

(S6) (84)

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

Civil Suit No.	43/1 of 2024
Date of Institution:	13.02.2024
Date of Transfer In:	21.05.2024
Date of Decision:	05.01.2026

Noor Abbas Khan s/o Lal Baz Khan
R/O Qoum Mamoza, Tehsil Upper, District Orakzai.

..... (Plaintiff)

VERSUS

1. Gul Abbas s/o Lal Baz Khan
2. *R/O Qoum Mamoza, presently residing in Kohat.*
3. Sarbaz Khan
4. Akbar Khan
5. Sabeel Khan
6. Yarbat Khan
7. Fazal Muhammad *Sons of Muhammad Baz*
All R/O Qoum Mamoza, Tappa Abdul Raheem Khel, Landi Road
Horasan Camp Peshawar

..... (Defendants)

**SUIT FOR FOR RECOVERY OF POSSESSION TO THE
EXTENT OF SHARE IN SUIT LAND**

JUDGEMENT:

05.01.2026

This order is to decide instant suit filed by Mr. Noor Abbas, the plaintiff, for recovery of possession to the extent of his share in suit land against Mr. Gul Abbas and 05 others, the defendants.

Pleadings:

The claim as recounted in the plaint reads that plaintiff is the owner, co-sharer, and in possession of 1/3rd share in the suit land comprising six fields, as described in the head-note of the plaint. It is further stated that the plaintiff and

Senior Civil Judge
Orakzai at the defendants have already partitioned the suit property about

(35)

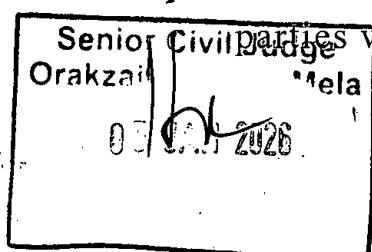
eight years ago during the lifetime of the father of defendants Nos. 2 to 6. It further contends that defendants are beyond their rights in asserting title over suit land, interfering with its possession etc. Plaintiff prays for injunction to restrain defendants from interference with the portion exclusively held by the plaintiff, and he further prays for partition of the joint holding.

In the written reply, the defendants vehemently deny the claims and assertions of the plaintiff. In addition to the regular objections to the validity of the suit. The defendants contend that the plaintiff is not entitled to any 1/3rd share in the suit property and has failed to implead the necessary parties to the suit. The defendants further submit that the plaintiff has not clearly stated whether the suit property is ancestral in nature or jointly acquired. It is specifically denied that the suit property has ever been partitioned, and it is further asserted that no decision regarding partition has ever been taken.

Rest of the defendants were proceeded against as ex-parte after they failed to make an appearance despite service.

Differences in the pleadings of the contesting

Senior Civil Judge
Orakzai
Mela
03 Oct 2020
parties were distilled into the following issues;



Issues:

- i. Whether the suit is maintainable in its present i.e joinder of the parties, partial partition, is free of legal defects and if the forum is competent to try it?
- ii. Whether parties are entitled as co-sharers in the suit property, if yes, the extent of their entitlement?
- iii. Relief?

Thereafter, both sides were invited to produce their evidence.

Witnesses and Exhibits

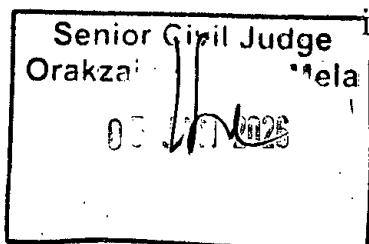
Mr. Noor Abbas s/o Lal Baz Khan, plaintiff himself appeared as PW-01, he exhibited the following documents; after that both the parties appeared before the court and requested for an opportunity to record their settlement, the terms of which might be decreed by the court.

i. Sketch is Ex.PW-1/1.

ii. Documents of decision is Ex.PW-1/2.

iii. Copy of notice as Ex.PW-1/4.

iv. Copy of CNIC of plaintiff as EX.PW-1/5.



