

SHANDI GUL VS ZIARAT GUL ETC.
Civil Appeal No. 56/13 of 2025

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

CIVIL APPEAL NO. : 56/13 OF 2025
DATE OF INSTITUTION : 09.09.2025
DATE OF DECISION : 12.11.2025

SHANDI GUL S/O SAIDAN SHAH, R/O DRESOTE, CASTE MALA
KHEL, TAPA CHAR KHELA, TEHSIL UPPER, DISTRICT
ORAKZAI

.....(APPELLANT)

-VERSUS-

ZIARAT GUL S/O SALEEM MUHAMMAD, R/O DRESOTE, CASTE
MALA KHEL, TAPA CHAR KHELA, TEHSIL UPPER, DISTRICT
ORAKZAI AND ANOTHER

..... (RESPONDENTS)


Present : Mr. Altaf Hussain Advocate for appellant.
: Mr. Abid Ali Advocate for respondent No. 1.

JUDGEMENT

12.11.2025

This civil appeal was preferred by the appellant against the judgment and decree dated 31.07.2025 passed by the Court of learned Senior Civil Judge, Orakzai, whereby Civil Suit No. 93/1 of 2022 was dismissed.

2. The appellant/plaintiff seeks declaration-cum-permanent and mandatory injunction to the effect that he is owner and co-sharer in the suit property, described with four boundaries in headnote of the plaint, situated at Dresote Tehsil Upper, District Orakzai. The plaintiff also alleged that he cannot get full benefit from the joint property without partition between the parties. The respondents were asked time and again to hand over the share of plaintiff through partition, but in vain. The respondents are bent upon to interfere in the suit property through sale/purchase and changing its nature by raising


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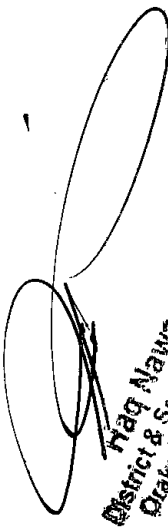
construction. Possession through partition of the suit property was also sought in prayer C and D of the plaint.

3. According to the averments of the plaint, the plaint and defendant No. 2 are belonging to same Tabar/family whereas the defendant No. 1 is stranger. The defendant No. 1 is illegally claiming ownership of a field in the name of Gul Ajab Khan field situated at Dresote, being purchased owner; however, the plaintiff was having the right to purchase it in accordance with the local custom and Sharia. The suit property is jointly owned by the plaintiff and defendant No. 2 whereas the defendant No. 1 has got no concern with it and he has occupied it illegally. The defendants refused to hand over the share of plaintiff when they were asked for the same. Hence, the suit was filed.

4. The defendant No. 1 contested the suit by submitting his written statement. It was alleged that the suit field was exchanged by him with one Saeed Khan s/o Gul Ajab about 15 years back for better management of the exchanged properties which were situated near to their residential houses. The defendant No. 2 submitted his cognovit in favour of the plaintiff. Pleadings of the parties were reduced into the following issues;

I. *Whether the plaintiff has got a cause of action?*

II. *Whether the suit of the plaintiff is time barred?*


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III. *Whether the suit property is the exclusive ownership of the plaintiff and the defendant No. 1 have nothing to do with the same?*

IV. *Whether the plaintiff is entitled to the decree as prayed for?*

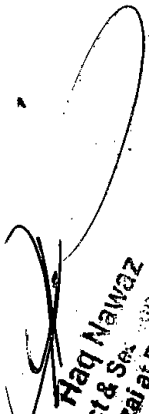
V. *Relief.*

5. The parties adduced their pro and contra evidence. The learned trial Court, after hearing both the parties, dismissed the suit through his impugned judgment and decree. Hence, this appeal was preferred.

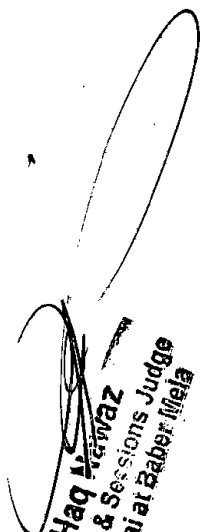
6. I have heard learned counsel for the parties and perused the record.

7. The very prayer A of the plaint is full of contradictions in which the plaintiff, on the one hand, seeks partition of the suit land and alleged to have asked the defendants for the said purpose, and on the other hand, he alleged that the defendant No. 1 has got no concern with the suit property. Similarly, in para 3 of the plaint, the plaintiff submits that the defendant No.

1 alleges his ownership as purchased owner but the plaintiff was having the right to purchase the suit property in accordance with local custom and Sharia. But the suit was filed for declaration by the plaintiff instead of a suit for the exercise of his rights of pre-emption.


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8. In the next two paras of the plaint, the plaintiff has again taken contradictory pleas with regard to partition of the suit land with both the defendants and no concern of the defendant No. 1 with the suit property at the same breath.
9. During the course of evidence, a single witness was not produced by the plaintiff to support his claim. Both the PW-1 and PW-2 have deposed about some mediation between the parties with no deposition about the present dispute. Hence, the plaintiff is the only witness in support of his plaint as PW-3; however, in his cross examination, the plaintiff offered the withdrawal of the suit in case Saeed Khan s/o Gul Ajab Khan admit the sale/exchange of the suit property in favour of the defendant No. 1, but the said Saeed Khan, who, in view of the said statement, seems to be the original owner, was not made party to the suit. The learned counsel for the plaintiff/appellant submitted an application for his impleadment during the course of arguments before this Court, but the acceptance of said application may not cure the contradictions and ambiguities in the facts as well as form of the plaint. Therefore, the application is turned down.
10. On the other hand, the respondent/defendant No. 1 recorded his statement as DW-1. He reiterated the said facts as alleged in the written statement regarding exchange of the suit field with one Saeed Khan s/o Gul Ajab Khan for better management of the properties being adjacent to their respective

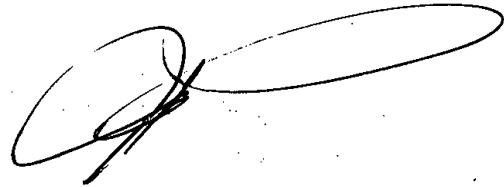

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residences. No single question was asked from him in this respect during his cross examination.

11. In view of the above, the learned trial Court has very rightly dismissed the suit. The impugned judgment is well reasoned and based on correct appreciation of evidence which needs no interference by this Court. The appeal is, therefore, dismissed being meritless. File of this Court be consigned to record room after its necessary completion and compilation.

Announced:

12.11.2025

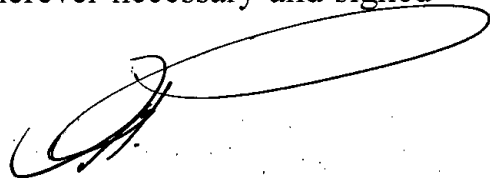


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CERTIFICATE

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 12.11.2025



(HAQ NAWAZ)
District Judge, Orakzai
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