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

Civil Suit No. 44/1 of 2024
Date of Institution: 03.11.2022
Date of Transfer In: 21.05.2024
Date of Decision: 22.01.2026

1. Shams Ud Din s/o Syed Ahmad
 2. Nazeer Muhammad s/o Syed Ahmad
 3. Khial Muhammad s/o Khan Muhammad
- All R/O Kach Mela, Umerzai, PO Mishti, Shekhan, Tehsil Central District Orakzai, presently Shekhan Banda, Tehsil District Hangu.*

..... (Plaintiffs)

VERSUS

1. Azeem Shah s/o Haleem Shah
2. Shereen s/o Haleem Shah
3. Muhammad Rauf s/o Hameed Shah
4. Khan Afzal s/o Gul Afzal
5. Rehman s/o Badshah
6. Sultan Gul s/o Hazrat Noor
7. Sahib Noor s/o Hazrat Noor
8. Janat Gul s/o Abdul Hassan
9. Bakht Ameer s/o Meer Hassan
10. Fazal Rabi s/o Fazal Kamal

All R/O Kach Mela, Tehsil central District Orakzai.

11. Provincial Government through Deputy Commissioner Orakzai.

..... (Defendants)

**SUIT FOR DECLARATION OF TITLE, RECOVERY OF
POSSESSION AND CORRESPONDING RESTRAINING
ORDERS**

JUDGEMENT:

22.01.2026

This order is to decide instant suit filed by Mr. Shams Ud
Din and 03 others, the plaintiffs, for declaration of title, recovery of

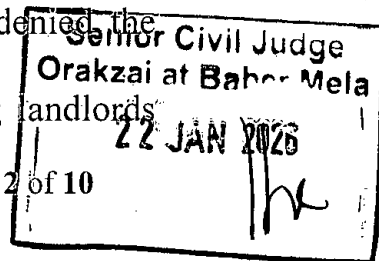
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possession if lost during suit, and for corresponding restraining orders, against Mr. Azeem Shah and 10 others, the defendants.

Pleadings:

Facts derived from the plaint reads that plaintiffs are owners in possession through generations of suit land comprising on a residential building, and 03 plots of 03, 02, and 02 Jirabs respectively. It is averred that defendants were tenants at will of the plaintiffs, and have no legal claim to the title of the suit land. The suit house, after its reconstruction, was leased out to the defendants, who began to lay claims to its title. Similarly, it is held that suit lands were also conveyed to the defendants for the purpose of cultivation. That for some time an agreed share in the produce was paid to the plaintiffs, but recently, the same has also been withheld. It is alleged that defendants are unruly persons with little regard for law, and are sending threats to intimidate the plaintiffs. Plaintiffs claim that defendants no 06-10, who are co-sharers of some other land with plaintiffs, concede the entitlement of the latter to suit land. It is requested that entitlement of the plaintiffs be declared, and defendants be restrained from illegal excesses.

Defendants no 1,2,3,4 and 08 submitted a joint written statement. In addition to the regular objections to the validity of the legal frame of the suit, the defendants have also assailed the factual content of the claim. Stance of the defendants from the written statement reads that they have been in possession of suit land for generations, and that the plaintiffs have no legitimate claim to it. Defendants have denied the claims to entitlement, the assertions about the parties being landlords.



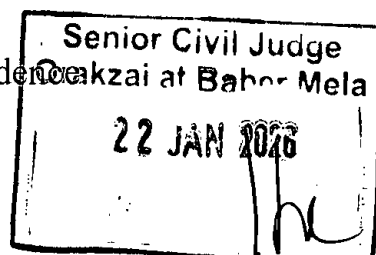
and tenants, and the allegations of the threats issued. Also, the assertions about reconstruction of the disputed house are denied. Further, they have denied the claim of the plaintiffs about the defendants being related to them as cousins. They request for dismissal of suit with costs.

Difference between the stances of the sides were distilled 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 property is ancestral ownership of the plaintiffs and the same has been given to the defendants for cultivation?
5. Whether the house in which defendant No.1 is residing is ownership of the plaintiffs and the same has been given to him being tenant of plaintiffs?
6. Whether the defendants are owner/possessor in the suit property and in the house since their predecessor?
7. Whether the plaintiffs are entitled to the decree as prayed for?
8. Relief.

