

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

CIVIL APPEAL NO. : 66/13 OF 2025
DATE OF INSTITUTION : 19.11.2025
DATE OF DECISION : 13.12.2025

AYAZ KHAN S/O TAJ ALI KHAN AND FIVE OTHERS, CASTE
BILAND KHEL, TAPA PALAMAT KHEL, TEHSIL UPPER,
DISTRICT ORAKZAI.

.....(APPELLANTS)

-VERSUS-

SHAH SAWAR S/O SULTAN AND THREE OTHERS, CASTE
BILAND KHEL, TAPA PALAMAT KHEL, TEHSIL UPPER,
DISTRICT ORAKZAI.

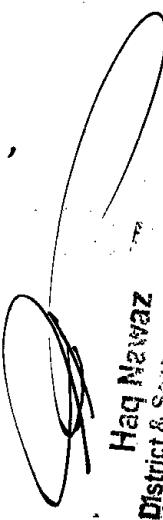
.....(RESPONDENTS)

JUDGEMENT

13.12.2025

This civil appeal was preferred against the judgement and decree dated 23.05.2023 passed by the Court of learned Civil Judge-I, Orakzai, whereby Civil Suit No. 104/1 of 2021 was decreed as prayed for.

2. The suit was brought by the plaintiffs/respondents for declaration and permanent injunction to the effect that they are owners in possession of the suit property measuring 12 Jeerabs since their forefathers, situated at Baland Khel (Wesh Khawre), District Orakzai. The defendants have no right to claim ownership of 4 or 3-1/2 Jeerab of suit property or occupy it illegally. They also sought possession of the suit land in prayer 'B' of the plaint as alternative relief.
3. According to averments of the plaint, the plaintiffs belong to Peeran (Syed) Tapa whereas the defendants belong to Palmat Khel of Baland Khel. The suit land as shown in the site plan


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with points A, B, C and D is the ownership of plaintiffs for more than 200 years and they are in possession of the same since their forefathers. The defendants have adjacent property towards south of the suit property which is shown with points E, F, G and H in the site sketch. There was a watercourse from north to south between both the properties of the parties which is shown with points "الف و ب" in the site sketch. The parties and Malayan Tapa diverted the watercourse jointly to points "ت و ث" with the expenditure of Rs. 01 lac. But the defendants have started claiming ownership of about 4 or 3-1/2 Jeerabs of the suit property towards east from the old watercourse. They were repeatedly asked 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;

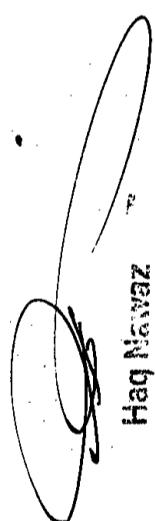
I. Whether the plaintiffs have got cause of action?

II. Whether the plaintiffs are estopped to sue?

III. Whether the suit of the plaintiffs is time barred?

IV. Whether the suit property is the ownership of the plaintiffs and the plaintiffs are entitled to enjoy all the rights associated with suit property?

V. Whether the ancestors of defendants had mortgaged the suit property to the ancestors of the plaintiffs?



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VI. Whether the plaintiffs are entitled to the decree as prayed for?

VII. Relief.

5. After recording pro and contra evidence and hearing both the parties, the learned trial Court decreed the suit as prayed for through his impugned judgment and decree. The appellants preferred Civil Appeal No. 23/13 of 2023 against the said judgment which was dismissed on 02.02.2024 by the Court of Additional District Judge-II, Orakzai. The appellants preferred CR No. 189-P of 2024 before the Hon'ble Peshawar High Court, Peshawar which was allowed on 07.11.2025 and the case was remanded back to this Court with the directions to first decide the pending application for allowing the petitioners to produce additional evidence under the provisions of Order XLI Rule 27 CPC and thereafter decide the main appeal upon its own merits and in accordance with law.

6. The application under Order XLI Rule 27 CPC was submitted before the appellate Court on 06.12.2023 to allow the appellants to produce additional evidence. It was submitted in the application that although the appellants have produced oral evidence but there is no revenue record available in District Orakzai; therefore, the cases are adjudicated upon customs of the locality. It was further submitted that as per Rivaj of Baland Khel, there is an Ilaqa Qazi, having his own seal, who holds the record of sale/purchase in Baland Khel in the shape of a book.

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Each tribe/Tapa has its own book and only those tribes could sell out their lands who belong to four sub-tribes/Tapas of Baland Khel namely Palmat Khel, Masti Khel, Lodhiani and Adizai. It was, therefore, requested that the appellants may be allowed to produce additional evidence and Ilaqa Qazi of Baland Khel may be summoned.

7. The application was contested by the respondents by submitting their written reply. It remained pending up till disposal of the appeal on 02.02.2024, resulting into directions of the Hon'ble Peshawar High Court in CR No. 189-P of 2024 to first decide the said application.

