

IN THE COURT OF MUHAMMAD JUNAID ALAM
CIVIL JUDGE-II, TEHSIL COURT'S KALAYA ORAKZAI

Suit No.63/1 of 2021

ORIGINAL DATE OF INSTITUTION.09.02.2021

DATE OF TRANSFER IN.12.10.2024

DATE OF DECISION OF THE SUIT.....27.10.2025

FAYAZ KHAN SON OF ALI MAJAN, RESIDENT OF
QOM MANI KHEL, TAPA SABZI KHEL, SATAR
SAAM DISTRICT ORAKZAI AND 01 OTHER

.....PLAINTIFFS

VERSUS


GHULAM HASSAN SON OF SAID JAFFAR,
RESIDENT OF PERRA KURAIZ, TEHSIL & DISTRICT
ORAKZAI

.....DEFENDANT

**SUIT FOR DECLARATION, PERMENENT
INUCTION, SPECIFIC PERFORMANCE AND
RECOVERY AN AMOUNT OF RS: 2- CRORE AND
TWENTY LACS AND RS- 40 LACS AS PENALTY
AMOUNT.**

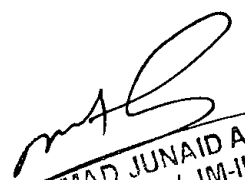
Counsel for plaintiffs: Insaf Ali Advocate
Counsel for defendant: Abid Ali Advocate

JUDGMENT
27.10.2025


MUHAMMAD JUNAID ALAM
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Vide this judgment the Court intends to dispose of suit
captioned above.

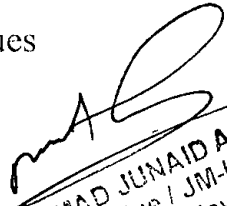
2. It is a suit from the plaintiffs against defendant for declaration, permanent injunction, specific performance and recovery of Rs-2,20,00,000/- (Rupees two crores twenty lacs) as their share and Rs-40,00,000/- (Rupees forty lacs) as penalty since 01.10.2003 per year.
3. Brief facts of the case as narrated in the plaint are, that parties to the suit were partners, and both the plaintiffs and the defendant, as partners, made the deal and purchased two coal mines. That an agreement deed dated 22.11.2003 was scribed between parties to suit and with another party on some terms & conditions, which postulate that the share in the mine will not be sold out without the permission/consent of parties to the suit as well as other partners. Out the same was sold by defendant without the permission/consent of plaintiffs. That defendant and other partners started the coal mine against the consent of plaintiffs, despite the fact that the plaintiffs, defendants, and other partners spent a large amount of money and made the mine successful. Meanwhile, defendant started again on the coal mine and promised one and half anna (½) to plaintiffs. However, after lapse of seven years defendant refused to settle the matter with the plaintiffs. The defendant has taken contract of the management and administration of all the work. According to the terms and condition of agreement deed,


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that the share of both mines shall not be sold without the permission and consent of all four partners. But it was sold without the consent/permission of plaintiffs. Therefore, Rs-02 crores 20 lacs and Rs-40 lacs penalty since 01.10.2003 per year are still outstanding against him. Defendant was time and again requested to pay the legal shares of plaintiffs but he refused, hence the instant suit.

4. After institution of the suit the defendant was summoned, who accordingly appeared and submitted his written statement with legal and factual objections, raised therein.
5. Out of controversies of the parties, as raised in their respective pleadings, this Court framed the following issues on 30.07.2022.

1. Whether plaintiffs have got cause of action? OPP
2. Whether the suit of plaintiffs is within time? OPP
3. Whether this court has got jurisdiction to entertain the suit of plaintiffs? OPD
4. Whether suit of plaintiffs is hit by res-judicata? OPD
5. Whether suit of plaintiffs is bad due to non-joinder and mis-joinder of the parties? OPD
6. Whether plaintiffs are estopped to sue? OPD
7. Whether defendant sold shares in the jointly owned coal mine in violation of agreement dated 22.11.2003? OPP
8. Whether plaintiffs are entitled to the recovery of Rs. 02 crores 20 lacs as their share and Rs. 40 lacs as penalty since 01.10.2003 per year? OPP


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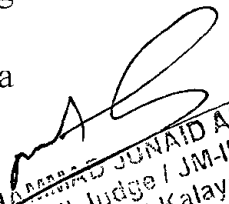
9. Whether plaintiffs have already sold their shares through agreement dated 24.07.2004? OPD

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

Relief.

