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

Civil Suit No.	60/1 of 2024
Date of Institution:	27.10.2022
Date of Transfer In:	21.05.2024
Date of Decision:	27.11.2025

1. Asghar Khan s/o Umar Khan
2. Noor Habib s/o Umar Khan

*Both R/O Qoam Mola Khel, Tappa Aziz Khel, Kaski Zar,
District Orakzai.*

..... (Plaintiffs)

VERSUS

1. Sail Muhammad s/o Deen Muhammad
*R/O Qoam Mola Khel, Tappa Aziz Khel, Kaski Zar, District
Orakzai, presently Malang Abad, District Orkazai.*
2. Saeed Jan s/o Saif Ali Khan
3. Hazrat Ullah s/o Noor Habib
4. Arshad Khan s/o Noor Habib
5. Muhammad Asif s/o Noor Habib
6. Speen Gul s/o Noor Habib
7. Nasir Ullah s/o Noor Habib
8. Marjan Bibi d/o Noor Habib
9. Bibi Ayesha d/o Noor Habib
10. Bilal Khan s/o Noor Habib
11. Saif Ullah Khan s/o Deen Khan
12. Mewa Jan d/o Umar Khan
13. Khaista Jan d/o Umar Khan

*All R/O Qoam Mola Khel, Tappa Aziz Khel, Kaski Zar, District
Orakzai.*

..... (Defendants)

**SUIT FOR DECLARATION AND CORRESPONDING
INJUNCTIVE ORDERS**

*IJAZ MAHSOOD
Senior Civil Judge, S.M.
Orakzai at Baber Mela*

JUDGEMENT:

27.11.2025

This order shall decide instant suit filed by Mr. Siyal Gul and others for declaration and corresponding

injunctive orders against defendants Mr. Sail Muhammad and others.

Pleadings:

The matter as recounted in the amended plaint reads that plaintiffs and defendants no 02 to 12 are owners in possession of suit land measuring 30 kanals through inheritance from their ancestors. It is stated that grandfather of the plaintiffs Mr. Deen Khan and his cousin Mr. Lobat Khan were the original co-owners of the suit land. The latter was allegedly killed by residents of Kaski Zar in a dispute over land.

It is further reported that defendant migrated to Kohat and returned after the wave of militancy, and without formal partition etc. constructed a house on the suit land. It is alleged that defendant no 01 is hard-headed person who has illegally occupied suit land, and intends to misappropriate it. Plaintiffs request for declaration of title, and corresponding injunctions to restrain defendant no 01 ^h from his alleged illegalities in respect of suit property.

It is pertinent to record that originally the amended plaint contained prayers for partition of suit land between plaintiffs and pro forma defendants. However, subsequently, the prayer and alleged co-sharers were ordered deleted by the court on 16/10/25 in acceptance of an application by the plaintiff.

Defendant no 01, in addition to the regular objections to the validity of the suit, also disputed the factual version of the matter in his written statement. It is pled that responding defendant is owner through

generations of suit property to the exclusion of third persons. Defendant asserts that plaintiffs are from Kandi Katha kari, while he is from Saro Khel.

It is claimed that suit land was on lease with plaintiffs for a period of two years after which they defaulted on payment of rentals, and are now claiming title. That cousins of the plaintiffs have admitted the relation in a deed dated 17/04/18. It is further claimed that plaintiffs are defendants are not related in the farthest degree, and that no blood feud or enmity has ever existed between the two sides. Defendant adds that he has constructed a house on suit land which was never objected to by the plaintiffs. He prays for dismissal of the suit.

Defendants no 02 to 11, who were subsequently deleted, submitted cognovits in favor of the plaintiffs.

Differences distilled from the pleadings were reduced into the following issues:

Issues:

1. Whether the plaintiffs have got cause of action?
2. Whether the plaintiffs are stopped to sue?
3. Whether the suit of the plaintiffs is time barred?
4. Whether the suit of the plaintiffs is bad for mis-joinder and non-joinder?
5. Whether the suit of the plaintiff is bad in its present form?

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6. Whether the plaintiffs are co-sharers along with proforma defendant No. 2 to 13 of the suit property being their ancestral property?
7. Whether defendant No. 1 is owner of the suit property and the plaintiffs were tenants of defendant No. 1?
8. Whether the plaintiffs are entitled to the decree as prayed for?
9. Relief.

Thereafter, both sides were invited to produce their evidence.

Witnesses/Exhibits:

Khaista Akbar s/o Deen Akbar appeared as PW-01, Asghar Khan s/o Umar Khan as PW-02, Bilal Khan s/o Noor Habib as PW-03, Speen Gul s/o Noor Babib, Hanif Khan s/o Sar Baz Khan as DW-01, Noorab Khan s/Khial Bat Khan as DW-02, Musleemeen Khan s/o Haider Khan as DW-03, Ghafoor Khan s/o Faqeer Khan as DW-04 and Sail Muhammad s/o Ghulam Muhammad as DW-05. They have exhibited the following documents;

- i. Copy of CNIC of PW-02 as Ex.PW-2/1.
- ii. Special power of attorney of PW-03 as EX. PW-3/1.
- iii. Copy of CNIC of PW-03 as Ex.PW-3/2.
- iv. Special power of attorney of PW-4 as EX. PW-4/1.
- v. Copy of CNIC of PW-04 as Ex.PW-4/2.
- vi. Copy of CNIC of DW-1 as Ex.DW-1/1.

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- vii. Copy of CNIC of DW-2 as Ex.DW-2/1.
- viii. Shajara Nasab as EX.DW-5/1.
- ix. Affidavit copies as Ex.DW-5/2 and Ex.DW-5/3.

