

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

CIVIL APPEAL NO. : 22/13 OF 2025  
DATE OF INSTITUTION : 04.03.2025  
DATE OF TRANSFER-IN : 29.05.2025  
DATE OF DECISION : 03.11.2025

MAZHAR ALI S/O SADAF ALI, RESIDENT OF ANDKHEL BALA,  
DISTRICT ORAKZAI AND OTHERS

.....(APPELLANTS)

-VERSUS-

MARWAR HUSSAIN S/O SADAT ALI, CASTE STORI KHEL, TAPA  
ANDKHEL BALA, TEHSIL LOWER, DISTRICT ORAKZAI AND  
OTHERS

.....(RESPONDENTS)

**JUDGEMENT**

03.11.2025

This civil appeal was preferred by the appellants against the order dated 08.02.2025 passed by the Court of learned Civil Judge, Tehsil Courts Kalaya, District Orakzai, whereby Civil Suit No. 86/1 of 2023 was dismissed being not maintainable.

2. The suit was brought by the appellants/plaintiffs for the grant of decree to the effect that they are owners in possession of the property measuring 100 acres approximately, described with four boundaries in headnote of the plaint, situated at Kalaya, District Orakzai as per their legal share. The denial of their ownership by the defendants is illegal, unlawful and ineffective upon the rights of the appellants/plaintiffs. They also prayed for possession of the suit property through partition in relief 'B' of the plaint with permanent and mandatory injunction in relief 'C'.

3. The suit was contested by the respondents No. 1 and 4 by submitting their written statement. During the case

management and scheduling conference proceedings, the learned trial Court heard the parties and held that the suit was not maintainable in its present form and dismissed the same through his impugned order with the observations that the parties may approach the Revenue Court for partition of the suit property. Hence, this appeal was preferred.

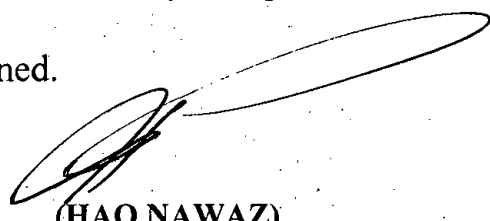
4. I have heard learned counsel for the parties and perused the record.
5. It is pertinent to note that there is no settlement record in District Orakzai and the Honourable Peshawar High Court, Mingora Bench (Dar-ul-Qaza Swat) in its judgment dated 25.01.2021, has held in a similar case that the bar provided under Section 172 of the Revenue Act against the Civil Court is not applicable in such eventuality. It was further held that the 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. However, it is evident from the plain reading of the plaint that there are other joint properties of the parties; hence, the present suit was filed for partial partition of the joint ownership of the parties. A suit for partition must include all properties that are jointly owned; otherwise, it is considered a partial partition, which is not maintainable. According to 2006 YLR 2289 of the Hon'ble Lahore High Court, a party opting for partition cannot selectively choose valuable parts of the joint property while

Haq Nawaz  
District & Sessions Judge  
Orakzai District, Mingora

leaving out others, as a suit for partial partition is not maintainable. Similarly, it was held in 2016 YLR 1489 by the Hon'ble Peshawar High Court, Peshawar that all joint owned properties must be subject to the partition suit.

6. In view of the above facts and circumstances, the appeal is meritless. It is, therefore, dismissed. File of this Court be consigned to record room after its necessary completion and compilation while record be returned.

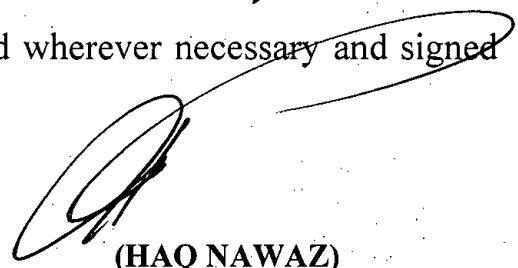
**Announced:**  
03.11.2025

  
(HAQ NAWAZ)  
District Judge, Orakzai  
at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 03.11.2025

  
(HAQ NAWAZ)  
District Judge, Orakzai  
at Baber Mela