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

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| Civil Suit No. | 50/1 of 2021 |
| Date of Institution: | 20.03.2021 |
| Date of Transfer In: | 21.05.2024 |
| Date of Decision: | 24.09.2025 |

1. Ayaz Ali Khan s/o Taj Ali Khan
2. Muhammad Ashraf Khan s/o Azmat Khan
3. Muhammad Raheel Khan s/o Azmat Khan
4. Ayub Khan s/o Awal Khan
5. Niaz Wali Khan s/o Mohabbat Ali Khan
6. Shameet Khan s/o Gul Mat Khan
7. Muhammad Ayub Khan s/o Dastar Khan.

All R/O Qoum Beland Khel, Tappa Palmat Khel, District Orakzai

..... (Plaintiffs)

VERSUS

1. Shah Deem Khan s/o Gul Abbas Khan
2. Eid Azar s/o Gul Dar Khan
3. Azwar Khan s/o Sheen Azar alias Goda
4. Sher Khandan s/o Shadi Khan
5. Abdul Salam s/o Moula Khan
6. Abdullah s/o Muhammad Jan
7. Shahzad Khan s/o Khadem Khan

All R/O Qoum Beland Khel, Tappa Masti Khel, District Orakzai.

8. Muhammad Raees Khan s/o Peer Tahir Shah
9. Abdul Samad s/o Borhan Ul Deen and 11 others

All R/O Qoum Ali Khel, Tehsil Upper, District Orakzai

..... (Defendants)

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

JUDGEMENT:

24.09.2025

This order is to decide instant suit filed for declaration of title and corresponding injunctions by Mr. Ayaz Ali and others, the plaintiffs, against Mr. Shah Deem Khan and others, the defendants.

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Senior Civil Judge, JM
Orakzai at Baber Mela

(183) (152)

Pleadings:

The claim as recounted in the plaint reads that plaintiffs belong to tappa *Palmat Khel* of Qaum *Buland Khel*. They are owners of land including suit property through their ancestors. Originally plaintiffs had a dispute over land boundaries with pro-forma defendants no 08 to 14. The latter had given land measuring 35 meters to defendants no 01 to 07. However, defendant no 01-07 have begun encroaching upon lands of both plaintiffs and pro-forma defendants.

The plaint continues that upon the construction of the new road, landed entitlement of the plaintiffs was split into two with 08 kanals of their land left on the side of the road on which defendants no 01-07 had acquired land. It is alleged that defendants were repeatedly requested to desist from their illegal interference but to no avail, hence the suit.

The defense as pitched in the written statement reads that defendants no 01-07 are owners through purchase of land measuring 136 Marlas from defendant no 08-16 through agreement deed no 393. In addition to legal objections to the maintainability of the suit, the written statement refutes the factual assertions of the plaintiffs.

It asserts that landed entitlement of the plaintiffs and defendants no 08-16 is separated by paved road, and on the side of the road on which defendants no 01-07 owns land, the plaintiffs do not have entitlement. That their entitlement i.e.

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measuring 136 Marlas, is situated to the West side of the road and has been in their possession since the time purchase. Defendants deny the claim of the plaintiffs and request for dismissal of the suit.

Defendants no 08-16 were proceeded against as ex-parte after they failed to appear.

Differences between the sides as distilled from their respective pleadings were reduced into the following issues:

Issues:

1. Whether the plaintiffs have got cause of action? OPP
2. Whether the plaintiffs are estopped to sue? OPD
3. Whether the suit of the plaintiffs is time bard? OPD
4. Whether the suit property is the ownership of the plaintiffs and the plaintiffs are entitled to enjoy all the rights associated suit property? OPP
5. Whether defendant No. 1 to 7 has taken illegal possession of 15 yards land in the plaintiffs' property and have raised construction in the same? OPP
6. Whether defendant No.1 to 7 has purchased the suit property from defendant No. 8 to 16? OPD
7. Whether the plaintiffs are entitled to the decree as prayed for?

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Relief.
Thereafter, both sides were invited to produce evidence in support of their respective stance.