Thereafter, both sides were invited to produce their evidence.



Witnesses/Exhibits:

Muhammad Alam Khan s/o Mohabbat Khan appeared as PW-01, Muhammad Sharif s/o Muhammad Gul as PW-02, Sultan Gul s/o Hazrat Noor, (defendant No.06) appeared as PW-03, Shams Ud Din s/o Syed Ahmad (Plaintiff No.1 and special power of attorney for plaintiffs) appeared as PW-04, Ameen Ullah s/o Noor Zali Shah as DW-01, Naiz Meen s/o Abdullah Khan as DW-02, Azeem Shah s/o Hakeem Shah as DW-03. They have exhibited the following documents;

- i. Copy of Iqrar Nama as Ex.PW-1/1.
- ii. Special power of attorney as Ex.PW-4/1.
- iii. Copy of CNIC of PW-04 as Ex.PW-4/2.
- iv. Copy of CNIC of DW-01 as Ex.DW-1/1
- v. Copy of CNIC of DW-02 as Ex.DW-2/1.
- vi. Special power of attorney of DW-03 as Ex.DW3/1.
- vii. Copy of CNIC of DW-03 as Ex. DW-3/2.

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 and 03:

These issues pose the regular questions of limitation 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.

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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.

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

Issue No 04, 05 and 06:

Plaintiffs have claimed that suit land is their ancestral entitlement; it was allegedly given to defendants for cultivation as a tenant, but now the latter has begun to lay claim to its title. Defendants have denied the claim as well as the relation between sides alleged by the plaintiffs.

These issues question into the respective claims of entitlement and possession, hence they are taken together.

Before the court formally embarks on the exercise of weighing the judicial record for evidentiary merits in relation to the issues, it is pertinent to underscore the peculiar adjudicatory dynamics prevalent in the district.

Foremost, it needs appreciation that all title claims in the district are to be decided without the assistance of any independently maintained land record. Thus, no neutral record

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exists of the proprietary entitlements of the citizens of the district. The district, being a newly merged one, is yet to conclude its maiden land settlement.

Absence of revenue records naturally renders the court hesitant in issuing a decree of declaration of title in rem, against the whole world. Other than the contesting parties, and available record, the court has no independent means to ascertain a claim to title being contested before it.

Further, in absence of written records about title to landed property, proof of claim is entirely dependent on pleadings and evidence, mostly by oral accounts. The court is cognizant that civil litigation recommends preponderance of evidence. With this backdrop, the court shall now appraise the evidence available on file to ascertain the truth of the claims of both sides.

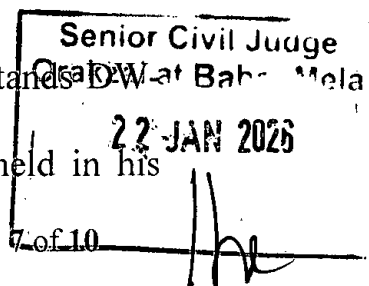
- The first witness the plaintiffs produced is a deed writer who drafted deed dated 27/09/22 allegedly executed between the sides. The deed is a settlement agreement wherein the plaintiff is held entitled to the land in question. Plaintiffs could not meet the legal requirements as laid down in article 17 and 79 of the QSO order for proof of documents. Two attesting witnesses of the deed were not produced, hence the document could not be relied upon.
- Mr. Muhammad Sharif took the witness stands PW-02 for plaintiffs. In his direct statement he states that suit land is the

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entitlement of the plaintiffs that was leased out to defendants for cultivation along with the house on it. He concedes that deed dated 27/09/22 was issued in his name and he confirmed his thumb impression on it.

- Mr. Sultan Gul is plaintiffs' witness no 03. He states that plaintiffs are his close relatives and owners of the disputed land and house. He adds that during the reconstruction of the said house, he assisted by transporting and supplying construction material. This portion of statement about the witness being a close relative of the plaintiffs and of having supplied construction material remains unchallenged in the cross-examination.
- Mr. Shams Ud Din the plaintiff appeared as PW-04. He repeats the claims made in the plaint and prays for declaration of title, and recovery of possession. During his cross-examination, nothing significant was extracted from him. About the delay in his claim, he explains that he was abroad hence the delay.
- Defendants produced three witnesses including the principal defendant. Mr. Ameen Ullah, witness no 01 for defendant, admits to being ignorant of the fact if the plaintiff had given suit land to defendant as claimed. He does not deny the fact.
- Similarly, defendant no 02, Mr. Niaz Meen, admits in his cross examination to being ignorant about the land in question or the dispute under litigation.
- Mr. Azeem Shah, defendant no 01, took the witness stand as PW-05. In his direct statement he repeated the position held in his



pleadings, and in statements of witnesses for him. However, in his cross examination he made certain admissions, and admitted ignorance about some basic facts which need a mention.

