

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

CIVIL APPEAL NO. : 18/13 OF 2025
DATE OF INSTITUTION : 02.05.2025
DATE OF TRANSFER-IN : 29.05.2025
DATE OF DECISION : 17.10.2025

JAFFAR KHAN S/O ZUHAR BADSHAH, CASTE MISHTI, TAPA
DARWI KHEL, TEHSIL CENTRAL, DISTRICT ORAKZAI AND
OTHERS

.....(APPELLANTS)

-VERSUS-

ABDUL KHANAN S/O DIN AKBAR, CASTE MISHTI, TAPA
DARWI KHEL, PO MISHTI MELA, R/O VILLAGE TAGHA SAM,
TEHSIL CENTRAL, DISTRICT ORAKZAI

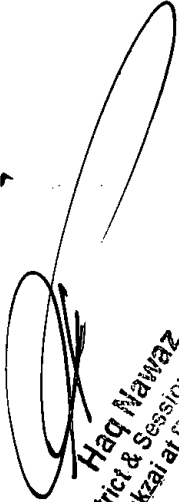
..... (RESPONDENTS)

Present : Abid Ali Advocate for appellants.
: Mr. Sana Ullah Khan Advocate for respondents.

JUDGEMENT
17.10.2025

This appeal was preferred against the order dated
14.04.2025 passed by the Court of learned Civil Judge,
Tehsil Courts Kalaya, District Orakzai, whereby Civil Suit
No. 17/1 of 2024 was dismissed being not maintainable.


2. The suit was brought by the appellants for declaration to the
effect that the parties, being legal heirs of Utman Shah, are
joint owners of the suit property consisting upon different
fields and residential houses of the parties, situated in
District Orakzai, described with details in headnote of the
plaint, which has not yet been partitioned. They also prayed
for possession of the suit properties through partition and
sought permanent and mandatory injunction to restrain the
respondents/defendants from causing interference in the
suit properties.


Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

3. The suit was contested by the respondents by submitting their written statement. The learned trial Court, vide his impugned order, dismissed the suit being not maintainable; hence, this appeal was preferred.

4. After hearing both the parties and perusal of the record, it was found that earlier an application under Order 7, Rule 11 CPC was dismissed by the trial Court on 25.03.2025 with the observations that the matter will be decided after recording pro and contra evidence. Secondly, the trial Court has held in the impugned order that the suit properties have privately been partitioned between the parties, but a careful perusal of the written statement shows that no such plea was taken by the respondents. So far, jurisdiction of the Civil Court is concerned, it is pertinent to note that there is no settlement record in District Orakzai and the Honourable Peshawar High Court, Mingora Bench (Dar-ul-Qaza Swat) in its judgment dated 25.01.2021, has held in a similar case that the bar provided under Section 172 of the Revenue Act against the Civil Court is not applicable in such eventuality. It was further held that Civil Courts shall be fully competent to entertain suits for partition of joint immovable properties in respect of such land, which had not yet been documented according to Chapter-VI of the Revenue Act.

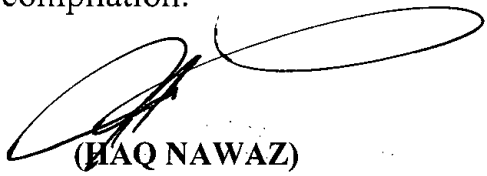
5. According to Order 1 Rule 9 CPC, "*no suit shall be defeated by reason of the mis-joinder or non-joinder of*


Haq Nawaz
District & Sessions Judge
Orakzai at Peshawar

parties, and the Court may in every suit deal with the matter in controversy so far as regards the rights and interests of the parties actually before it". As the present dispute is with regard to partition of the joint properties and no objection about partial partition is raised in the written statement, but the parties must ensure that all the joint ownership of the parties is included in the subject matter for the purpose of partition with the presence of all the necessary parties including women folk before the trial Court.

6. In view of the above discussion, the appeal is accepted. The impugned order is set aside and suit of the appellants is remanded back to the trial Court with the directions to proceed with the same in accordance with law. Parties are directed to appear before the Court of learned Civil Judge, Tehsil Courts Kalaya, on 01.11.2025. Copy of this judgment be sent to the trial Court for information and compliance. File of this Court be consigned to record room after its necessary completion and compilation.

Announced:
17.10.2025

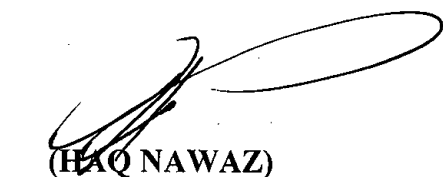

(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of three (03) pages.

Each page has been read, corrected wherever necessary and signed by me.

Dated: 17.10.2025


(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela