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

Civil Suit No. 44/1 of 2022
Date of Institution: 27.11.2021
Date of Transfer In: 27.06.2022
Date of Decision: 18.10.2025

1. Taza Khan s/o Malik Gul Batt Khan
R/O Wam Panrra, Qaum Shaikhan, District Orakzai.
 2. Muhammad Zaman s/o Abdul Hameed Shah
R/O Lakhti Banda, District Hangu.
- (Plaintiffs)

VERSUS

1. Noor Akbar s/o Ali Sardar
 2. Noor Hakeem s/o Gul Hakeem
 3. Haider s/o Deen Akbar
 4. Fayaz Khan s/o unknown
All Rs/o Illaqa Wan Panrra, Quam Shaikhan, District Orakzai.
 5. The Director Mines & minerals, KPK, Office at District Courts
premises Peshawar.
- (Defendants)

**SUIT FOR SPECIFIC PERFORMANCE AND
CORRESPONDING RESTRAINING ORDER**

JUDGEMENT:

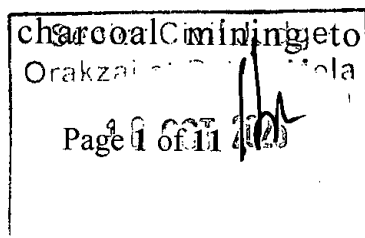
18.10.2025

This order is to decide instant suit filed by Mr. Taza Khan and another, the plaintiffs, for specific performance of a Qaumi Jirga, and corresponding injunctions against Mr. Noor Akbar and 04 others, the defendants.

Pleadings:

Facts as recounted in the plaint run as follows. Plaintiff no 01 and defendants no 01 are owners in possession of a joint Khata which they have mutually divided it into two portions.

Plaintiff gave his portion on lease for

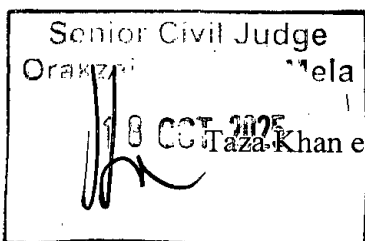


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plaintiff no 02, and defendant gave it to defendant no 02 to 04. Plaintiffs portion of the mine is designated as A-11, while defendant hold rights to mines labelled as A-2 and A-3.

That consequent to a dispute over borders of their respective portions, a Jirga of local elders was convened who decided the matter for the parties. It was agreed that each side would remain in their duly marked and fixed portion and not transgress upon the share of the other. It is alleged that despite the agreement, the defendants periodically violate the same and encroach upon the share of the plaintiff. Plaintiffs contend that defendants no 02-04 being lessees of the defendant no 01 are equally bound by the agreement and that their interference is illegal. Plaintiffs request for enforcement of the agreement and a restraining order against interference.

In addition to the regular objections to the validity of the suit, the defendants have rebutted the factual claim of the plaintiffs. It is conceded that both sides are co-sharers but deny the assertion that the land has been split between the sides. The written statement adds that plaintiffs have no right to sub-let lease to anyone, and thus, their entire claim is unfit and legally unsustainable. That Mr. Fazal Hakim is the original lease owner and he has not given any NOC to the plaintiffs. In para 05 of the written statement, it is further held that since both sides are not lease holders, their agreement inter-se has no legal status or



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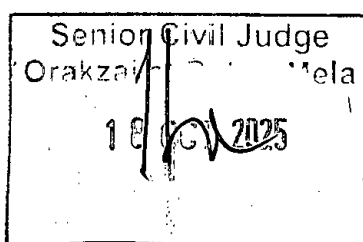
sanctity. Defendants deny the incidence of the agreement on which the plaintiffs claim demarcation of the joint holding.

Differences between the sides were distilled and reduced into the following issues:

Issues:

1. Whether Plaintiffs have got cause of action?
2. Whether the plaintiffs are estopped to sue?
3. Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder of necessary parties?
4. Whether previously the dispute in respect of encroachment/boundaries between the parties in respect of the suit property was resolved through Qumix Jirga verdict and boundaries were determined, but the defendants are now violating the verdict Jirga?
5. Whether the plaintiffs have made illegal mine and carrying out excavation without the permission of lease holder?
6. Whether the plaintiffs are entitled to the decree as prayed for?
7. Relief

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



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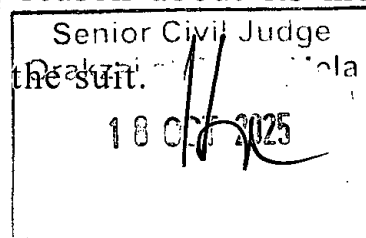
Witnesses/Exhibits:

Mr. Muhammad Zaman, the plaintiff No. 02 himself and special attorney of plaintiffs appeared as PW-01, Mr. Gulab Khan s/o Mohib AL Hassan as PW-02, Mr. Qalandar Shah s/o Gul Nabi as PW-03, Mr. Muhammad Aqeel s/o Saeed Khan, as CW-01, Mr. Malak Noor Akbar s/o Ali Sarwar as DW-01, Mr. and Haider Khan s/o Deen Akbar, special attorney of defendants appeared as DW-02. They have exhibited the following documents;

- i. Sketches as Ex. PW-1/1 and Ex. PW-1/2.
- ii. Jirga Decision as Ex. PW-1/3.
- iii. Jirga Waak documents as Ex. PW-1/4 and Ex. PW-1/5.
- iv. Special power of plaintiffs as Ex. PW- 1/6.
- v. Pictures as Ex. PW-1/7 to Ex. PW-1/14.
- vi. Report/sketch of parties as Ex. CW-1/1 and Ex. CW- 1/2.
- vii. Assessment report as Ex. CW-1/3 and ex. CW -1/4.
- viii. Copy of CNIC of DW-1 as Ex. DW-1/1.
- ix. Copy of CNIC of DW-2 as Ex. DW-2/1.
- x. Stamp paper of Iqrar Nama as ex. DW- 2/x1.

Reasons:

The court shall advert to each issue, reason about its merits, and rule upon them, and eventually on the suit.



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Issues No 01, 02, and 03:

These issues encapsulate the legal objections posed to the validity of the suit. They are taken together for convenience in decision and articulation.

Issue no 01 poses the question of cause of action. Plaintiffs seek to enforce an agreement they allege was executed between the sides to demarcate their respective entitlements. It is held that suit land is jointly held, and for the purpose of mining was demarcated between the owners of the land through mediation of the local elders.

Defendants have alleged that the suit is not maintainable on the ground that, first, sub-letting of lease is illegal under section 54 of the Mines and Minerals Act; second, the plaintiffs do not have any legal conveyance of the lease from the actual lease holder i.e. Mr. Fazal Hakim.

It is pertinent to underscore that the court is seized of a suit for specific performance of an agreement between private parties, and is not engaged in determining the validity of the lease or its sub-letting. The law has specifically empowered the Minerals Titles Committee under section 06 of the KP Mines and Minerals Act 2017 which is empowered to:

7 (c) supervise and regulate mining operations within the province through specific or general instruments

(d) Oversee enforcement of laws, rules and regulations relating to the mines and minerals in the provinces.

Plaintiff no 01 claims that he co-owner of suit land with defendant no 01, and that they entered into an agreement to demarcate the land for the purpose of mining operations. The division was effectively done and sanctioned by local elders, but now, allegedly, the defendants are violating the agreement. Plaintiffs seek enforcement of the agreement, which is a civil matter well within the jurisdiction of this court.

Interestingly, defendants claim entitlement to mine field A-3 and A-4 in the same manner as the plaintiffs, without possessing any better titular credentials.

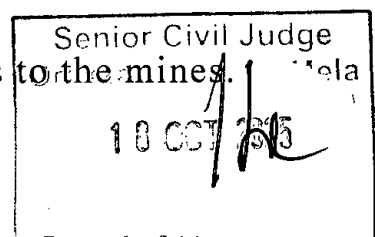
In view of the above, the suit is found fit and the forum competent for it. These issues are decided accordingly.

Issue no 04:

The issue questions about the resolution of disputed boundaries through a Qaumi Jirga, and if defendants are now violating the agreement.

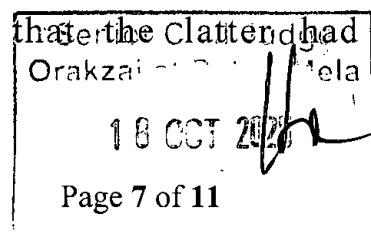
This issue holds the heart of the matter. Both sides concede one another as owners of adjacent properties in their pleadings. However, the dispute that led to litigation is the operations of certain mining fields established on their respective fields.

The plaintiffs claim that the dispute was settled and resolved through a Qaumi Jirga that proceeded to demarcate the territorial rights of both parties with regards to the mines.



Reading of evidence and the inferences it warrants are as follows:

- Plaintiff produced a Jirga deed available on file as Ex-PW 1/3. Witnesses on the deed Mr. Qalandar khan, and Mr. Gulab Khan testified in favor of the deed for the plaintiff. It is pertinent to highlight the defendants plainly denied the incidence of the Jirga, and consequently, the validity of the deed.
- It is interesting to note that in addition to denial of the Jirga Proceedings, the defendant also claimed ignorance about the identity of the Jirga members named above. However, his nephew, Mr. Haider Khan, who testified as DW-02, and is attorney for defendants admitted that the Jirga members are well-known to him, and they belong to his tribe i.e. Sheikhan.
- He also concedes the incidence of Jirga, and the participation of the Jirga Members named by the plaintiff, and produced as witnesses. He also concedes that plaintiff had commissioned a Surveyor to demarcate the boundaries of the disputed mines A-11 and A-3.
- Both witnesses have plainly admitted that A-11 mine belongs to the plaintiffs and A-3 mine to the defendants. It is also conceded that defendants acquired the mining rights from Mr. Qismat Ali, and that the Clatter had

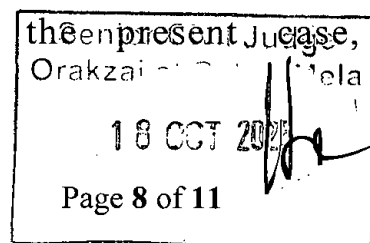


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boundary dispute with the plaintiffs. It is pertinent to point out that Qismat Ali is also a signatory of the deed Ex-PW 1/3.

- Surveyor, Mr. Muhammad Aqeel was summoned by the court as Court witness to share his findings in respect of the dispute. His report is available on file as Ex. PW 1/1, 1/ 2. He supports the version of the matter as related by the plaintiffs.
- Despite having evasively denied the incidence of the Jirga, the deed, and the proceedings by the surveyor, defense witness no 0-2 and attorney for defendants have admitted the incidence of Jirga, its members who testified for the plaintiffs, the investigation conducted by the Surveyor, and the fact that A-11 mine belongs to the plaintiffs.
- Plaintiffs' witness no 02 and 03 have related that defendants refused to honor the Jirga verdict so efforts were being made to involve experts from the mining department to technically demarcate the boundaries of both the sides.
- About Jirga Verdict, it is pertinent to contextualize that in erstwhile FATA, Jirgas enjoyed the same legal status as civil courts, and however, their verdicts were enforced through customary sanctions. In the present case,



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apparently the verdict could not be enforced hence the protraction of the dispute.

- The court understands that both parties have been engaged in the mining operations of mine fields A-11 and A-3 and A-4 respectively. Neither side disputes these entitlements nor claim any right to the mine of the other side. In these circumstances, the court sees it fair, fit, and faultless to restrict both sides to the mines the claim and admit as their entitlement. Issue is decided accordingly.

Issue No 05:

As discussed under issue no 01, the mandate rests with the mining department to regulate the operations of the mines operated in the area, and to enforce the laws regarding them. The law has specifically empowered the Minerals Titles Committee under section 06 of the KP Mines and Minerals Act 2017 which is empowered to:

7 (c) supervise and regulate mining operations within the province through specific or general instruments

(d) Oversee enforcement of laws, rules and regulations relating the mines and minerals in the provinces.

The court, in the context of the suit, when the principal matter before it is the specific performance of an agreement executed between private parties, is disinclined to decide the legality of the mine-holding rights of the parties.

would be overstepping its jurisdiction if it proceeds with determination of the legality or otherwise of the mines. Issue is disposed accordingly.

Issue no 06:

Plaintiffs have sought a restraining order against the defendants to prevent them from alleged interference with the possession and operations of mine A-11. As discussed above under issue no 04, both sides their mutual entitlement to the mines the claim to be under their disposal A-11 and A-03 and A-04. Neither side has any claim to the entitlement of the other side.

However, for the court to pass a restraining order against interference with a mine, it must have before it clear and definite lay-out and boundaries of each mine. Although surveyor of the mining department has, in private capacity, submitted his findings on the boundaries of mine A-11 and the extent of the interference, but his status and findings were controverted by the other side, and his findings were not in response or discharge of a clearly assigned mandate by the court.

In these circumstances, the court deems it appropriate to pass a preliminary decree in admission of the rights of the plaintiffs for the control and disposal of mine A-11 against the defendants. Defendants are beyond their rights in interfering with it.

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However, during final decree proceedings, the court may, with the formal assistance of mining department, determine and set clear boundaries to the mines in question, and thereafter, formally restrain each side to its due entitlement. Issue is decided accordingly.

Relief:

A preliminary decree is passed in favor of the plaintiffs for the control and disposal of mine A-11 against the defendants. Defendants are beyond their rights in interfering with it.


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

Announced
18.10.2025


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)