

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

Suit No.126/1 of 2022

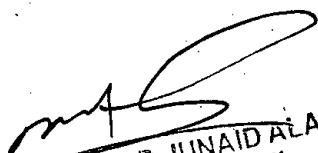
ORIGINAL DATE OF INSTITUTION.05.09.2022

DATE OF DECISION OF THE SUIT.....10.11.2025

KHAYAL DAR SHAH SON OF YANI SHAH, RESIDENT OF QOM UTMAN KHEL, TAPPA BAZRAN KHEL, VILLAGE KHULKI KHEL, TEHSIL LOWER DISTRICT ORAKZAI AND 03 OTHERS.

..... PLAINTIFFS

VERSUS


MUHAMMAD JUNAID ALAM
Civil Judge / JM-II
Orakzai at Kalaya

LAIQ SHAH SON OF KAMEEN SHAH, RESIDENT OF QOM UTMAN KHEL, TAPPA BAZRAN KHEL, VILLAGE KHULKI KHEL, TEHSIL LOWER, DISTRICT ORAKZAI AMD 07 OTHERS.

..... DEFENDANTS

**SUIT FOR DECLARATION-CUM-PERMNENT AND
MANDATORY INJUNCTION**

Counsels for plaintiffs: Mr. Abid Ali Advocate

Counsel for defendants: Mr. Sana Ullah Khan Advocate

JUDGMENT

10.11.2025

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

2. It is a suit from the plaintiff against defendants for declaration, permanent and mandatory injunction.

3. Brief facts of the case are that plaintiffs through instant suit had stated that parties to the suit are cousins inter se and descendants of one Rasool Khan. Parties to the suit are joint owners in possession of the vacant plot measuring about 15-20 Marlas at Khulki Khel, Orakzai, fully detailed in the headnote of the plaint. Further stated that the suit property is their ancestral property. Plaintiffs stated that they are owners of 1/3rd share of a house comprising of three rooms, measuring about 06-07 Marlas, which is in possession of defendant no. 04 Sar Gul. Defendants have no right to grab the whole suit property forcibly and take the possession and raise construction on the same, while defendants are refusing to partition the disputed share between the parties.

Furthermore, many jirgas were convened between the parties regarding vacant plot, wherein, partition have been made, but defendants have refused the same. Defendants were asked time and again to give the plaintiff their legal shares in the suit property, but they refused, hence, the instant suit.

4. After institution of the suit the defendants were summoned, accordingly defendant no. 01 & 02 appeared and submitted their written statement with legal and factual objections, raised therein. While defendant no. 03 to 06 placed and proceeded ex-parte.

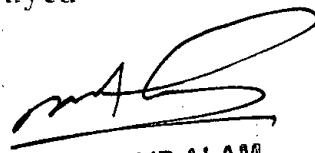
MUHAMMAD JUNAID ALAM
Civil Judge / JM-II
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5. Out of controversies of the parties, as raised in their respective pleadings, the then incumbent Court framed the following issues on 04.05.2023.

6. **ISSUES:**

1. **Whether plaintiffs have got cause of action? OPP**
2. **Whether the suit plot measuring 15/20 Marla and suit house measuring 6/7 Marla, which is in possession of defendant no. 04 is joint ancestral property of the parties to the suit and plaintiffs are entitled for their 1/3rd share through partition? OPP**
3. **Whether the defendants inherited suit plot and suit house from their father and are owners in possession of the suit property since the time of their father? OPD**
4. **Whether plaintiffs are entitled to the decree as prayed for? OPP**

Relief.



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7. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as four (04) witnesses and thereafter, closed their evidence with a note. Contrary to this the defendants produced three (03) witnesses and thereafter, closed their evidence with a note.
8. Thereafter arguments of both the counsel for the parties were heard.
9. Counsel for the plaintiffs argued that parties to the suit are cousins inter se and descendants of one Rasool Khan. Parties to the suit are joint owners in possession of the vacant plot measuring about 15-20 Marlas at Khulki Khel, Orakzai, fully

detailed in the headnote of the plaint. Further argued that the suit property is the ancestral property. He further adduced stated that plaintiffs are owners of 1/3rd shares in the suit house comprising of three rooms, measuring about 06-07 Marlas, which is in possession of defendant no. 04 Sar Gul. Defendants have no right to grab the suit property forcibly and take the possession and raise construction on the same, while defendants are refusing to partition the disputed share between the parties. He further argued that many jirgas were convened between the parties regarding vacant plot, wherein, plaintiffs and defendant no. 01 had given statements, but defendants have refused the same. Counsel for the plaintiffs argued that plaintiffs have succeeded to produce evidence in light and support of their stance as stated in the plaint. Hence, the suit in hand may kindly be decreed.