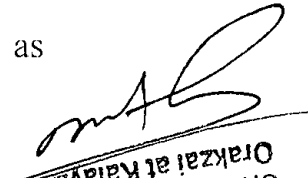
6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as four witnesses including their self as PW-01 & PW-04 and thereafter closed their evidence with a note. Contrary to this the defendant produced as many as two witnesses including himself as DW-02 and thereafter closed his evidence with a note.

7. Thereafter arguments were heard. Learned counsel for the plaintiffs opened the case and argued that that parties to the suit were partners, and both the plaintiffs and the defendant, as partners, made the deal and purchased two coal mines. That an agreement deed dated 22.11.2003 was scribed between parties to suit and with another party on some terms & conditions, which postulate that the share in the mine will not be sold out without the permission/consent of parties to the suit as well as other partners. Out the same was sold by defendant without the permission/consent of plaintiffs. That defendant and other partners started the coal mine against the consent of plaintiffs, despite the fact that the plaintiffs, defendants, and other partners spent a large


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amount of money and made the mine successful. Meanwhile, defendant started again on the coal mine and promised one and half anna (½) to plaintiffs. However, after lapse of seven years defendant refused to settle the matter with the plaintiffs. The defendant has taken contract of the management and administration of all the work. According to the terms and condition of agreement deed, that the share of both mines shall not be sold without the permission and consent of all four partners. But it was sold without the consent/permission of plaintiffs. Therefore, Rs-02 crores 20 lacs and Rs-40 lacs penalty since 01.10.2003 per year are still outstanding against him. He further adduced that the plaintiffs have succeeded to prove their stance through their evidence and furthermore nothing in rebuttal or contradictory is available on the record. Hence prayed that the suit in hand may kindly be decreed in favour of plaintiffs and against the defendants for the relief as claimed for.

8. Contrary to this learned counsel for the defendants argued that the plaintiffs had not approached this court with clean hands. He further adduced that plaintiffs have filed a false and baseless suit against the defendant with the intention to grab money from them. He further added that plaintiffs are demanding profit on the share which they had already


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sold, in the year 2004. He further added that the sale agreement (transaction of sale) took place in the presence of witnesses on the date 24.07.2004. He stated that plaintiffs have badly failed to prove their case through cogent, convincing and reliable evidence while on the other hand the defendant succeeded to produce evidence in light and support of his stance stated in the written statement. Hence, prayed that as plaintiffs have failed to prove their case, hence the suit in hand may kindly be dismissed with costs.

9. On perusal of record, available evidence and assistance of both the learned counsels for the parties the issue wise findings of the court are as under.

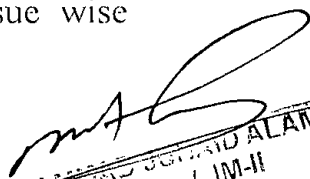
ISSUE NO. 03, 04 & 06:

Whether this court has got jurisdiction to entertain the suit of plaintiffs? OPD

Whether suit of plaintiffs is hit by res-judicata? OPD

Whether plaintiffs are estopped to sue? OPD

All these issues are purely legal in nature are duly interlinked, hence, taken together for discussion. Burden of proof regarding these issues was on defendant. Defendant has alleged in his written statement that this court has got no jurisdiction to entertain the instant suit, suit of plaintiff is hit res-judicata and the suit is bad for non-joinder and mis-joinder of the parties and plaintiffs are estopped to sue by their own conduct. To prove his stance defendant produced


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two DWs. In given circumstances perusal of the record and statements of all the DWs would reveal that none of the DWs uttered a single word regarding the issues in hand and no relevant record has been put before the court and thus deviated from the stance of defendant alleged in the written statement.

