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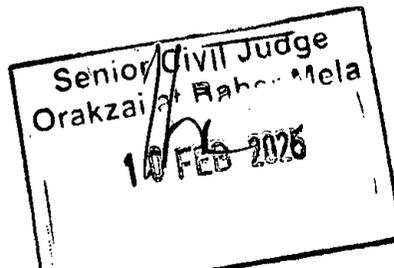
IN THE COURT OF IJAZ MAHSOOD,
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No. 39/1 of 2024
Date of Institution: 15.12.2021
Date of Transfer In: 21.05.2024
Date of Decision: 10.02.2026

1. Sultan Akbar s/o Gul Badshah
 2. Aqal Badshah s/o Gul Badshah
 3. *Noor Badshah* s/o Gul Badshah
 4. *Ibrahim* s/o Gul Badshah
 5. *Ayaz Khan* s/o Gul Badshah
 6. *Mst. Parsh Bibi wd/o Gul Badshah*
 7. *Mst. Taj Bibi d/o Gul Badshah*
 8. *Mst. Umat Bibi d/o Gul Badshah*
 9. *Fazal Shah s/o Said Akbar*
 10. *Jaman Shah s/o Said Akbar*
 11. *Akhtar Gul s/o Fazal Gul*
 12. *Aqal Badshah s/o Noor Husain*
 13. *Dawood Khan s/o Jaman Shah*
 14. *Mst. Noor Mar jana Bibi wd/o Noor Hassan*
 15. *Mst. Raz Bibi wd/o Fazal Gul*
- All R/O Qaum Mamozai, Tappa, Abdul Raheem Khel, Essark,
Tehsil Upper, District Orakzai.*
- (Plaintiffs)

VERSUS

1. Zarnat Khan s/o Zareen Khan
2. Naani Khan s/o Hussain Khan
3. Ghani Khan s/o Piao Khan
4. Niaz Mir Piao Khan
5. Gulla Khan s/o Meera Khan
6. Abdul Ahad s/o Meera Khan
7. Gul Bat Khan s/o Ali Mat Khan
8. Rasool Jan s/o Zar Muhammad
9. Abdul Khanan s/o Khan Muhammad
10. Ajab Khan s/o Nawab Khan
11. Fazal Gul s/o Piao Khan
12. Rasool Khan s/o Piao Khan
13. Miat Khan s/o Noor Afzal
14. Nazeer Badshah s/o Noor Afzal
15. Abdul Malik s/o Noor Afzal
16. Fazal Kareem s/o Zarnat Khan
17. Abdul Kareem s/o Fazal Akbar
18. Ilyas s/o Khial Akbar
19. Khabai s/o Saali Khan
20. Sahib Khan s/o Hussain Khan



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21. Musa Khan s/o Khaista Khan
22. Mink Khan s/o Piao Khan
23. Saif Ullah Khan s/o Gulla Khan
24. Nazeer Khan s/o Gulla Khan
25. Sahib Khan s/o Gul Bat Khan
26. Ghafoor Khan s/o Gul Bat Khan
27. Fazal Badshah s/o Shakeeb Khan
28. Khial Janan s/o Saali Khan
29. Khobak s/o Abdul Khanan
30. Khail Akbar Zareen Khan

All R/O Qaum Mamozai, Tappa, Abdul Raheem Khel, Essark, Tehsil Upper, District Orakzai.

..... (Defendants)

**SUIT FOR DECLARATION OF TITLE, POSSESSION
THROUGH PARTITION AND NECESSARY RESTRAINING
ORDERS**

JUDGEMENT:

10.02.2026

This order is to decide instant suit filed by Mr. Sultan Akbar and 14 others for declaration of title, possession through partition and necessary restraining orders against Mr. Zarbat Khan and 31 others, the defendants.

Pleadings:

The claim as related in the plaint reads that the plaintiffs are members of Qaum Mamozai, sub tribe Abdur Rahim Khel, and residents of Essa Rak Tehsil Upper Orakzai. Plaintiffs claim they are owners in possession through generations of their share in suit land measuring approximately 200 Jirabs, surrounded by mountains spanning over 5 to 6 hundred Jirabs.

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The plaint reads that suit land is entitlement of the plaintiffs who have fruit trees grown over it, and buildings of clay standing over it. That defendants are beyond their rights in interfering with their entitled possession of suit land by cutting trees, and demolishing structures standing over it.

The plaint further reports that in 1981 the parties engaged in a blood-feud that resulted in the migration of the plaintiffs to Kohat. Defendants, it is alleged, taking advantage of the absence of the plaintiffs periodically attempted to misappropriate the suit land by chopping trees over it, or damaging the structures left by the plaintiffs.

Pleadings continue that previously the area was a tribal district with little or no administrative control which further emboldened the defendants to consolidate their illegal interference in the suit property. Now, after merger of FATA into KPK, plaintiffs claim that they law and order situation in the district is suitable for them to claim their entitlement. It is alleged that defendants were repeatedly urged to recede back to their legal entitlement and desist from illegal interference but to no avail, hence the suit. Plaintiffs pray for possession through partition and necessary injunctions for enforcement of their rights.

