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SAJJAD KHAN ETC. VS GHAFAR KHAN ETC.  
Civil Appeal No. 04/13 of 2025

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

CIVIL APPEAL NO. : 4/13 OF 2025  
DATE OF INSTITUTION : 12.05.2025  
DATE OF DECISION : 10.10.2025

SAJJAD KHAN S/O HABIB KHAN, CASTE FEROZ KHEL, TEHSIL  
LOWER, DISTRICT ORAKZAI AND OTHERS

.....(APPELLANTS)

-VERSUS-

GHAFAR KHAN S/O KHAISTA GUL, CASTE FEROZ KHEL,  
TAPA QEEMAT KHEL, TEHSIL LOWER, DISTRICT ORAKZAI  
AND OTHERS

..... (RESPONDENTS)

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JUDGEMENT  
10.10.2025

This civil appeal was preferred by the appellants against the order dated 14.04.2025 passed by the Court of learned Senior Civil Judge, Orakzai, in Civil Suit No. 10/1 of 2023 whereby suit of the appellants was dismissed being not maintainable.

2. The suit was brought by the plaintiffs for declaration-cum-permanent and mandatory injunction to the effect that the parties are joint owners of the suit property which consists of a mountain situated at Lerri, Bandajat, Samali and Krappa mountain and Cheeta mountain, situated at District Orakzai, described with four boundaries in headnote of the plaint which has not been partitioned between the parties. The parties have equal shares in the suit property and the defendants have got no concern with the share of the appellants, but they are bent upon to possess the same forcibly by making construction and

Haq Nawaz  
District & Sessions Judge  
Orakzai at Baber Mela

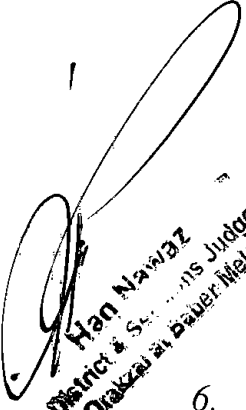
thereby causing interference in lawful possession of the plaintiffs which is against the law and facts. The plaintiffs also sought dispossession of the defendants and demolition of any construction made during pendency of the suit; therefore, the suit was filed.

3. The suit was contested by the defendants by submitting their written statement. The learned trial Court dismissed the suit through his impugned order; hence, this appeal was filed.

4. I have heard learned counsel for the parties and perused the record.

5. The learned trial Court, while dismissing the suit through his impugned order being not maintainable, held that no relief to the extent of official partition was sought. It was further observed that all the co-sharers in the suit property have not been impleaded, full description of the property is not mentioned in the plaint, the suit property is subject to dispute with other tribes of the District and the Civil Court was lacking jurisdiction under the Land Revenue Act to entertain the present suit.

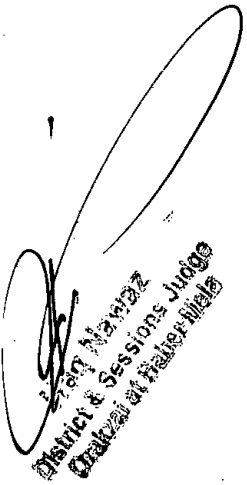
6. The perusal of prayer 'B' of the plaint shows that the appellants have specifically sought partition of the suit property, whereas Order 01 dated 13.03.2023 shows that the appellants were allowed to sue under Order 1 Rule 8 in a representative capacity with the observations that the list of owners is placed on file, against whom publication was issued in Daily Ausaf

  
**Han Nawaz**  
District & Sessions Judge  
Quetta at Bader Mela

for 20.11.2023. Even otherwise, according to Order 1 Rule 9 CPC, *“no suit shall be defeated by reason of the mis-joinder or non-joinder of 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”*. Similarly, the boundaries of the suit mountains have also been given in relief ‘A’ of the plaint.

7. So far, the bar of jurisdiction upon the Civil Court under Section 172 of the Revenue Act, is concerned, it is pertinent to note that the Court in its Order dated 07.03.2024 had earlier decided to proceed with the partition proceedings as per law. Further 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.

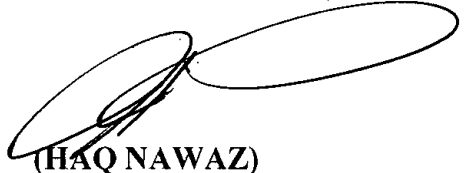
8. In view of the above facts and circumstances, the appeal is accepted. The impugned order is set aside and the suit is remanded back to the trial Court. Parties are directed to appear before the trial Court on 18.10.2025 for further proceedings.

  
District & Sessions Judge  
Orakzai

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File of this Court be consigned to record room after its  
necessary completion and compilation.

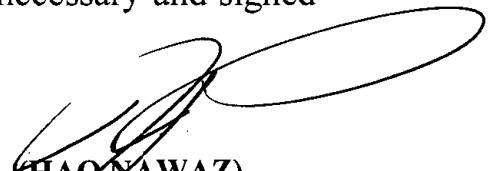
**Announced:**  
10.10.2025

  
(HAQ NAWAZ)  
District Judge, Orakzai  
at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of four (04) pages. Each  
page has been read, corrected wherever necessary and signed  
by me.

Dated: 10.10.2025

  
(HAQ NAWAZ)  
District Judge, Orakzai  
at Baber Mela