In light of what has been discussed above, as defendant miserably failed to prove issue no.03, 04 & 06 through their cogent, reliable and convincing evidence, hence, the aforementioned issues are hereby decided in negative against defendant and in favour of plaintiffs.

ISSUE NO. 02:

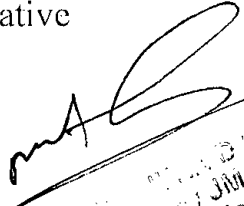
Whether the suit of plaintiffs is within time? OPP

Burden of proof this issue was on plaintiffs. Per averments of plaint, there was a dispute between the parties since the year 2003, upon the same several verbal *jirgas* have been held. Record reveals that the suit of the plaintiffs is badly time barred and not within time. As, PW-01 stated in his cross examination that”

یہ درست ہے کہ ہمارے مابین 2003 سے دعویٰ دائری کسی قسم کا کوئی تحریر وغیرہ نہیں لایا گیا البتہ زبانی ج

کے ہوئے ہیں۔ یہ درست ہے کہ میں نے ایسے مبینہ جگہوں کے حوالے سے کوئی گواہ پیش نہیں کیا۔

The suit in hand was filed on 09.02.2021, while the dispute arose between the parties in the year 2003. And since then


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the plaintiffs have never approached any forum for dispute resolution in the Erstwhile FATA. Hence, suit of plaintiffs is held to be badly time barred. Even more, all Federal and Provincial Laws stood extended to the Newly Merged Districts in the year 2018. Hence, issue in hand is decided in negative against of plaintiffs.

ISSUE NO. 05:

Whether suit of plaintiffs is bad due to non-joinder and mis-joinder of the parties? OPD

Burden of proof regarding this issue was on defendant. Defendant has stated in his written statement that the suit of the plaintiffs is bad for non-joinder and mis-joinder of the parties. As all the parties which are necessary to be impleaded in the instant suit are not correctly arrayed in the plaint. Record shows that plaintiff no. 01 appeared in the witness box as PW-01, he stated in his cross examination that that it is correct that we have not filed any suit against lease holder. It is correct that the lease holder of that area is Awan Ali.

یہ درست ہے کہ ہم نے لیز ہولڈر پر کوئی مقدمہ نہیں کیا ہے۔


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It is pertinent to mention here that the said lease holder is the necessary party in the instant suit, but plaintiffs

failed to implead him, hence, the issue in hand is decided in negative against the plaintiffs.

ISSUE NO. 7 & 8:

Whether defendant sold shares in the jointly owned coal mine in violation of agreement dated 22.11.2003. OPP

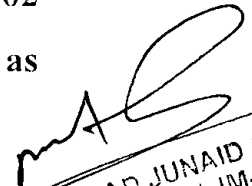
Whether plaintiffs are entitled to the recovery of Rs. 02 crores and 20 lacs as their share and Rs. 40 lacs as penalty since 01.10.2003 per year. OPP

Both these issues are interlinked, hence, taken together for discussion. Burden of these issues were on plaintiffs.

Plaintiffs in their plaint had stated that both parties to the suit were partners, who made the deal and purchased two coal mines. That an agreement deed dated 22.11.2003 was scribed between parties to suit and also another party on some terms and conditions. To prove their stance plaintiff no. 01, himself appeared and deposed as PW-01, who produced copy of his CNIC which is Ex. PW-1/1. He supported his stance as narrated in the plaint. During cross examination he deposed that it is correct that I had not mentioned the number of coal mine in my statement.

یہ درست ہے کہ میں نے اپنے بیان میں کول مائن کا نمبر وغیرہ کا ذکر نہیں کیا ہے۔

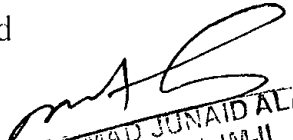
He further stated that it is correct that we have not filed any suit against lease holder. It is correct that the lease holder of that area is Awan Ali. It is correct that I have not produced


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any deed that shows that the lease holder Awan Ali gave us place for coal mine. It is also correct that I had not mentioned the number and name of mine in the plaint. It is also correct that all the mine numbers and names are available in *Dawali*. Self-stated that the number assigned to the alleged coal mine is 04.