2. Contrary to this learned counsel for the defendants argued that the plaintiffs have got no cause of action. The suit of the plaintiffs is time barred. The suit of the plaintiffs is liable to be dismissed due to mis-joinder and non-joinder of the parties. Furthermore, stated that parties to the suit are descendants of Rasool Khan. Defendants are owners in possession of the suit plot since the time of their father and the same is in possession of defendants. He further argued that plaintiffs have no concern with the same. He further

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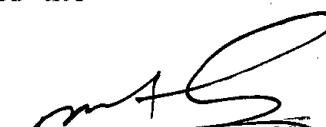
adduced that the defendant no. 04 inherited the suit house from his father, and since then he has been the owner, possessors, and occupants of the property. The plaintiffs have no concern or connection with it and neither they are owners nor possessors. Counsel for the defendants argued that defendants have succeeded to produce evidence in light and support of their stance as 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. In light of perusal of record, available evidence and valuable assistance of both the learned counsels for the parties the issue wise findings of the court are as under.

ISSUE NO. 2:

Whether the suit plot measuring 15/20 Marla and suit house measuring 6/7 Marla, which is in possession of defendant no. 04 is joint ancestral property of the parties to the suit and plaintiffs are entitled for their 1/3rd share through partition? OPP

Burden of proof regarding this issue was on plaintiffs. Plaintiffs in their plaint had stated that parties to the suit are joint owners of the suit plot measuring about 15-20 Marla alongwith suit house comprising of three rooms measuring about 06-07 Marlas. To prove their stance plaintiffs produced one Rab Nawaz Khan son of Nasrullah Khan as PW-01, who produced copy of his CNIC which is Ex. PW-2/1. He


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deposed on oath in light and support the stance of plaintiffs as narrated in the plaint. During cross examination he deposed that it is correct that he is not the witness of the suit property regarding that whom is the owner.

یہ درست ہے کہ میں جائیداد مدد گویہ وغیرہ کے بابت میں اس بابت کا گواہ نہ ہوں کہ یہ کس کی ہے۔

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PW-02 is the statement of Niaz Mast son of Zar Mast, who produced his CNIC, which is Ex. PW-2/1. He stated in light and support of the stance of plaintiffs as narrated in the plaint. During cross examination he admitted that he convened a jirga pertaining to suit house consists of 06-07 Marlas between Liaq Khan (defendant no. 01) and Zari Bat Khan, wherein defendants had pledged/taken an oath on Holy Quran in the presence of two witnesses before Zari Bat Khan regarding the suit house. Upon the same an amount of Rs. 2,50,000/- (Rupees two lac and fifty thousand only) was paid to Zari Bat Khan. It is correct that after administration of Holy Quran and payment of said amount the Zari Bat Khan handed over the possession of the suit house to defendants.

میں نے لائی اور زری بت خان کے مابین مکان 6-7 مرلہ کا جگہ جسیں مدعا علیهم نے زری بت خان

کے لئے مکان منزد کرہ بالا پر دو کسان قرآن کیا تھا جس پر دو لاکھ پچاس ہزار روپے زری بت خان کو ادا کر دئے۔

یہ درست ہے کہ قرآن اور رقم ادائیگی کے بعد زری بت خان نے مدعا علیهم کو تبضہ حوالہ کیا

It is also correct that no dispute over the suit house.

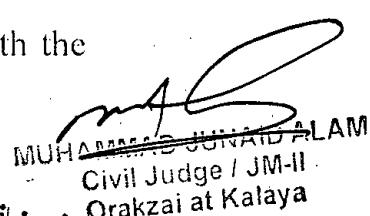
یہ درست ہے کہ مکان ہند کرہ پر ابھی کوئی تنازع نہ ہے۔

It is also correct that he is not witness regarding the suit property that he is the real owner.

