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

|                      |              |
|----------------------|--------------|
| Civil Suit No.       | 58/1 of 2024 |
| Date of Institution: | 22.03.2023   |
| Date of Transfer In: | 21.05.2024   |
| Date of Decision:    | 18.12.2025   |

1. Sadiq Akbar s/o Fazal Akbar
2. Mst. Khatam Bibi d/o Fazal Akbar
3. Mst. Noor Bibi d/o Fazal Akbar
4. *Mst. Naimat Bibi d/o Noor Akbar*
5. *Mst. Sameer Bibi d/o Noor Akbar*
6. *Mst. Qeemat Bibi d/o Noor Akbar*
7. ~~Mst. Radia Bibi d/o Noor Akbar~~
8. Mst. Shoukat Bibi d/o Muhammad Akbar

*All R/O Tora Worri, Tehsil Tal, District Hangu.*

..... (Plaintiffs)

**VERSUS**

1. Deen Shah s/o Muhammad Shah
2. Hassan Badshah s/o Muhammad Shah
3. Peer Badshah s/o Muhammad Shah
4. Wazir Badshah s/o Muhammad Shah and 40 others.

*All R/O Qoam Mamoza, Tappa Abdul Rehman, Village Karapa,  
District Orakzai presently residing Jarma Kohat.*

..... (Defendants)

**SUIT FOR DECLARATION OF TITILE AND POSSESSION  
THROUGH PARTITION**

**JUDGEMENT:**

18.12.2025

This order is to decide instant suit filed by Mr. Sadiq Akbar and 08 others, the plaintiffs, for declaration of title and possession through partition against Mr. Deen Shah and 43 others, the defendants.

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**Pleadings:**

The claim as recounted in the plaint reads that plaintiffs and defendants are co-heirs of a shared great predecessor Mr. Badshah Gul. They are co-owners of suit property through inheritance. It is asserted that the late predecessor had three sons namely Mr. Syed Akbar, Mr. Sar Gul, and Mr. Hasan Gul. Plaintiffs claim to be children of Mr. Syed Akbar, and maintain that defendants are children of Mr. Sar Gul, while Mr. Hasan Gul died issue less.

It is further averred that suit land is held jointly between the sides and is yet to be formally partitioned. It is alleged that since joint holding is proving detrimental to the interests of the plaintiffs hence the suit for partition. Plaintiffs claim that entitlement of Hasan Gul was subject of dispute which was resolved under customary laws. That in the process, plaintiffs paid all the expenses incurred on the process, and thus they are entitled to the share of Mr. Hasan Gul. Plaintiffs request for partition of suit land so that they could use, dispose, and avail their entitlement.

Defendants no 03 and 04 submitted a joint written statement. In addition to the conventional objections to the legal validity of the suit, they also disputed the factual version. They maintain that suit land has been in their possession for over a century now and nobody has so far disputed their entitlement. That plaintiffs had previously filed a suit which was dismissed. They pray for dismissal of the suit.

Defendants no 05 and 06 submitted a joint written statement. They are Mr. Gul Asghar and Mr. Rahman Shah. Plaintiffs claim they are grand-children of Mr. Sar Gul, through his son Mr. Abdullah Shah. These two defendants submitted cognovits in favor of the claim of the plaintiffs conceding it to be true and correct.

Defendants no 01, 03, and 04 submitted written statement jointly. They also repeat legal and factual objections raised by defendants no 03 and 04 that suit land is their entitlement, and that previously plaintiffs had filed a suit that was dismissed.

Points of dispute distilled from the pleadings of the parties were reduced into the following issues:

**Issues:**

1. Whether the plaintiffs have got cause of action?
2. Whether the plaintiff is stopped to sue?
3. Whether the suit of the plaintiff is time barred?
4. Whether the suit of the plaintiff is bad for mis-joinder and non-joinder?
5. Whether the suit of the plaintiff is bad in its present form?
6. Whether the plaintiff, defendant and proforma defendants are co-sharers in the suit property which is yet to be partitioned.

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7. Whether defendant No. 03 and 04 are owners in possession of the suit property?
8. Whether the plaintiff is entitled to the decree as prayed for?
9. Relief.

Thereafter, both sides were invited to produce their evidence.