یہ درست ہے کہ ہم نے لیز ہولڈر پر کوئی مقدمہ نہیں کیا ہے۔ یہ درست ہے کہ ہم نے کوئی تحریر پیش نہیں کی ہے کہ اعوان علی نے ہمیں مائن کے لئے جگہ دی ہو۔ یہ درست ہے کہ پورے دعویٰ میں کسی بھی مائن نمبر یا مائن کے نام کا ذکر نہ ہے یہ بھی درست ہے کہ ڈاوی میں تمام مائن کے نمبر اور نام موجود ہے۔ از خود کہا کہ یہ چار نمبر کا مائن ہے۔

It is correct that we do not have the labour attendance and account register related to the mine.


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یہ درست ہے کہ ہمارے پاس مائن کے حوالے سے مزدور حاضری، حساب و کتاب رجسٹر نہیں ہے۔

It is correct that no written document or record was taken between us regarding the filing of plaint since 2003, however, verbal *jirgas* were held. It is also correct that I did not produce any witnesses regarding those alleged *jirgas*.

یہ درست ہے کہ ہمارے مابین 2003 سے دعویٰ دائری کسی قسم کا کوئی تحریر وغیرہ نہیں لیا گیا البتہ زبانی ج

کے ہوئے ہیں۔ یہ درست ہے کہ میں نے ایسے مبینہ جگہوں کے حوالے سے کو گواہ پیش نہیں کیا۔

PW-02 was produced and examined as one Zulfiqar Ali son Riaz Khan, who deposed on oath in light and support of the

stance of plaintiffs. He produced copy of his CNIC, which is Ex. PW-2/1. During cross examination he stated that no *jirga* decision has made between the parties. Self-stated that the defendant did not appear on the appointed date for the *jirga*.

مابین فریقین ہم نے جرگہ فیصلہ نہیں کیا ہے۔ از خود کہا کہ مدعا علیہ مقررہ تاریخ پر بروئے جرگہ نہیں آیا تھا۔

PW-03 was produced and examined as one Mazhar Ali son of Asmat Ali, who deposed on oath in light and support of the stance of plaintiffs. He produced copy of his CNIC, which is Ex. PW-3/1. He was the mediator of a previous *jirga* which was appointed between the parties. During cross examination he stated that it is correct that we did not make any decision. The plaintiff has filed a claim of approximately nine lacs rupees. Self-stated that I do not have exact information, but a suit has been filed in court.

یہ درست ہے کہ پھر ہم نے کوئی فیصلہ نہیں کیا مدعی نے تقریباً 9 لاکھ کا دعویٰ کیا ہے۔ از خود کہا کہ مجھے صحیح

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معلومات نہ ہے لیکن عدالت میں دعویٰ کیا ہے۔

PW-04 was Fayaz Ali, the plaintiff no.1 himself appeared and deposed as PW-04, who produced the deed of penalty amount and copy of his CNIC which are Ex. PW-4/1 & Ex. PW-4/2 respectively. He stated on oath in light and support of his stance as narrated in the plaint. During cross examination he deposed that it is correct that in the deed,

Ex. PW-4/1, Kamal Khan, Warkhameen Ali, Abrar Hussain, and Mir Hassan have not been produced as witnesses.

یہ درست ہے کہ Ex. PW-4/1 میں کمال خان، درخمن علی، ابرار حسین اور میر حسن بطور گواہ پیش نہیں ہوئے۔

It is correct that mine number is not available. Self-stated that the alleged coal mine is known as Gulab Hussain mine and mine number two.