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Witnesses/Exhibits:

Mr. Niaz Wali Khan s/o Muhammad Ali Khan, plaintiff No.05 and special power of attorney of defendants, appeared as PW-01, Mr. Shoaib Rehman s/o Payo Omar Khan as PW-02, Mr. Salamat Noor s/o Khairat Noor as PW-03, Mr. Zakir Ullah s/o Payo Ullah Khan, special attorney for defendants No.1 to 7, as DW-01, Mr. Gul Payo Khan s/o Habib Ullah Khan as DW-02, Mr. Dil Faraz Khan s/o Moqadam Jan as DW-3 and Mr. Meer Nawaz Khan s/o Muhammad Raheem as PW-04. They have exhibited the following documents;

- i. Special power of attorney of PW-01 as Ex.PW-1/1.
- ii. Attested copy regarding ancestral property of plaintiff is Ex.PW-1/2
- iii. Copies regarding sale and purchase are Ex.PW-1/3 and Ex.PW-1/4.
- iv. Copy of sketch is Ex.PW-1/5.
- v. Special power of DW-01 as Ex.DW-1/1.
- vi. Copy regarding sale deed No. 393 as Ex.PW- 1/2.

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Reasons:

Reasoning of the court followed by a ruling on each issue is as follows:

Issue No 01:

These issues pertain to the questions of estoppel and joinder of parties. Estoppel is a bar on holding a position during a trial that is against a previously established position. During the course of trial, no previously held position was agitated specifically to attract the bar of estoppel. Similarly, the court too, during its examination of the case record and evidence, could not find a positive instance of the suit being hit by estoppel.

Similarly, throughout the course of trial, defendants did not mention any necessary party that might have been left out. A suit for declaration against the current occupant who claims exclusive title, and a government contractor who is busy in construction on it, apparently meets the legal criteria of impleading the right parties. The court could not find any fatal defect on that score. The issues are decided for the plaintiffs.

Issue No 04, 05, and 06:

The dispute is wrapped around plaintiffs' claim that defendants no 01-07 are exceeding their entitlement i.e. 136 Marlas, and encroaching upon their landed estate. These issues, since they pose questions about the entitlement of both sides

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and the allegation of encroachment, are taken together for convenience of articulation and comprehension. The court understands that discussing them separately would confuse the readers without serving any useful purpose.

The onus to prove that defendants are attempting to exceed their entitlement of 136 marlas, and encroaching upon the property of the plaintiffs fell on the latter. Below the court shall examine the corpus of evidence in the context of the issues under discussion.

- Plaintiff claims that suit land and its vicinity is the entitlement of *Tappa Palmat Khel*, and they have been recognized as its owners in possession since the time of their ancestors. Plaintiff witness no 01 produced certain conveyance deeds to establish the fact that they have been disposing land through sale and donation in the disputed area. Copy of the deeds are Ex-PW 1/1 and 1/2.
- PW-01, in reiteration and confirmation of the pleadings, state that property of the plaintiffs was formally split into two by a public road when it was rolled over an informal track customarily used by locals as passage through their land.

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Senior Counsel, JM
Orakzai District Court

The witness concedes that defendants no 01 to 07 have indeed purchased some land from rest of the defendants adjacent to the suit property.

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- During the cross examination, on page 07 of his statement, the witness is made to admit that plaintiffs have land on both sides of the road.
- Next two witnesses for the plaintiffs testified that the entire area around the suit land is the ownership of *Qaum Palmat Khel*, and that they, the witnesses, are owners by purchase from *Palmat Khel*. These witnesses did not shed light on the instant controversy directly, and were, accordingly, not cross-examined in respect of their statement.
- Mr. Zakir Ullah, defense witness no 01, is the attorney for rest of the defendants. His statement begins with an overview of the sub-divisions of *Buland Khel Qaum* i.e. *Hadapzai, Masti Khel, Palmat Khel, and Lodhyani*. He confirms that his clients are owners through purchase of land measuring 136 Marlas through agreement deed no 393.
- In his cross-examination, he states that to the west of the public road, the landed property is exclusive ownership of the respective owners, and not shamilaat. It is curious to note that Dw-02 and DW-03 maintain that suit land to the west of the road is Shamilaat.

