

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

CIVIL APPEAL NO. : 55/13 OF 2025
DATE OF INSTITUTION : 01.09.2025
DATE OF DECISION : 25.11.2025

AHMAD JAN S/O SARWAR JAN, CASTE MAMOZAI, TAPA ADO
KHEL, LATO KACH GARHI, TEHSIL UPPER, DISTRICT ORAKZAI
AND OTHERS

.....(APPELLANTS)

-VERSUS-

SHER S/O YAQOOB KHAN, CASTE MAMOZAI, TAPA ADO KHEL,
TEHSIL UPPER, DISTRICT ORAKZAI AND OTHERS

..... (RESPONDENTS)

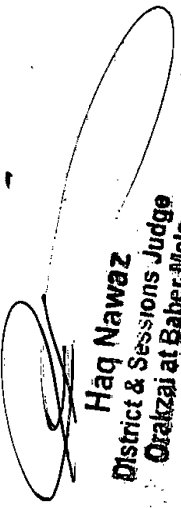
Present : Mr. Khursheed Alam and Maulana Ihsan Ullah Advocates for
appellants.
: Mr. Shaheen Muhammad Advocate for respondents No. 1 to 5.

JUDGEMENT

25.11.2025

This civil appeal was preferred against the judgement and
decree dated 29.07.2025 passed by the Court of learned Senior
Civil Judge, Orakzai, whereby Civil Suit No. 5/1 of 2025 was
dismissed.

2. The suit was brought by the plaintiffs for declaration to the
effect that they are owners in possession of the suit property
consisting upon 18 fields measuring approximately 20 Jeerabs,
described with four boundaries in headnote of the plaint,
situated at Lato Kach Garhi. The defendants have no right to
occupy the suit property illegally. They also sought permanent
and mandatory injunction to restrain the
respondents/defendants from causing interference in the suit
property in relief 'B' of the plaint.


Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

3. As per averments of the plaint, the plaintiffs are inhabitants of Mamozai, District Orakzai by birth. They are owners in possession of the suit property consisting upon 18 fields since their forefathers and residing in their dwelling houses. The defendants have got no right to interfere in the suit property and claim its ownership. The defendants were asked time and again to refrain from their illegal claim, but they refused; therefore, the suit was filed.

4. The defendants contested the suit by filing their written statement. Pleadings of the parties were reduced to the following issues;

I. Whether the suit is bad for legal defects i.e., cause of action, limitation, legal standing, non-joinder etc. and is not maintainable in its present form?

II. Whether plaintiffs are born members of the Mamozai tribe, and are owners in possession of suit property through generation?

III. Relief.

5. After recording pro and contra evidence and hearing both the parties, the learned trial Court dismissed the suit through his impugned judgment. Hence, this appeal was preferred.

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

7. The appellants, in support of their claim, produced three witnesses before the Court as PW-1 to PW-3. All of them deposed that the appellants/plaintiffs are in possession of the suit property since their remembrance. They produced their CNICs as Ex. PW 1/1, Ex. PW 2/1 and Ex. PW 3/1. According to which, they are aged about 65 years, 73 years and 48 years respectively. The appellant/plaintiff No. 3 himself appeared before the Court as PW-4. He is also attorney of the remaining plaintiffs. He produced his CNIC before the Court along with Domicile Certificate of his son namely Shaheen Ullah as PW 4/2 and Ex. PW 4/4. According to which, they belong to Caste Mamozai, Tapa Ado Khel, Kach Garhi. He also stated that they are in possession of the suit property since their forefathers and his elders are buried in the suit property.

8. On the other hand, the respondent/defendant No. 1 appeared before the Court as DW-1. He submitted that the appellants/plaintiffs belong to Caste Ali Khel and they are tenants of the respondents/defendants. He also produced a written deed in this respect as Ex. DW 1/3. Another deed on behalf of elders of Mamozai was also produced before the Court as Ex. DW 1/4. The DW-1 submitted that the suit property is situated within Mamozai areas; therefore, the appellants/plaintiffs have no concern with it and the respondents/defendants are owners of the same. The perusal of Ex. DW 1/3 shows that it was scribed on 01.06.1964 and it

