

(103)

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

Civil Suit No.	38/1 of 2022
Date of Institution:	29.09.2020
Date of Transfer In:	22.06.2022
Date of Decision:	22.12.2025

1. Gulab Khan s/o Haiwa Khan
2. Gul Khan s/o Haiwa Khan
3. Wazir Khan s/o Haiwa Khan
4. Mst. Nawab Khela d/o Haiwa Khan
5. Amal Jan s/o Khial Jan
6. Kamran s/o Ghelaf Khan

All R/O Qoum Ali Khel, Tappa Sher Khel, Village Alfa Khel, Tehsil Upper, District Orakzai.

..... (Plaintiffs)

VERSUS

1. Bostan
2. Gulistan
3. Noor Muhammad *Sons of Chaman Khan*
4. Niaz Mewa d/o Chaman Khan
5. Khial Bat Khan s/o Mewa Khan
6. Khial Janan s/o Mewa Khan
7. Umer s/o Bostan
8. Lal Jan s/o Abdul Raheem
9. Hanif s/o Fazal Jan
10. Walo Khan s/o Fazal Jan

All R/O Qoum Ali, Tappa Sher Khel, Village Alfa Khel, Tehsil Upper, District Orakzai.

11. Tehsildar Upper Orakzai.

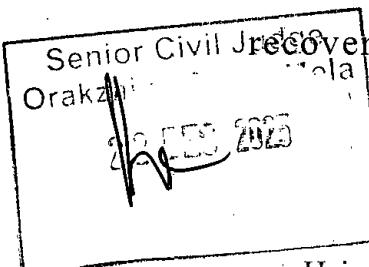
..... (Defendants)

**SUIT FOR DECLARATION OF TITILE, RECOVERY
OF POSSESSION, PERMANENT AND MANDATORY
INJUNCTION**

JUDGEMENT:

22.12.2025

This order is to decide instant suit filed by Mr. Gulab Khan and 06 others, the plaintiffs, for declaration of title,



mandatory injunction, and recovery of Rs. 4 lac rupees, against Mr. Bostan and 10 others, the defendants.

Pleadings:

Facts as recounted in the amended plaint filed on 23/05/24, reads that plaintiffs are owners in possession through generations of suit land comprising on 17 properties of different description and surrounding fully detailed in the plaint. It reads that plaintiffs and defendants come from the family of single common ancestor Mr. Aziz Khan. Plaintiffs are children of Mr. Matali Khan S/O Mr. Aziz Khan, while defendants are children of Mr. Obia Ali Khan and Mr. Sarbaz Khan, both deceased children of Mr. Aziz Khan.

It is asserted that plaintiffs have been occupying and disposing the suit land since the time of their predecessors with which the defendants have no legal connection or proprietary entitlement. Both sides are in possession of their shares which devolved on them through their predecessors from Mr. Aziz Khan. It is alleged that despite being children of a common ancestor, defendants no 01 to 07 are illegally interfering with the entitlement of the plaintiffs.

It is further alleged that government surveys for compensation packages have already been conducted in respect

Senior Civil Judge
Orakzai P. Bazar Mela

22/05/2023

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collected the amount due in half to the plaintiffs, and are unwilling to pay it. The plaint concludes with prayers for the reliefs highlighted above.

Defendants, in addition to the regular objections to the validity of the suit and competence of the forum, have raised the following factual rebuttals. They contend that suit land is the ownership and possession of the defendants, and the plaintiffs have no valid claim to its title or possession.

It is elaborated that plaintiffs are children of Mr. Mast Ali who had received his share of land, and therefore, his heirs are not entitled to further claims. It is further claimed that constructed properties on suit land are entitlements of the defendants, and these have been in their possession.

Defendants also deny the claim in respect of the parties being related, however, they have admitted that the parties share kandhi and Tappa etc. It is further alleged that predecessor of the plaintiff Mr. Mast Ali had four sons namely Mr. Sharif Khan, Mr. Taur Khan, Mr. Khyal Jan, and Mr. khewa Khan. That plaintiff's share is in possession of Mr. Rahmat Jan, and Mr. Dosti Khan, their cousins. They claim that plaintiffs being children of Mast Ali should ask for recovery of their share from their brothers/cousins, and not from the

Senior defendants. They request for dismissal of suit.

Orakzai etc. etc.
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Differences in the positions of both sides were distilled and reduced into the following issues.