یہ درست ہے کہ مائن کا نمبر موجود نہیں ہے۔ از خود کہا کہ سائینڈان مائن جو کہ گلاب حسین کے نام سے مشہور تھا اور 2 نمبر مائن کے نام سے بھی مشہور تھا۔

It is correct that I did not produce the alleged mine's expense register, material register, etc.

یہ درست ہے کہ میں نے مائن مبینہ کے اخراجات رجسٹر، سامان رجسٹر وغیرہ پیش نہیں کیا ہیں۔
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I do not have any written document, showing that I am demanding thirty lacs rupees annually.

میرے پاس اس کی بابت کوئی تحریر موجود نہ ہے کہ میں سالانہ 30 لاکھ روپے مانگ رہا ہوں۔

In light of the above evidence produced by the plaintiffs to prove the issue in hand, it has been noticed that although PWs deposed in light and support of the stance of plaintiffs as stated in their plaint. However, during cross examination all the PWs were contradicted in material particulars and

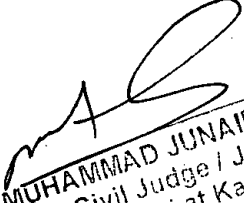
negated the stance of the plaintiffs. A brief of said contradictions and negations is mentioned as under;

As for as the alleged/disputed coal mine is concerned, it is pertinent to mention here that PW-01, the plaintiff no. 02 in his self-stated statement stated that the alleged mine number is 04 while PW-04, the plaintiff no. 01 appeared and deposed in his cross examination that the alleged/disputed coal mine number is 02.

PW-01 اپنے از خود دئے ہوئے بیان میں کہتے ہیں کہ موجودہ کوئلہ مائن نمبر 04 ہے جبکہ PW-02

اپنے بیان میں کہتے ہیں کہ متذکرہ بالا کوئلہ مائن نمبر 02 ہے۔

As for as the Registers of accounts and attendance of labors and other material of alleged coal mine are concerned, it is noted that PW-01 in his cross examination admitted that it is correct that the one Awan Ali is the lease holder of the said area. It is correct that we have not produced any document showing that Awan Ali had given us land for the coal mine. He also admitted that it is correct that we do not have the labor attendance and account register related to the mine. While PW-04 also admitted the fact that I do not have the expenditure register or the material register of the alleged mine.


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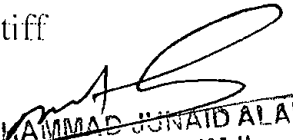
PW-01 اپنے جرح میں کہتا ہے کہ اعوان علی اس علاقے کا لیزر ہولڈر تھا اور ہم نے کوئی ایسی تحریر پیش

نہیں کی ہے کہ جس سے ظاہر ہو کہ اعوان علی نے مذکورہ کوئلہ مائن کے لئے زمین دی ہو۔ جبکہ PW-04

اپنے جرح میں کہتا ہے کہ میں نے مائن مبینہ کے اخراجات رجسٹر، سامان رجسٹر پیش نہیں کیا گیا ہے۔

PW-03 stated in his examination in chief that he was mediator between parties to the suit, whereas, PW-02 Zulfiqar was from plaintiff's side while Muhammad Alam was from defendant's side. But when the PW-03 cross examined he stated in contradiction that we have not convened the *jirga* between the parties. Further stated it is also correct that plaintiffs claimed for Rs. 09 lacs. It is pertinent to mention here that the mentioned PW is the plaintiff's witness, but he does not know what the plaintiff has claimed.

Furthermore, PW-02, is the Munshi/Clerk of plaintiffs, but he has not brought any evidence on the record. Moreover, PW-04, the plaintiff no. 01 himself stated in his cross examination that the witnesses and party of the document Ex. PW-4/1 have not been made party to the suit nor produced for evidence, thus it creates serious legal and evidentiary defects on behalf of plaintiffs which weakens or nullify the plaintiff's case. Needless to mentioned here that the document Ex. PW-4/1 remains unproved, therefore, adverse inference arises. Also, PW-01 stated in his cross


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examination that several verbal *jirgas* have been conducted between parties to suit, but on record there are no witnesses regarding such alleged *jirgas*. It shows that there is no written agreement or documentary proof, the claim rests solely on oral assertion, which carry weak weight in civil proceedings unless credibly proved through witnesses.