#### Witnesses/Exhibits:

Azeem Khan s/o Noor Jehan appeared as PW-01, Wazir Janan s/o Muhammad Ayub Khan as PW-02, Jamal Khan s/o Meer Mat Khan as PW-03, Sadiq Akbar s/o Fazal Akbar as PW-04, Peer Badshah s/o Muhammad Shah, the plaintiff No.03 as DW-01, Wazir Badshah s/o Muhammad Shah as DW-02. They have exhibited the following documents;

- i. Special power of attorney of PW-04 as EX. PW-4/1.
- ii. Copy of CNIC of PW-04 as Ex.PW-4/2.
- iii. Special power of attorney of PW-01 as EX. PW-1/1.

#### 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 their outcome.

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 taken together because decision on one conversely determines the outcome of the other. If plaintiffs are established as co-sharers, the claim of the defendants of being exclusive owners is rendered moot.

It is pertinent to highlight that revenue records in merged districts are unavailable. Pedigree tables of landowners with records of their proprietary entitlements are not in existence. In

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these circumstances, courts are constrained to seek guidance from civil laws and customary practices.

Below the court shall examine the merits of the claim in view of the evidence produced by both sides.

- It is pertinent to underscore at the outset that where officially maintained land records and pedigree tables are not available, the court, in a suit for partition, is obligated to ascertain the relation of the parties as co-heirs, and the status of land as being ancestral. Once these facts are established, the subject matter is legally amenable to partition among co-sharers in accordance of their legal shares.
- Plaintiffs claim that both sides are co-heirs of the children of a common predecessor Mr. Badshah Gul who had three children including father of the plaintiffs, Mr. Syed Akbar. Defendants have not denied the relation in their written statements/pleadings.
- Four witnesses took the stand for the plaintiffs including Mr. Sadiq Akbar, plaintiff no 01. All witnesses in essence repeated the position that the parties cousins interse, and co-heirs of a shared predecessor in interest. That suit land is ancestral property to which each legal heir is entitled as

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- From the defense, Mr. Peer Badshah, who is defendant no 03 and is special attorney for defendant no 01, took the witness stand as DW-01. In his cross-examination he admits that he has not denied his relationship with the plaintiffs in his written statement. In the very next line, he volunteers to state that he has no relation with them.
- Further, he admits that Sar Gul was his grandfather, but claims ignorance of the knowledge of his brothers. He also denies knowledge of the fact Mr. Syed Akbar was brother of Mr. Sar Gul. He denies the CNIC of the plaintiff as being fake and false.
- He admits that Mr. Abdullah Shah and Mr. Habib Shah are his uncles but denies knowledge of their children. Defendants no 05 and 06 are children of Mr. Abdullah Shah, but the witness denies knowledge instead of denying it. It is pertinent to mention here that subject defendants have submitted cognovits in favor of the plaintiffs, and admitted their claim to be true and correct.
- The witness has claimed innocence of the knowledge of the siblings of his grandfather, and children of his uncle. His ignorance of such commonplace information speaks much about his motive and intent. It is hard to imagine a

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person ignorant of these close relations in the local culture.

- Mr. Wazir Badshah took the witness stand as DW-02. His statement makes claims to the title of the suit land and denies the claim of the plaintiffs, without denying his relationship etc. He claims ignorance about the identity of his grandfather, and also if the land was inherited by his father from his ancestors or acquired through some other modes.
- As highlighted earlier, in absence of official records, for a claim to partition of suit land among co-heirs, the legal requirements are proof of relationship, and patrimonial status of the property. Presently, the defendants have not denied the relationship of the plaintiffs and proforma defendants. They also admit that suit land is ancestral. In view of the foregone, the suit land is held as joint entitlement of the parties to be divided among them in accordance with Sharia and law. These issues are decided accordingly.

**Issue No 01, 08, Relief:**

A preliminary decree is passed in the terms that suit land is the joint-entitlement of the parties being co-heirs of Mr. Sar Gul through their respective ascendants. Plaintiffs and

defendants are held entitled to their shares as determined by Sharia and law. Given that land settlement is yet to be conducted in the district, the exact measurement of the share of each heir may be determined in the next phase of the proceedings after the land is measured.

Case file be consigned to the record room after its necessary completion and compilation. Costs shall follow the event.

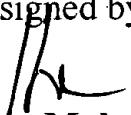
**Announced**  
**18.12.2025**



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Senior Civil Judge,  
Orakzai (at Baber Mela)

### **CERTIFICATE**

Certified that this judgment of mine consists of nine (09) pages, each has been checked, corrected where necessary and signed by me.



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