8. During the course of arguments on the said application, both the learned counsel for the parties submitted that the application needs discussion on the evidence, adduced by the parties; therefore, the same should be decided with the main appeal.

9. The existence of the office of Ilaqa Qazi for keeping record of the sale and purchase is admitted by almost all the witnesses from both the sides in their statements whereas the DW-1 has given the details of establishment of the said office. According to him, the Wali of Afghanistan namely Ameer Abdul Rehman appointed eight (08) Qazis for the properties of Baland Khel at Speen Tall and Wesh Khawre. The joint properties were divided in four sub-tribes of Baland Khel in 1946. In case of any transaction, the parties must visit the office of Qazi and

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every non-pashtoon person must have the document of sale/purchase with the seal of said Qazi.

10. The said office of Ilaqa Qazi is neither a public office nor the record maintained by him comes under the definition of public document as provided in Article 85 of the Qanun-e-Shahadat Order, 1984. According which the following documents are public documents:

- (1) Documents forming the acts or records of the acts;
 - (i) of the sovereign authority;
 - (ii) of official bodies and tribunals, and
 - (iii) of public officers, legislative, Judicial and executive, of any part of Pakistan, or of a foreign country;
- (2) Public records kept in Pakistan of private documents;
- (3) Documents forming part of the records of judicial proceedings;
- (4) Documents required to be maintained by a public servant under any law; and
- (5) Registered documents the execution whereof is not disputed.
- (6) Certificates deposited in a repository pursuant to the provisions of the Electronic Transactions Ordinance, 2002.

11. Further that no transaction of sale and purchase is involved in the present case, but the appellants seek to summon the Ilaqa Qazi to prove that he does not have the book regarding Tapa Peeran (respondents) and thus they are not hereditary owners in the areas of Baland Khel. The said plea was not taken in the written statement. Rather both the attorneys for the appellants, who appeared before the Court as DW-3 and DW-4, have

admitted about 100 hereditary residential houses of Peeran (respondents) in their statements. In such circumstances, the examination of said Ilaqa Qazi is not required to enable this Court to pronounce judgment as provided by Sub-Rule 1 (b) of Rule 27 of Order XLI CPC. Therefore, the application for additional evidence is turned down.

12. The appellants have submitted in their written statement that the suit property was given by their forefathers to the forefathers of respondents/plaintiffs on *Ijara (Ganra)*, but they are now illegally occupying the same. However, none of the DWs deposed about Ijara or Ganra in their statements before the Court. Whereas possession of the respondents/plaintiffs is not only admitted in the written statement as stated above but both the attorneys for the appellants have also admitted possession of the respondents in their statements before the Court as DW-3 and DW-4. The fact that the old watercourse was diverted by the respondents with the help and co-operation of appellants and Malayan Tapa was also admitted by both the attorneys in their statements. The respondents, on the other hand, have produced two witnesses before the Court as PW-1 and PW-2 who also deposed that the suit property is in their possession since their forefathers.

13. In such circumstances, the burden to prove that the respondents were not owners of the suit property was upon the appellants

*Hanif Ali, M.A.
District & Sessions Judge
Qazzaq at Bara Patti, Botala*

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under Article 126 of the Qanun-e-Shahadat which provides as under,

"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."

14. 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 poosidentis*" (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".

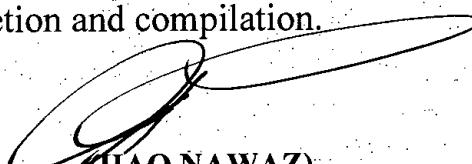
15. When neither party has any title document and the land is in an area with no settlement record, mere possession alone still does not automatically entitle a person to a declaration of ownership. However, in such cases, ownership is decided on the basis of "better title", and long, peaceful, exclusive possession often becomes the decisive factor. So, the person who proves better, older, continuous and exclusive possession would have a strong case in his favour 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

33.1 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".

16. Hence, the appellants could not discharge their burden to prove that they are owners of the suit land and the respondents/plaintiffs are in possession of the same being lessees or mortgagees. On the other hand, the respondents have sufficiently proved their long, peaceful and exclusive possession of the suit property with their residential houses over there.
17. The learned trial Court has, therefore, correctly decreed the suit in favour of the respondents. This appeal, being devoid of merits, is dismissed. File of this Court be consigned to record room after its necessary completion and compilation.

Announced:

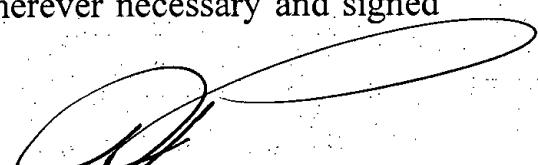
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CERTIFICATE

Certified that this judgment consists of eight (08) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 13.12.2025


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