In light of the above findings, the plaintiffs have failed to prove the issue in hand through cogent convincing and confidence inspiring evidence, hence, accordingly the issue in hand is hereby decided in negative against the plaintiffs and in favour of defendant.

ISSUE NO. 9:

Whether plaintiffs have already sold their shares through agreement date 24.07.2004? OPD


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The defendant in his written statement has alleged that plaintiffs are demanding profit on the portion, which they have already sold, in the year 2004. He further stated that the sale agreement (transaction of sale) took place in the presence of witnesses on the date 24.07.2004. To prove his stance defendant produced as many as two witnesses including himself.

Khan Muhammad appeared before the court and deposed as DW-01, who deposed on oath in light and support of the stance of defendant as stated in the written statement. During cross examination he stated that he does not know

that plaintiffs had joint business with the defendant. But he knows that plaintiff Fayaz Ali had share with Kamal Hussain, and later on Fayaz Ali sold his share which was purchased by Fazal Abbas.

مجھے علم نہ ہے کہ فیاض علی کا غلام حسن مدعا علیہ کے ساتھ مشترکہ کاروبار تھا۔ البتہ مجھے کمال حسین کمال

حسین مان میں فیاض علی کے حصے کا علم تھا کیونکہ یہ حصہ ہم نے فضل عباس کے لئے خرید لیا تھا۔

When DW-02, the defendant himself appeared before the Court and stated in his cross examination that after the year 2004, the plaintiff Fayaz Ali was no longer his partner.

کہ 2004 کے بعد فیاض علی ہمارا پارٹنر نہیں رہا۔

Also, defendant stated in his cross examination that plaintiff Fayaz Ali sold his share to Fazal Abbas.

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یعنی نے فضل عباس پر اپنا حصہ فروخت کیا تھا۔

Needless to mention here that plaintiff Fayaz Ali sold their shares vide Ex. DW-1/1 in the year 2004. It is also pertinent to mention here that plaintiffs neither arrayed the co-owners of the alleged coal mine nor arrayed the name of purchaser.

مدعیان نے دعویٰ میں نہ کوئی شراکت دار کو شامل کیا ہیں نہ خریدنے والے کو۔

In light of what has been discussed above, as defendant succeeded to prove the issue in hand through cogent, convincing and reliable evidence, hence accordingly the

issue in hand is hereby decided in positive in favour of defendant and against the plaintiffs.

ISSUE NO. 1

Whether plaintiffs have got cause of action? OPP

In wake of issue wise findings above, the plaintiffs have got no cause of action, as he had sold his share in the mine, while this fact was conceded by them, hence, accordingly the issue in hand is hereby decided in negative against the plaintiffs and in favour of defendant.

ISSUE NO.10:

Whether plaintiffs are entitled to the decree as prayed for? OPP


In wake of my issue wise findings above, have badly failed to prove their case and have also made concealment of facts, therefore, plaintiffs are not entitled to the decree as prayed for, hence accordingly the issue in hand is hereby decided in negative against the plaintiffs and in favour of defendant.

Relief:

As nutshell of my detailed discussion upon various issues, the suit of plaintiffs is hereby dismissed with cost of Rs. 2000/- per date of appearance. File be consigned to record room after its necessary completion.

Announced.

27.10.2025

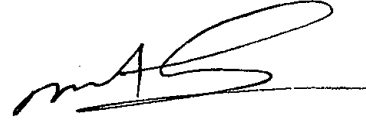

Muhammad Junaid Alam,
Civil Judge -II,
Tehsil Courts Kalaya, Orakzai

C E R T I F I C A T E

Certified that this judgment consists of Eighteen (18) pages.

Each page has been read over, checked and signed after making necessary correction therein.

Dated: 27.10.2025



Muhammad Junaid Alam,
Civil Judge -II,
Tehsil Courts Kalaya, Orakzai