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Next, the witness reports the defendants' property touches the water stream on one side, and the public road to the

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east. He further concedes that defendant no 01 to 07 belong to Qaum Masti Khel.

- Defendant no 03 and 04 state that defendants no 01-07 do not have any land in the dispute area other than 136 marlas bought from Tappa Peeran. Both the witnesses concede in their direct statement that rest of the land is Qaumi Shamilaat.

Commission's Report:

Considering the fact that the district is yet to conduct its maiden land settlement for revenue purposes, the court felt it useful to dispatch a commission to report facts from the actual site i.e. the suit land.

The commission was specifically mandated to investigate whether defendants no 01 to 07 are indeed attempting to encroach upon plaintiffs' land by exceeding in their possession beyond the 136 marlas they acquired through deed no 393.

The commission accordingly discharged its mandate and submitted its report on 24/05/25. Objections were received from both sides, and opportunity was afforded to both sides to cross-examine the commissioner.

As indicated above, in district without revenue records, the court is substantially assisted by commission reports in discerning the situation on site. Interestingly, neither side

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disputed the mapped lay-out of the disputed land/neighborhood as submitted by the local commissioner.

Similarly, the defendants 01-07 did not object to the findings of the local commissioner that the land from the Algada on the west to the road to the east is measured 247 Marlas roughly. It is safe for the court to rely on undisputed facts reported by the local commissioner.

- Now, in the map drawn by the local commissioner, the disputed land is between two streets of varying width on the north and south, and the stream and the road on the east and west. The map clearly sets out the disputed land for the court which previously was unclear and disputed between the parties in their respective maps.
- The portion of land highlighted above consists on a building owned and possessed by defendants no 01-07 and a large chunk of plain land. Plaintiffs claim that defendants are entitled to 136 marlas i.e. that is the constructed portion, and to nothing beyond it. Defendants admit to be entitled to 136 marlas only. Local commissioner has already reported that the total land mass including the constructed house in the perimeter highlighted above is 247 marlas rather than 136 marlas.


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- This sufficiently establishes for our purpose that between the four points highlighted above, defendants

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no 01-07 are beyond their rights in attempting to encroach upon, possess or build land in excess of their 136 marlas.

Concluding observations:

In view of the discussion above, it is amply confirmed that plaintiffs belong to *Qaum Palmat Khel*, and defendants to *Qaum Masti Khel* of the larger *Buland Khel* tribe. That *Palmat Khel* owns most of the suit land and have donated or sold portions of it on both sides of the road. That defendants no 01-07 owns 136 marlas through purchase adjacent to the suit land. That land between two streets north south, and Algada and public road east west measures 247 marlas. Plaintiffs claim, and their principal witness have been made to admit that they own land on both sides of the road. Clearly, defendants are not entitled to the land beyond 136 marlas.

Therefore, the court is of the considered opinion that any attempt by defendants no 01-07 to occupy land beyond 136 marlas in the confines highlighted above is a misappropriation, and thus unwarranted. The issues are decided for the plaintiffs, and against the defendants.

Issue No 07 and 08:

These issues carry the question of relief to which the plaintiffs might be entitled. The law is clear on the point that a joint-owner can file a claim or acquired symbolic possession

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for the rest of co-sharers against a stranger. In absence of land settlement, the court deems it prudent to pronounce a decree of declaration in personam for the plaintiffs against the defendants.

Defendants no 01-07 are restrained from exceeding their entitlement of 136 marlas in the suit land. Any attempt to do so shall expose them to punitive rigors of the law. They are restrained from unwarranted transgression in these terms. The issues are decided accordingly.

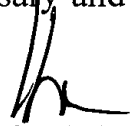
Case file be consigned to the record room after its necessary completion and compilation.

Announced
24.09.2025


Ijaz Mahsood)
Senior Civil Judge,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment of mine consists of Eleven (11) pages, each has been checked, corrected where necessary and signed by me.


(Ijaz Mahsood)
Senior Civil Judge,
Orakzai at (Baber Mela)