Defendants, in addition to the legal objections to the validity of the suit, denied the factual version of the plaintiffs.

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suit titled Mr. Zarbat Khan Vs Muhammad Deen Shah pending adjudication in this court is true and correct. They claim to be owners in possession of suit land, and that the suit of plaintiffs is baseless and false. It is held that plaintiffs have no relation to suit land.

Differences between the sides as distilled from their pleadings were reduced into the following issues:

Issues:

1. Whether the plaintiffs have got cause of action?
2. Whether the suit of the plaintiffs is time barred?
3. Whether the present suit is bad for mis-joinder and non-joinder?
4. Whether the suit property is the ownership of the plaintiffs and the plaintiffs are entitled to enjoy all the rights associated suit property?
5. Whether the plaintiffs are entitled to the decree as prayed for?
6. Relief.

Proposed Issue

1. Whether the parties are co-sharer or exclusive owner of the suit property?

Thereafter, both sides were invited to produce their evidence.

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Witnesses/Exhibits:

Sultan Akbar s/o Gul Badshah (plaintiff No.1) appeared as PW-01, Muhammad Din s/o Said Akbar as PW-02, Muhammad Salim s/o Fazal Shah, (Special power of attorney for plaintiffs No.1 to 4 and 6 to 15) appeared as PW-03, Zarbat Khan s/o Zain Khan (defendant No.1) as DW-01, Habib Ur Rehman s/o Gula Khan (special attorney for defendants No. 24, 29, 30 and 32) as DW-02. They have exhibited the following documents;

- i. Copy of special power of attorney for plaintiff No.1 to 4 and 6 to 15 (consist of 02 pages) as Ex.PW-1/1.
- ii. Special power of attorney for plaintiff No. 5/1 to 5/4 (consist of 02 pages) as Ex.PW-3/1.
- iii. Special power of attorney for defendant No. 24, 29, 30 and 32(consist of 02 pages) as Ex. DW-2/1.

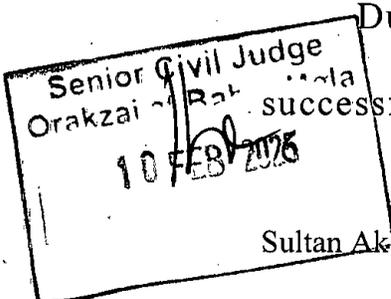
Reasoning/Ruling:

Issue wise reasoning of the court followed by a ruling on each issue, and eventually on the suit is as follows:

Issue No 02 and 03:

These issues pose the regular questions of limitation, joinder of parties. These issues, since they go to the legal roots of the suit, burden both the defense and the court to determine them.

During the course of trial, the defense could not successfully establish the fact of the suit being hit by any of



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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.

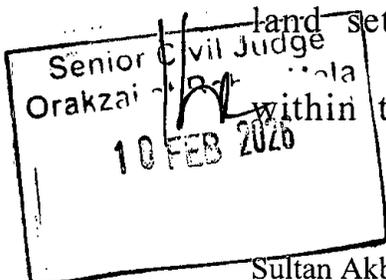
Issue No 04 and proposed issue No. 1:

These issues deal with the claim of entitlement of the plaintiffs as to whether they are entitled as exclusive owners to suit land or to a share of the suit land. These are taken together because decision on one essentially renders the other moot.

Before the court properly embarks upon the examination of the corpus of evidence, it is considered proper to put down preliminary remarks about the administrative and evidentiary constraints faced in civil trials about proprietary claims.

The district, previously a tribal agency, was recently merged into Khyber Pakhtunkhwa, and is yet to conduct its first

land settlement. The implication being that landed property within the district has not been surveyed for the purpose of



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revenue location. Thus, courts in merged districts are at a disadvantage in that no land records of neutral origins exist to assist them in deciding competing claims of title or possession.

Further, land boundaries are denoted by customary methods i.e. marks or permanent points, without precise demarcation, and measurement. Thus, disputing parties refer to their entitlements by specific titles without reporting their exact boundaries, or size. These circumstances constrain the courts to resort to special methods in passing or executing orders for partition of joint-holdings.

Finally, it is also significant to underscore that a parallel suit by Mr. Zarbat Khan, defendant no 01, seeking to declare himself the owner, and denying all/any juridical relation to the plaintiffs with suit property is also pending adjudication.

After this brief but necessary digression, the court shall now advert to the evidence in an attempt to gauge and weigh the merits of the claim or defense, as the case may be.

- In newly merged tribal districts, per customs inherited property devolved through a common grand-ancestor. Thus children of a father or grand-father would tend to live in close proximity, and strangers were/are rarely allowed to reside in an area owned by children of one patriarch.