Haq Nawaz
District & Sessions Judge
Orakzai at Baber Mela

contains that the landed property at Lato was given to father of the plaintiffs No. 1 and 2 namely Sarwar Jan, Caste Ali Khel on the basis of half share for a period of 20 years. The other deed Ex. DW 1/4 was scribed on 26.02.2025. According to which, the local elders were approached by the defendants to ask the plaintiffs to admit the claim of defendants in respect of their ownership with regard to the suit property as it was given to Sarwar Jan by Jaffar khanadan (defendant No. 1) and Malak Mir Asghar khanadan (defendant No. 3) on lease. The elders asked the plaintiffs accordingly to vacate the suit property. The DW-2 and DW-3 deposed that the plaintiffs belong to Caste Ali Khel and the suit property is the ownership of defendants which was given to the plaintiffs for zamindari. However, none of the DW-2 and DW-3 were marginal witness to either Ex. DW 1/3 or Ex. DW 1/4 nor they uttered a single word with regard to the said deeds or receipt of half share of produce by the respondents from the appellants. Further that none of the elders mentioned in Ex. DW 1/4 were produced before the Court. It is interesting to note that the suit in hand was instituted on 24.12.2024 whereas Ex. DW 1/4 was scribed on 26.02.2025, during pendency of the suit.

9. The learned trial Court observed in the impugned judgment that all the three witnesses produced by the appellants/plaintiffs were consistent to depose in respect of possession without hinting at the fact of entitlement. The said fact was also

admitted by the defendant No. 1 in his cross examination as DW-1 by admitting that the plaintiffs are settled in Mamozai for about 40/50 years. According to Article 126 of the Qanun-e-Shahadat;

"When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."

10. The Hon'ble Baluchistan High Court in its judgment in the case of *"Abdul Khaliq and another VS Muhammad Ismail and others"* reported in 2024 YLR 2757 held that; *"possession was prima facie evidence of ownership"*. It was further held in the said judgment that; *"'Potior est condition possidentis' (the condition of actual possessor is stronger) where both the parties are equally at fault, then law will favour the party who is in possession"*.

11. When neither party has any title document and the land is in an area with no settlement record, mere possession alone still does not automatically entitle a person to a declaration of ownership. However, in such cases, ownership is decided on the basis of "better title" and long, peaceful, exclusive possession often becomes the decisive factor. So, the person who proves better, older, continuous and exclusive possession is generally declared owner not because possession is equal to ownership but because he has a better claim than the opponent. It was held

by the Hon'ble Supreme Court of Pakistan in the case of "*Abdul Majeed VS Raisuddin*" reported in *PLD 1975 Supreme Court 331* that; "*in areas without reliable or formal land record, possession coupled with length and exclusivity becomes strong evidence of ownership as against a rival claimant with no better title*".

12. In view of the above facts, neither the defendants were able to discharge the burden of their proof sufficiently nor the learned trial Court comprehends the relevant law on the subject.

13. Further that the learned trial Court, while drawing inference from the fact that all the witnesses produced by the appellants were belonging to Ali Khel tribe and none of the witnesses from Mamozai tribe was produced to support the claim of the plaintiffs, did not give the desired weightage to the CNIC of the appellant/plaintiff No. 3 and the Domicile Certificate of his son which are public documents having the caste of appellant/plaintiff No. 3 and his son as Mamozai, Ado Khel, Kach Garhi. It is also interesting to note that none of these documents with regard to caste of the appellant/plaintiff No. 3 and his son have been challenged before the Competent Authority and the same are still intact.

14. In view of the above facts and circumstances, the appellants/plaintiffs have sufficiently proved their long, peaceful and exclusive possession of the suit property with their residential houses and graveyard over there, whereas the

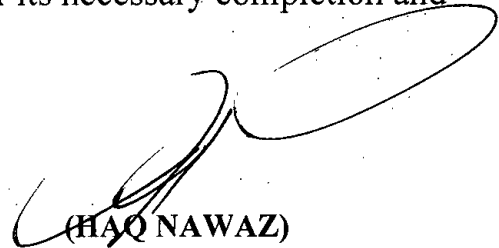
48

AHMAD JAN ETC. VS SHER ETC.
Civil Appeal No. 55/13 of 2025

respondents/defendants remained miserably failed to establish the status of appellants as their tenants in respect of the suit property.

15. Resultantly, the appeal is accepted. The impugned judgment is set aside and the suit is decreed as prayed for. File of this Court be consigned to record room after its necessary completion and compilation.

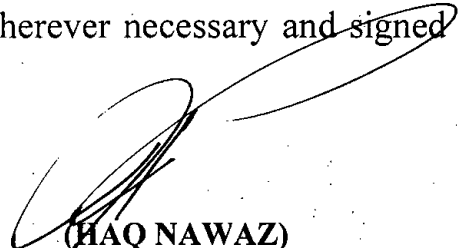
Announced:
25.11.2025


(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of seven (07) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 25.11.2025


(HAQ NAWAZ)
District Judge, Orakzai
at Baber Mela