Issues:

1. Whether the plaintiffs have got a cause of action?
2. Whether the Plaintiffs are estopped to sue?
3. Whether the suit of the plaintiffs is time barred?
4. Whether the plaintiffs are the exclusive owners in possession of the suit property but the defendants are interfering in the same despite the fact that they have nothing to do with the same?
5. Whether the plaintiffs and defendants are co-sharers of the suit property, if yes, the extent of their entitlement?
6. Whether private/domestic partition of property between the parties has taken place?
7. Whether the plaintiffs are entitled to half of the amount received by the defendant no. 02 in the CLCP survey of the suit house?
8. Whether the plaintiffs are entitled to the decree as prayed for?
9. Relief.

Thereafter, both sides were invited to produce their evidence.

Witnesses and Exhibits

Mr. Gulab Khan s/o Haiwa Khan, the plaintiff No. 01 himself and special power of attorney appeared as PW-01, Mr.

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Orakzai Naseeb Shah s/o Haider Shah as PW-02, Mr. Aman Gul s/o
Haiwa Khan etc. Vs Bostan etc. Case No. 38/1 Page 4 of 11

Shandi Gul appeared as PW-03 They have exhibited the following documents;

- i. Special power of attorney for the plaintiff No.1 as Ex.PW-1/1.

Reasons:

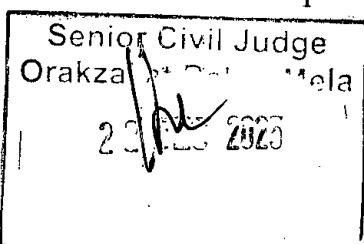
Reasoning of the court on each issue followed by a decision is as follows:

Issue No 02 and 03:

These issues pose the regular questions of limitation and estoppel. These issues, since they go to the legal roots of the suit, burden both the defense and the court to determine them.

During the course of trial, the defense could not successfully establish the fact of the suit being hit by any of these legal bars and defects. Given that jurisdiction of civil courts was extended to the area in 2019, the question of limitation rarely arises, as the law provides 06 years for claims of declaration of title.

Similarly, throughout the course of trial, neither any positive instance of estoppel or non-joinder was either pointed out by the defendant, or noted by the court, sufficient to merit dismissal on these grounds. These issues are, accordingly, decided for the plaintiff.



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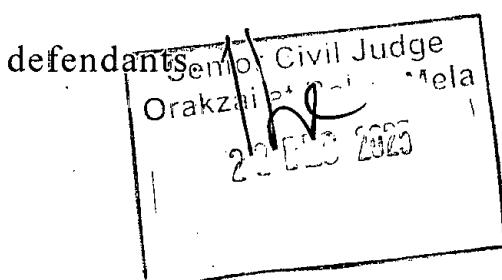
Issue No 04, 05 and 06:

These issues pose the questions of whether the suit property is jointly held or exclusively owned. They are taken together for discussion to facilitate the readers in a clearer perspective of the dispute.

It is pertinent to underscore at the outset that right to defense of the defendants was struck-off on 13/11/25 after they persistently failed to produce evidence despite multiple opportunities. The trial proceeded in absence of evidence from the side of the defense. The pleadings of the defense remain unsubstantiated.

Plaintiffs have laid claim of entitlement and possession to suit property that is a collection of 17 disparate landed properties duly described and detailed in the plaint. They claim that they are exclusive owners in possession of suit property which they received from their ancestors after partition with the co-sharers per local customs.

Defendants have counter alleged that the parties share a common predecessor in 4th or 5th degree, and that among the parties, they do not have any common holding. They contend that plaintiff's share is with their cousins and not with the defendants.

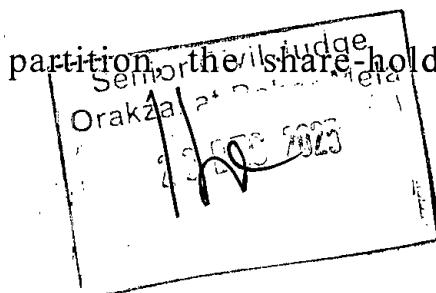


Issue no 04 deals with the claim of the plaintiffs about exclusive entitlement and ownership of suit property. They claim that after partition with the ancestral co-sharers, the suit property fell in their share and ever since the time of the predecessors, they have been occupying suit land as owners.

Before the court begins to appraise the evidence of the plaintiff, it is pertinent to assess the scope of the pleadings. Plaintiffs seek declaration of title to suit land, and corresponding injunctions to ensure their exclusive and peaceable enjoyment of it.

The claim of the plaintiffs is based on an alleged private partition that occurred between the predecessors of the parties under which suit land fell into the share of the plaintiffs. Now for the court to declare the plaintiffs exclusive owners of a particular property consequent to a private partition, the details of the private partition must not only be pled categorically, but proved to the satisfaction of the court.

