in their pleadings. Pleadings minus evidence results in naught.

For civil litigation, the standard of proof recommended by law is preponderance of evidence and balance of probability. Instantly, only plaintiffs' pleadings are backed and supported by statements of witnesses.

Plaintiffs produced 06 witnesses including Mr. Rehan, plaintiff no 01 and attorney for the rest. He reiterates consistently the claim as related in the plaint that suit land is ownership of Qaum Mani Khel. The land was formally demarcated by the then political administration consequent to a dispute on its boundaries. That since the demarcation the plaintiffs are in possession of their entitlement to the exclusion of strangers.

He repeats his allegations that defendants, without any right or claim, periodically interfere with the possession of the suit property. He requests for a restraining order. In view of the forgone, the court is inclined to decide the issue for the plaintiffs.

It is pertinent to underscore that declaration of a right is sought and granted against a fully matured and pre-existing legal right. Legal right is an interest recognized by law. Private agreements on the other hand create equitable interests which, when duly attested by a public body, attains the status of right.

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Throughout the province, register of rights as maintained by the revenue office, or registration of sale deed carried by the registrar's office, is received as adequate proof of official acknowledgment of rights of a party.

However, in newly merged districts, the records are yet to be officially sanctioned. In absence of public records, declaration of title through a judgment in rem is an unsafe legal action. Therefore, despite having proved the claim, the court shall proceed to grant a modified relief in the circumstances. The issue is decided for the plaintiffs.

Relief:

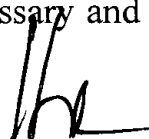
Plaintiffs are held entitled to suit land as owners in possession as against the current defendants. Defendants are permanently restrained from illegal interference suit property. Case file be consigned to the record room after its necessary completion and compilation.

Announced
09.09.2025


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)