یہ درست ہے کہ میں جائیداد کی ملکیت کے بابت گواہ نہ ہوں کہ کس کی ہے۔

PW-03, is the statement of Maroof Khan son of Abdul Khaliq. He stated that he held a jirga between the parties. He stated that according to local customs and tradition both the parties were administered with the special oath.

دوں فریقین کو رواج کے مطابق مکانات پر لیار/حلف مقرر کیا۔ جو مکانات جس کے پاس ان پر حلف انہیں کو


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He produced his CNIC which is Ex. PW-3/1. Moreover, he deposed in favor of plaintiffs as narrated in the plaint. During cross examination he stated that he did not know that whether jirga was conducted between Zari Bat Khan and Liaq Shah (defendant no.01).

مجھے یہ علم نہ ہے کہ زری بٹ خان اور لائق کے مابین جگہ ہوا ہے۔

PW-04, Karim Shah son of Lal Dar Shah. He stated in his examination in chief that Rasool Khan had four sons namely Zameen Shah, Kameen Shah, Rasool Shah and Yani Shah. He further stated that jirgas were conducted between the parties in the year of 2016 & 2022, copies of which are Ex.

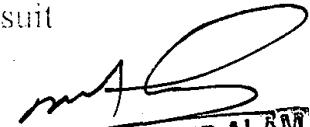
PW-4/1 & Ex. PW-4/2 respectively. He also produced special power of attorney which is Ex. PW-4/3. During cross examination he stated that one Sar Gul had sold the suit house to Zari Bat Khan.

یہ درست ہے کہ سر گل نے زری بٹ خان پر 6-7 مرلے کا گھر فروخت کیا تھا۔

He further stated that the house of Sar Gul is presently lying vacant and the predecessor of the parties namely Rasool Khan had partitioned the suit property among his legal heirs.

سر گل کا مکان اب خالی پڑا ہے۔ رسول خان نے اپنے بیٹوں کے میں تیس جائیداد کی ہے۔

He further stated in his cross examination that when he was going abroad, at that time Sar Gul was residing in the suit house.


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He stated that he exchanged property with one Zameen Shah and got a house near the vacant plot. It is correct that one Zameen Shah has not been produced as witness. It is correct that there is no document or deed of the aforementioned exchange.

یہ کہ میں زمین شاہ کے ساتھ جگہ تبدیل کر کے خالی پلاٹ کی تربیب مکان حاصل کیا ہے۔ یہ درست ہے کہ

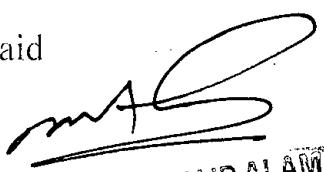
زمین شاہ بطور گواہ پیش نہیں ہوا ہے۔ یہ درست ہے کہ اس تبادلے کے کاغذات نہ ہے۔

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 identification of ownership of the suit property is concerned, it is noted that PW-01 stated in his cross examination that he is the not witness of the ownership of the suit property while PW-02 also stated that he did not know about the ownership of the suit property. It is pertinent to mention here that when the plaintiff's witnesses do not support the plaintiff's version regarding ownership the *suit property*, the plaintiffs fail to establish the basic facts of the claim. It is also noted that plaintiffs own witnesses deny knowledge about ownership the suit property.

As for as, the possession of the suit house is concerned, it is noted that PW-02 is the jirga member, who previously conducted jirga between the parties. He stated in his cross examination that he conducted jirga between Zari Bat Khan and Liaq Shah (defendant no. 01) pertaining to suit house, wherein, defendants had pledged/taken an oath on Holy Quran in the presence of two witnesses before Zari Bat Khan

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regarding the suit house. Upon the same an amount of Rs. 2,50,000/- (Rupees two lac and fifty thousand only) was paid to Zari Bat Khan. It is correct that after administration of Holy Quran and payment of said amount the Zari Bat Khan handed over the possession of the suit house to defendants. As PW-04 stated in his cross examination that it is correct that Sar Gul has sold the suit house to Zari Bat Khan.