Reasoning/Ruling:

Issue wise reasoning of the court followed by a ruling on each issue, and eventually on the suit is as follows:

Issue No 02, 03, 04 and 05:

These issues pose the regular questions of limitation, joinder of parties, maintainability, 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 of non-joinder was either pointed out by the defendant, or noted by the court, sufficient to merit dismissal on these grounds.

Moreover, no fatal defect in maintainability could also come to surface throughout the trial. These issues are, accordingly, decided for the plaintiff.

Issue No 06 and 07:

These issues are so interlinked that a decision on one of them renders the other moot. Plaintiffs claim that they along defendant no 02 to 13 are owners of suit property, while defendant no 01 claims that he is the exclusive owner in possession of suit land.

The onus to prove the principal issue of being owners in possession of suit land through generations fell on the plaintiffs, as they are the claimants in the matter. Below the court shall examine and appraise the evidence on record to test the truth or falsity of the claim.

- Mr. Khaista Akbar took the witness stand as the first witness for plaintiffs. He introduced some facts in his statement of which the court could not find any mention in the plaint. He reports that suit land was on lease with Bahadur Nwasay on behalf of the plaintiffs. When the latter were asked to return the land, they refused and resisted, which resulted in killing of one Mr. Lobat Khan, from the plaintiffs side.
- This version of the matter does not find any mention in the plaint, nor is it related to the principal defendant namely Mr. Siyal Muhammad. The witness further states that suit land was recovered by a Qaumi Jirga and handed over to the plaintiffs in the aftermath of the blood feud.
- The witness continues that after the wave of militancy defendants have again begun to claim entitlement to suit land. The witness and plaintiff both admit that defendant is not related to Bahadur



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Nawasay, nor has there been any violent dispute between the sides.

- It is admitted that plaintiff belongs to Beemar Kandi, while defendant belongs to Saro Khel Kandi. Why and how the defendant began to assert right over suit land after the dissipation of militancy is unclear.
- He admits that plaintiff has constructed a house on the suit property. In his cross-examination, he maintains innocence as to whether suit land is jointly owned by defendant with other owners.
- Mr. Asghar Khan, the plaintiff, took the witness stand as PW-02. His direct statement is three lines long where he mentions the dispute with Bahadur Nawasay, claims being in possession of suit land, and that defendant no 01 hails from Hangu. He adds that defendant constructed a single room on suit land in the period of militancy, and is now claiming title to the entire property.
- Again, the story of dispute with Bahadur Nawasy is an addition at trial stage, and finds no mention in the pleadings. The claim of being in possession is also contrary to the pleadings, as the plaint contains a prayer for recovery of possession, and in para 3, it is alleged that defendant has forcibly occupied suit land.
- Contrary to his position on the nature of the alleged illegal occupation that defendants constructed a single room on the suit land, the witness admits in his cross-examination that the former



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has a two-storey house on the suit land, which is at distance of 5 mins from the house of the plaintiffs.

- It is curious to note that initially plaintiff had sought partition of suit land with co-owners, implying that there are other owners who shared interest in the suit land, but surprisingly no alleged co-sharer has appeared to claim it. The only two claimants are plaintiff and his brother.
- Further, the list of witness was altered couple of times which the plaintiff concedes was done because the witnesses were not ready to come to the court with him. He admits that no local has come to the court to testify for his claim, not even the alleged co-sharers.
- Mr. Bilal Khan is witness no 03 who happens to be nephew of plaintiff no 01 and special attorney for plaintiff no 02. In his direct examination he repeats the same stance as the previous two witnesses. Interestingly, in the same breath he makes two contradictory statements that he made acquaintance of defendant no 01 during the suit. In the next line he reports that they held Jirgas with him during the militancy period.
- Mr. Speen Gul, witness no 04 for the plaintiff, is also nephew of plaintiff no 01. In his direct statement, he repeats the same facts as the other witnesses. In his cross-examination he concedes that another suit titled Mr. Speen Gul Vs Noorab, is also pending adjudication in this court.


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- He concedes that no private witness that is not immediately interested in the outcome has appeared with him in the court. About, the alleged lease to Bahadur Nawasey, he concedes that he has no documentary record etc to produce. It needs reiteration that subject lease finds no mention in the pleadings.
- Speen Gul Vs Noorab, is another suit that was repeatedly mentioned or alluded to during the course of trial. Since the suit is pending before this court, its record is available with this court. The record enjoys presumption of correctness. The court shall, without prejudice to the merits of the suit pending adjudication, refer to only those facts that are admitted by the plaintiffs of that suit in pleadings etc.
- The suit is for specific performance of an alleged agreement between Speen Gul, son of plaintiff no 02, and one Mr. Noorab. The agreement reads that possession of 'Saro Khel' land shall remain with the three signatories. As highlighted above, plaintiffs belong to Beemar Kandi, while defendant no 01 belongs to Saro Khel, of tappa Aziz Khel. If the suit land was ancestral, while refer to it as 'Saro Khel' land remains a question.
- In view of the discussion above, the plaintiffs have failed to establish their claim through cogent evidence. The issues are decided accordingly, against the plaintiff.

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Issue No 01, 08, and 09:

These issues pose the questions of presence of cause of action for the plaintiffs, and, consequently, their entitlement to relief from the court.

Issues no 06 and 07, previously discussed and decided, contained the principal claim of the plaintiffs which they failed to prove to the satisfaction of the court. Clearly, when the claim is not established the plaintiffs are not entitled to any relief from the court. Issues are decided against the plaintiffs. Suit is dismissed.

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

Announced
27.11.2025


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

CERTIFICATE

Certified that this judgment of mine consists of ten (10) pages, each has been checked, corrected where necessary and signed by me.


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