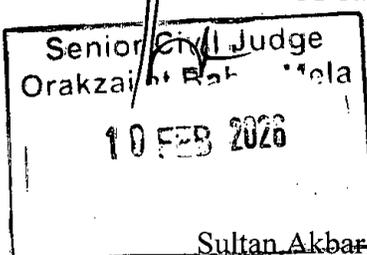
• Plaintiffs' claim that they are permanent residents of the area in which the suit land is located and owners through

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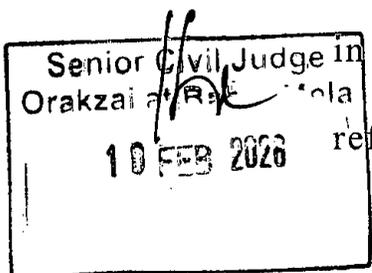
inheritance to the extent of their share. In respect of the claim of being residents, defendant no 01, Mr. Zarat Khan, in his statement PW-01 in the parallel suit, 40/1 of 2021, has admitted the fact. His statement produced by Muharir of the court is available on file as Mark B. Roughly translated the admission reads that defendants are born residents of suit land, Mauza Essa rak, Abdur Rahim Khel.

- About being children of a common great grand-father, defendant no 01 in his statement in the parallel suit, available on file as Mark-B, concedes that in the original plaint submitted in suit 40/1 of 2021, he had averred that the defendants (present plaintiffs) are his second-cousins.
- These two admissions sufficiently establish that present plaintiffs are distant relatives of the defendants, and that they are permanent residents of the area. As indicated above, permanent residents, by local customs, imply land-owners, unless it is shown that they are tenants or owners through purchase.
- Present defendant no 01, in his statement as PW-01 in Suit no 40/1 of 2021, available on file as Mark B admits that in his suit he has not pled or alleged sale or exchange of land by present plaintiffs.



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- The admissions above read together implies that plaintiffs are distant relatives of the defendants; they are born-residents of the area/suit property, and they have not sold or exchanged their ancestral land.
- It is pertinent to underscore that present plaintiff's claim that plaintiffs and defendants own adjacent lands separated by the land of Mr. Rehman, while present defendants who are plaintiffs in suit 40/1 of 2021 allege that present plaintiffs have no relation to suit land.
- Plaintiffs have placed a rough sketch of the suit land to furnish a rough idea of its terrain, and the holdings of its residents and dwellers. The map is marked as Annexure E and was exhibited during the statement of Mr. Muhammad Deen, who is witness no 02 for plaintiffs.
- Similarly, Mark A produced by the muharir is a rough map drawn by present defendant no 01 in his other suit i.e. 40/1 of 2021 as a rough sketch of suit land. In both the maps, the point of separation between the holdings of the two sides is the land of Mr. Rahman. Essentially, both sides admit that land of Mr. Rahman is the dividing point between plaintiffs and defendants.
- A striking element in the statements of Mr. Zarbat Khan



both cases is that in the suit where he is plaintiff, he refers to the defendants as his second cousin, well-known

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to him, but in the present suit he expressly denies acquaintance with them. It must be borne in mind that parties concede the existence of a serious blood-feud running on between them. It is hard to admit that defendant is not acquainted with the plaintiffs.

Preliminary Decree in a Merged Area:

In the prefatory remarks, the court attempted to shed some light on the dynamics prevailing in the district, especially in the backdrop of it being a recently merged district. In absence of land revenue settlement, land-holdings are not documented, and land-boundaries not definitely fixed.

Naturally, measurement of holding of each owner is also not precisely known, even to the parties contesting it. In these circumstances, the court is at a disadvantage in passing a preliminary decree on the measure of entitlement of each shareholder.

However, a preliminary decree is to be passed before actual partition of land mass can be effected. Plaintiffs and defendants are hereby held co-owners to the extent of their entitlements. Land of Mr. Rahman is declared the separating barrier between the two sides. The court, in final decree proceedings shall demarcate and partition the lands owned by the plaintiffs and defendants.

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Needless to state that any co-owner, or his/her heir, conceded to be entitled by both sides shall be included in the partition proceedings in the next stage. Further, corollaries to partition that do not substantially affect the claim or entitlement of the sides, or harm third persons, shall be determined by the court in the next phase. This order, being based on pleadings and evidence of contesting parties, in absence of public records, shall not affect third parties.

In view of the discussion, the issues are decided for the plaintiffs, in the terms produced above.

Issue No 01 and 05:

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 and proposed issue No. 1 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 in the terms stated in the previous issue. Accordingly, the said issues are decided in favour of the plaintiffs.

Relief:

A preliminary decree is hereby passed for partition and

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demarcation of suit land between plaintiffs and defendants.
Land of Mr. Rahman is conceded by both sides to be the

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separating barrier between the estates of the two sides. Exact measurement and other incidental matters shall be decided and determined by the court in final decree proceedings. Further, corollaries to partition that do not substantially affect the claim or entitlement of the sides, or harm third persons, shall be determined by the court in the next phase.

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

Announced
10.02.2026


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

CERTIFICATE

Certified that this judgment of mine consists of twelve (12) pages, each has been checked, corrected where necessary and signed by me.


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