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Reasons:

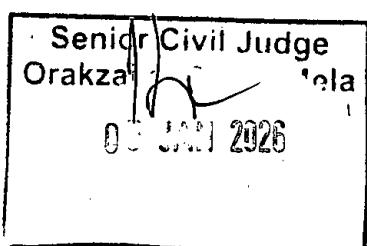
Reasoning of the court on each issue followed by a decision is as follows:

Issue No 01:

This issue poses the regular questions about the validity of the legal form and frame of suit. They raise the questions of estoppel, non-joinder, and limitation.

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.

The issue pertains to the questions of estoppel and joinder of parties. Estoppel is a bar on holding a position during a trial that is against a previously established position. During the course of trial, no previously held position was agitated specifically to attract the bar of estoppel. Similarly, the court too, during its examination of the case record and evidence, could not find a positive instance of the suit being hit by estoppel.



Issue No 02:

During the course of proceedings, parties appeared before the court and requested for an opportunity to record their settlement, the terms of which might be decreed by the court. Their joint statement was recorded wherein the parties conceded the measure of jointly owned land, and also the identity of the rightful claimants to it.

In a suit for partition, the court is required to determine the measure of land jointly owned, its owners, and their due shares in the joint holding.

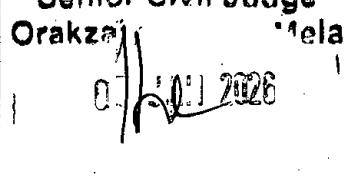
Since the sides have consensually settled these facts through a joint statement. The court does not see any need for judicial inquiry into facts already admitted.

Therefore, in view of the joint statement, Mr. Noor Abbas, the plaintiff, Mr. Gul Abbas his brother, and children of Mr. Muhammad Baaz are held as entitled in equal shares admitted in the statement as joint holding. The issue is decided accordingly.

Relief:

A preliminary decree for partition of suit land between plaintiff and defendants is hereby passed. Mr. Noor Abbas, the plaintiff, Mr. Gul Abbas his brother, and children of Mr. Muhammad Baaz are held as entitled in equal shares

Settled in the statement as joint holding.



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Further, any land jointly held between the sides that might be discovered during final decree proceedings shall, unless controverted, be distributed between them per their Shari entitlement.

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

Announced
05.01.2026


Ijaz Mahsood)
Senior Civil Judge,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this judgment of mine consists of six (06) pages, each has been checked, corrected where necessary and signed by me.


(Ijaz Mahsood)
Senior Civil Judge,
Orakzai at (Baber Mela)

**IN THE COURT OF IJAZ MAHSOOD, SENIOR CIVIL JUDGE
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.....(Plaintiff)

Versus

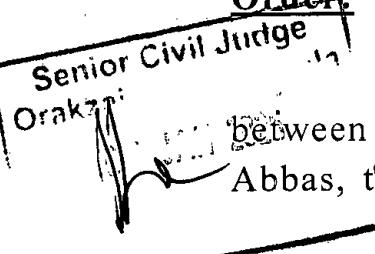
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Order:



A preliminary decree for partition of suit land between plaintiff and defendants is hereby passed. Mr. Noor Abbas, the plaintiff, Mr. Gul Abbas his brother, and children

Continue...

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DECREE SHEET

Continued... of Mr. Muhammad Baaz are held as entitled in equal shares
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ANNOUNCED
05.01.2026

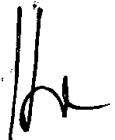

(Ijaz Mahsood)
 Senior Civil Judge,
 Orakzai (at Baber Mela)

COSTS OF SUIT

PLAINTIFF	CONTENTS	DEFENDANT
---	Stamp on suit	---
---	Pre-emption amount	---
---	Court fee	---
---	Stamp of power	300/-
---	Proclamation fee	---
---	Witness expenses	---
---	Miscellaneous	---
---	Total	300/-

Note: under my hand signature and seal stamp of this court on
05th day of **January, 2026**.




Ijaz Mahsood
 Senior Civil Judge,
 Orakzai (at Baber Mela)