

34
MARJAN VS PROVINCIAL GOVERNMENT ETC.
Civil Appeal No. 48/13 of 2025

**IN THE COURT OF HAQ NAWAZ,
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)**

CIVIL APPEAL NO. : 48/13 OF 2025
DATE OF INSTITUTION : 28.08.2025
DATE OF DECISION : 16.01.2026

MARJAN S/O JAMROZ KHAN; R/O CHAMAN JANA, CASTE
STORI KHEL, DISTRICT ORAKZAI

.....(APPELLANT)

-VERSUS-

PROVINCIAL GOVERNMENT THROUGH CHIEF SECRETARY
HYBER PAKTHUNKWA AND OTHERS

.....(RESPONDENTS)

JUDGEMENT

16.01.2026

This civil appeal was preferred by the appellant against the judgment and decree dated 29.07.2025 passed by the Court of learned Senior Civil Judge, Orakzai whereby Civil Suit No. 63/1 of 2022 was dismissed.

2. The suit was brought by the appellant for possession of the suit house, situated at village Chaman Jana, Stori Khel, District Orakzai. He also sought recovery of rent from 2020 till handing over of the possession in prayer 'B' of the plaint.
3. According to averments of the plaint, the appellant is the resident of Chaman Jana Caste Stori Khel. One of their elders namely Malik Awal Rehman was Loongi holder. His house was situated on the top of a mountain in the shape of a mansion consisting upon 22 units. In the year 2009, the militants attacked the mansion and set the houses of appellant and others on fire. They rebuilt the burnt houses and the same were taken by the Pakistan Army being

Haq Nawaz
District Judge
Orakzai

strategically suitable for military operation when the appellants were displaced due to law-and-order situation. The appellant along with his children were to live the life as Internally Displaced Persons (IDPs). The appellant and others were paid rent against the suit house in the year 2014 through local elders namely Malak Qamar Zaman, Malak Nasrullah Khan, Malak Awal Rehman and Malak Adam Khel etc. The Pakistan Army later on handed over possession of the suit house to FC upon their departure who later on handed it over to ex-Levy Force (Police/respondents). The respondents have neither paid the any rent nor the suit house was handed over to the appellant causing irreparable loss to him. The respondents were asked and time again to hand over the suit house and pay rent for the period of occupation, but in vain; therefore, the suit was filed.

4. The respondents contested the suit by filing their written statement. Pleadings of the parties were reduced to the following issues;

I. Whether the suit is bad for legal defects i.e., cause of action, limitation, legal standing, Rejudicata and non-joinder etc. and is not maintainable in its present form?

1
District & Sessions Judge
Qazisai at Baber Meja

II. Whether plaintiff is owner of the suit land who was compelled by circumstances of militancy to move out?

III. Whether plaintiff is entitled to recovery of possession, and rent/mesne profits for the period for which the subject matter has been in the possession of the defendants?

IV. Whether defendants have lawfully acquired the suit land, and are entitled to its possession?

V. Relief.

5. After recording pro and contra evidence and hearing both the parties, the learned trial court dismissed the suit through his impugned judgment and decree; hence, this appeal was filed.
6. During the course of arguments, the learned counsel for the appellant submitted that the appellant was not given the opportunity to submit amended plaint after the impleadment of respondent No. 6. He requested for remand of the case to the trial Court.
7. On the other hand, the learned counsel for the respondents submitted during the course of arguments that the parties have another Civil Suit pending between them before the trial Court for declaration of ownership of landed property situated at village Chaman Jana. He submitted photocopies

Master & Sessions Judge
Qazzaq at Bassein Mela

of the said Civil Suits No. 82/1 of 2022 and 83/1 of 2022,

which were placed on file.

8. After hearing both the parties and perusal of the record, it was found that the appellant submitted his plaint for possession of the suit house from respondents No. 1 to 5 which was initially occupied by the Pakistan Army in the year 2009 when the appellant was displaced from the area due to military operation. The house in question was allegedly handed over to FC subsequently who further handed it over to respondents No. 1 to 5 and the same is still in their possession. The appellant also prayed for the recovery of outstanding rent from the respondents for the period from 2020 till handing over the possession of suit house.
9. The respondents No. 1 to 5 submitted in their written statement that the house in question is in their possession which is the ownership of Provincial Government. The respondent No. 6 submitted an application for his impleadment as defendant by alleging ownership of the suit house. The application was accepted vide order dated 15.03.2023 and the case was fixed for submission of written statement on behalf of respondent No. 6 without affording opportunity of submission of written statement to the appellant. The respondent No. 6 claimed joint ownership of the suit house along with others in his written statement and



Syed Nawaaz
District & Sessions Judge
Orakzai at Gaber Mela

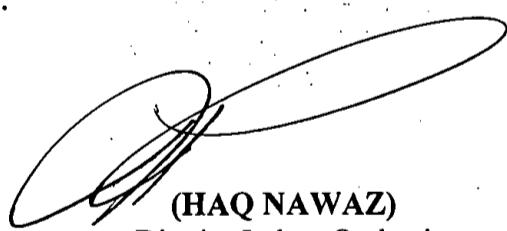
issue No. 2 regarding ownership rights of the appellant was framed.

10. Secondly, the pendency of declaratory suit between the present parties and others before the trial Court regarding ownership of the landed property in the same village Chaman Jana is admitted by both the parties. The judgment in the said suit may lead to contradictory judgments in both the present as well as the said cases.

11. In view of the above facts and circumstances, the appeal is allowed. The impugned judgment and decree are set aside. The case is remanded back to the trial Court with directions to carry out further proceedings in accordance with law side by side along with the Civil Suits pending between the parties. The parties shall appear before the trial Court on 28.01.2026 where the Civil Suits are fixed for hearing. File of this court be consigned to record room after its necessary completion and compilation.

Announced:

16.01.2026

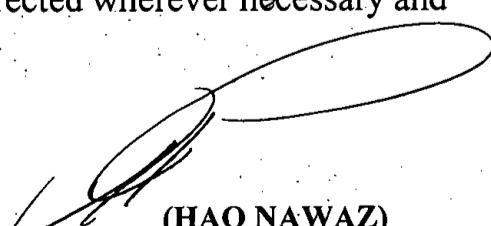


(HAQ NAWAZ)
 District Judge, Orakzai
 at Baber Mela

CERTIFICATE

Certified that this judgment consists of five (05) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 16.01.2026



(HAQ NAWAZ)
 District Judge, Orakzai
 at Baber Mela