میں نے لاگئی اور زری بٹ خان کے مابین مکان 6-7 مرلہ کا جگہ جیسی مدعی علیهم نے زری بٹ خان

کے لئے مکان مدد کرہ بالا پر دو سان قرآن کیا تھا جس پر دو لاکھ پچاس ہزار روپے زری بٹ خان کو ادا کر دیے۔

یہ درست ہے کہ قرآن اور رقم ادائیگی کے بعد زری بٹ خان نے مدعی علیهم کو قبضہ حوالہ کیا۔

PW-04 also deposed in his cross examination that Sar Gul (defendant) was residing in the suit house, which consist of 06-07 Marlas.


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سرگل 06-07 مرلے کے مکان مدد عویز میں رہتا تھا۔

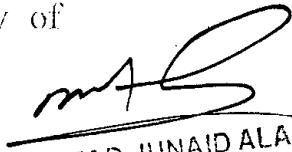
PW-01 also deposed in his cross examination that it is correct that the suit house is in possession of defendant no. 01 Liaq Shah.

یہ درست ہے کہ 7،8 مرلے مکان مدعی علیهم لاک شاہ کے قبضے میں ہے۔

In given circumstances, upon perusal of the PWs statements and their admission lead this court that "in local custom, possession based on special oath is considered a strong

traditional proof. The plaintiff's witness confirming this phenomenon which gives credibility to the defendants' possession and ownership of the suit house. It is also worth mentioning here that the partition claim is misconceived regarding the suit house, because the suit house no longer exists in joint possession.

As for as suit plot is concerned, it is noted that plaintiffs stated in their plaint that the suit plot is the joint ownerships of parties to the suit and has been lying vacant since the time of their forefathers. When PW-04, appeared before the court stated in his cross examination that plaintiffs have exchanged the property with Zameen Shah and got a house near the vacant plot. Similarly, PW-03 appeared before the court and stated in his cross examination that the agreement deed dated 17.11.2016 has correctly been thumb impressed by the defendant no.01 Liaq Shah. As per agreement deed dated 17.11.2026 reveals that the suit plot is joint property of parties to the suit.


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 17.11.2016
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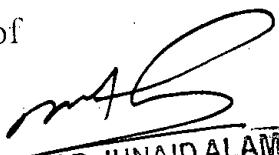
He further stated in his cross examination that it is correct that Jirga members had given me additional property in the partition, being elder and he further admitted that the suit plot remained joint.

جگہ ببران نے بطور مشریعے تقسیم میں اضافی جگہ دیا تھا۔ پلاٹ مشترکہ طور پر رہ گیا ہے۔

DW-02, Yar Wali Shah son of Gul Bat Khan was appeared before the court, who stated in light and support of the stance as narrated in the written statement. During examination he stated in his cross examination that Liaq Shah is not the sole owner of the suit plot.

یہ درست ہے کہ پلاٹ مددویہ لائق شاہ کا اکیلانیں ہے۔

He further stated in his cross examination that the house of Sar Gul is constructed on the joint property.


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Civil Judge / JM-II
Zakzai at Kalaya

DW-03, is the statement of Sar Gul, who stated in his examination in chief that the suit plot is joint ownerships of the parties to the suit. During cross examination he admitted that the plot is joint ownership of the parties to the suit.

پلاٹ مشترکہ ہے اور لائق کا اکیلانیں ہے۔

In light of the above findings the plaintiffs have partially succeeded to prove the issue in hand to the extent of suit plot through cogent, convincing and confidence inspiring evidence, while to the extent of suit house the same is not proved, hence, accordingly the issue in hand is hereby partially decided in positive in favour of the plaintiffs.

ISSUE NO. 04:

Whether the defendants inherited suit plot and suit house from their father and are owners in possession of the suit property since the time of their father? OPD

Burden of proof regarding this issue was on defendants. The defendants in their written statement had asserted that parties to the suit are descendants of one Rasool Khan. Defendants are owners in possession of the suit plot since the time of his father. To prove their stance defendant no. 01 himself appeared in the witness box as DW-01 and stated on oath that in light and support of the issue in hand. During cross examination he deposed that one of the legal heir of Rasool Khan namely Zari Bat Khan have constructed a house, it was exchanged with plaintiffs.