- He conceded that Mr. Sahib Noor and Mr. Sultan Gul are brothers, and that the former lives in Kach Mela, near the suit land. Initially, he denied knowledge about the residence of Mr. Sultan Gul, but later admits that all defendants live in Kach Mela.
- Mr. Azeem Shah denied relation of defendants no 06 to 10 to the plaintiffs. However, when Mr. Sultan Gul stated in his statement that he was closely related to the plaintiffs, the information was not subjected to cross-examination.
- Few extracts from the cross-examination of the witness seems advised:

مجھے علم نہ ہے کہ مدعا علیہم سلطان گل کچ میلہ میں رہائش پزیر ہے یا نہیں ہے۔ تمام مدعا علیہم کچ میلہ میں رہائش پزیر ہے۔ مجھے علم نہ ہے کہ ہماری زمین ہے کہ نہیں۔ مجھے معلوم نہ ہے کہ مدعیان کچ میلہ میں اراضی متدعویہ ہے کہ نہیں اگر آپ کو معلوم ہو تو معلوم ہوگی۔ مدعیان کی جائیداد متدعویہ اگر ہو تو مجھے اس کے بارے میں علم نہ ہے۔ جائیداد متدعویہ میرے ساتھ قبضہ میں نہیں ہے بلکہ مجھے علم نہ ہے کہ کس کے قبضے میں ہے۔ از خود کہا کہ مالکان کے پاس قبضہ ہوگا۔ مجھے مدعیان کے کچ میلہ سے ہنگو آنے کی تاریخ یا سن معلوم نہ ہے۔ مجھے یہ علم بھی نہ ہے کہ مدعیان کے باپ دادا کچ میلہ اورکزئی اپنی ابائی علاقہ سے ہنگو کب آئے۔ مجھے علم نہ ہے کہ مکان متدعویہ مدعیان کی ملکیت ہے یا نہیں ہے۔ مجھے مکان متدعویہ کے بارے میں علم بھی نہ ہے۔ مجھے علم نہ ہے کہ مکان متدعویہ بوسیدہ ہونے کے بعد مدعیان اس کی جدید تعمیر کی ہے یا نہیں کی ہے۔ اگر جائیداد متدعویہ سلطان گل اور جنت گل وغیرہ مدعیان کو حوالہ کرتے ہیں تو مجھے کوئی اعتراض اور تعلق نہ ہے۔ اگر مدعیان کو ان کا حق دیتی ہے تو مجھے کوئی اعتراض نہ ہے۔

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Again, in the circumstances prevailing in the district, where no revenue record exist, most land disputes are to be decided on the oral testimonies of the contesting parties and their witnesses.

The standard in civil litigation is preponderance of evidence. In view of the foregone submissions/admissions of the defendant as witness no 03, the court is amply decided on the facts that plaintiffs are land owning residents of Kach Mela. The evasive denials of the claims about construction of suit house etc. further establishes the claim of the plaintiff. Defendant neither claims the house and land to be his, nor objects to its conveyance to plaintiffs.

Resultantly, the observations above inclines the court to decide the issues for the plaintiffs.

Issue No 01 and 07:

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 04, 05 and 06, previously discussed and decided, contain the principal claims of the plaintiffs. The plaintiffs have duly proved these claims; therefore, the present suit is decreed in favour of the plaintiffs. Accordingly, the said issues are decided in favour of the plaintiffs.

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Relief:

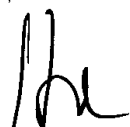
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Defendants are restrained from illegal interference. Possession of suit land, both constructed and plain fields, shall be handed over to the plaintiffs in accordance with the description of suit land as listed in the headnote of the plaint.

It merits a mention that in absence of public records, the entitlement of the plaintiffs is declared against the present defendants, and not against third parties or public in rem. Cost shall follow the events.


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

Announced
22.01.2026


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)