Instantly, throughout the pleadings, plaintiffs have merely mentioned the property they claim to be their share under a private partition, without revealing the details of the alleged partition. The court is in the dark about the date of the partition, ^{or the} ~~or the~~ ^{judge} ~~judge~~ ^{or the} ~~or the~~ ^{plaintiff} ~~plaintiff~~ ^{or the} ~~or the~~ ^{defendant} ~~defendant~~ ^{or the} ~~or the~~ ^{share-holders} ~~share-holders~~ involved, the size of the landed



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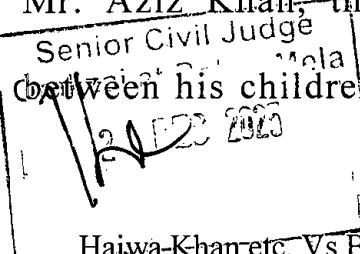
property that was divided, and size of the share each size received.

It is also pertinent to emphasize that the claim is to the land of Mr. Aziz Khan through one of his son Mr. Mathali Khan, whom plaintiffs claim to be their predecessor in interest. However, plaintiffs concede verbally, and now through their latest application, that they omitted to implead legal representative of two of the sons of Mr. Mathali Khan, namely Mr. Sharif Khan and Mr. Thor Khan.

A decree declaring title over suit land effectively settles the claim of proprietary ownership of a particular piece land. In absence of such essential information about the actual size of the land, number of share-holders, and the contours of the private partition, the court is naturally hesitant to declare one, or some of the share-holders as owners to a particular portion.

Having set the background, the court shall now advert to the evidence of the plaintiffs. They produced three witnesses including Mr. Gulab Khan, a plaintiff himself, and attorney for rest of the defendants.

He is the key witness for the plaintiffs. In his statement, he maintains that suit property was originally the entitlement of Mr. Aziz Khan, the grand predecessor, who duly divided it between his children Mr. Matali Khan, Mr. Obia Ali Khan, and



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Mr. Sarbaz Khan. He adds that plaintiffs are children of Mr. Matali Khan.

As per the family tree annexed with the plaint, Mr. Mathali Khan is shown to have been survived by 04 male offsprings namely Mr. Khewa Khan, Mr. Khyal Jan, Mr. Sharif Khan, and Mr. Toor Khan. The same is confirmed by the family tree annexed with the written statement.

Plaintiffs are the children of Mr. Khewa Khan and Mr. Khyal Jan. The remaining two brothers of Mr. Mathali khan, Mr. Sharif Khan and Mr. Toor Khan remain missing from the suit both in person, and through heirs.

Defendants maintain that when land was divided by the grand predecessor Mr. Aziz Khan, plaintiffs should seek and assert their entitlement against their immediate co-sharers, children of Mr. Toor Khan and Mr. Sharif Khan.

Again, as stressed in details above, the evidence is also silent about the actual size of joint-holding that was subjected to private partition, the number of share-holders, and the size of their respective shares. In these circumstances, the court is disinclined to declare one or some of the co-owners as entitled to a particular portion of land. These issues are decided accordingly, against the plaintiff.

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23/12/2005

Issue No 07:

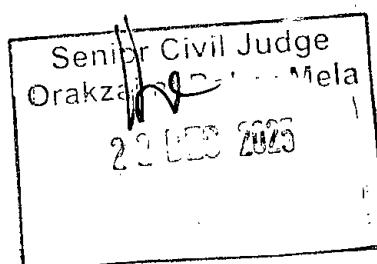
The issue envelopes the claim of the plaintiffs to half of the compensation amount allegedly received by the defendants. It is generally admitted that compensation for destruction during the war on terror is given for the structures on land, and not for the title.

There is no documentary or oral evidence in support of the claim. The survey was admittedly done in favor of the defendants. Whether plaintiffs are entitled to any share of the amount could only be ascertained only after their claims to the landed property, and constructions thereupon are determined. In absence of these findings, this court, with the record in hand, cannot effectively determine the matter. The issue stands unproved.

Issues No 01 and 08:

These issues deal with the cause of action, and the entitlement to relief. The court through trial of the claim has arrived at the conclusion that plaintiffs have failed to establish a valid cause for action. They failed to prove their claim. As such, they are held not entitled to any relief from the court.

Issues decided accordingly.



Relief:

Plaintiffs have failed to prove their claim through cogent and reliable evidence. The fact in issue remains unproved. Suit is dismissed; no relief is merited. Costs shall follow the event.

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

Announced
22.12.2025


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)