مختاری کے اولاد زاری بٹ خان وغیرہ نے باہر مکان بنایا ہے جس نے خیال دار شاہ مد عیان

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کے ساتھ تبدیل کیا تھا۔

He further stated in his cross examination that it is correct that Jirga members had given me additional property in the partition, being elder and he further admitted that the suit plot remained joint.

جگ مبران نے بطور مشریعہ تقسم میں اضافی جگہ دیا تھا۔ پلاٹ مشترک کر طور پر رکھا گیا ہے۔

DW-02, Yar Wali Shah son of Gul Bat Khan was appeared before the court, who stated in light and support of the stance as narrated in the written statement. During examination he

stated in his cross examination that Liaq Shah is not the sole owner of the suit plot.

یہ درست ہے کہ پلاٹ مددویہ لاٹ شاہ کا اکیلانیں ہے۔

He further stated in his cross examination that the house of Sar Gul is constructed on the joint property.

یہ درست ہے کہ سر گل کا مکان بھی مشترکہ جگہ پر ہے۔

DW-03, is the statement of Sar Gul, who stated in his examination in chief that the suit plot is joint ownerships of the parties to the suit. During cross examination he admitted that the plot is joint ownership of the parties to the suit.


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Civil Judge / JM-II
Jalakzai at Kalaya

In light of the above evidence produced by the defendants to prove the issue in hand, it has been noticed that although DWs deposed in light and support of the stance of defendants as stated in their written statement. However, during cross examination all the DWs were contradicted in material particulars and negated the stance of the defendants to the extent of the plot. A brief of said contradictions and negations is mentioned as under;

As for as suit plot is concerned, it is noted that DW-03 stated in his examination in chief as well as cross

examination that the suit plot is joint ownership of the parties to the sui.

یہ پلاٹ مشترک ہے اور لائق شاہ مدعی علیم نمبر 1 کا کیلئے نہیں ہے۔

DW-02 also stated in his cross examination that the suit plot is joint ownership of the parties to the suit.

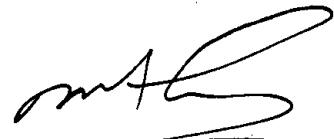
DW-01, who is also defendant no. 01 himself stated in his cross examination that partition has been made between the parties to the suit while the suit plot remained joint ownership of the parties.

یہ درست ہے کہ جگہ مشران نے بطور مشریعہ قسم میں اضافی جگہ دیا تھا۔ پلاٹ مشترک کو طور پر دیا گیا ہے۔

The DW's admission strongly strengthens the plaintiff's case and significantly weakens the defendant's defence regarding the suit plot.

In light of what has been discussed above as defendants failed to prove the issue in hand through cogent, convincing and reliable evidence, hence accordingly the issue in hand is partially decided in negative to the extent of said plot.

ISSUE NO. 1



MUHAMMAD JUNAID ALAM
Civil Judge / JM-II
Orakzai at Kalaya

Whether plaintiffs have got a cause of action? OPP

In wake of issue wise findings above, the plaintiffs have got a cause of action to the extent of said plot only, hence

accordingly the issues in hand is partially decided in positive in favor of plaintiffs and against the defendants.

ISSUE NO.5:

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

In wake of the issue wise findings above, plaintiffs are entitled to the partial preliminary decree to the extent of partition of suit plot only, as prayed for, hence accordingly the issue in hand is hereby decided in positive in favour of plaintiffs to that extent and against the defendants.

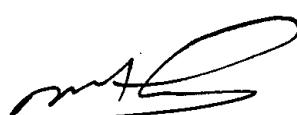
Relief:

In nutshell of the detailed discussion upon various issues, the suit of plaintiffs is hereby preliminary decreed to the extent of partition of the suit plot comprising of 15-20 Marlas while remaining pray to the extent of suit house is dismissed. No order as to costs.

File be consigned to record room after its necessary completion.

Announced.

10.11.2025



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 seventeen (17) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 10.11.2025



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