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

CIVIL APPEAL NO.	:	7/13 OF 2026
DATE OF INSTITUTION	:	07.01.2026
DATE OF DECISION	:	28.02.2026

ASGHAR KHAN S/O UMAR KHAN, SECTION MALA KHEL, SUB SECTION AZIZ KHEL, KASKI ZAR, TEHSIL UPPER, DISTRICT KOHAT

.....(APPELLANT)

-VERSUS-

SIAL MUHAMMAD S/O DEEN MUHAMMAD, R/O MALANG ABAD, DISTRICT KOHAT

..... (RESPONDENT)

JUDGEMENT
28.02.2026

This civil appeal was preferred against the judgment and decree dated 27.11.2025 passed by the Court of learned Senior Civil Judge, Orakzai whereby Civil Suit No. 60/1 of 2022 was dismissed.

2. The suit was brought by the appellants/plaintiffs for declaration to the effect that they are owners of the suit property since their forefathers measuring about 30 Kanals situated at Mula Khel, Tapa Aziz Khel, Kaski Zar District Orakzai, described with four boundaries in headnote of the plaint. The suit property was devolved upon Deen Khan, the grandfather of plaintiffs and his issueless cousin Lobat Khan as their ancestral property. The defendants have forcefully and illegally occupied the same by claiming its ownership. They are bent upon to interfere and possess the suit property and change its nature by raising construction over the same which are ineffective upon the rights of the appellants/plaintiffs. They also sought demolition of any construction raised by the defendants over the same prior to or

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during pendency of the suit with permanent and mandatory injunction to restrain the defendant from claiming ownership, causing interference and changing nature of the suit property etc.

3. As per averments of the plaint, the plaintiffs belong to caste Mala Khel, Tapa Aziz, Village Kaski Zar, District Orakzai. They are owners of the suit property which was the ancestral ownership of their grandfather namely Deen Khan and his cousin Lobat Khan who died issueless. The said Lobat Khan along with his family was killed in enmity with Kaski Zar whereafter father of the defendant left the area and started living in Kohat. In the year 2016, the defendant came back to District Orakzai and constructed a house over 20 Marla of the suit land without any family or formal partition. The defendant has forcefully and illegally occupied the same without having any concern with the suit property. Therefore, the suit was filed.

4. The suit was contested by the defendant by submitting written statement. Pleadings of the parties were reduced to issues. 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 preferred.

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5. I have heard learned counsel for the parties and perused the record.

6. During the course of evidence, the appellant produced only one witness before the Court as PW-1. He himself appeared before the Court as PW-2 and two sons of the plaintiff No. 2 appeared

before the Court as PW-3 and PW-4. None of them narrated the facts as submitted in the plaint regarding ownership of the suit property by forefathers of the plaintiff namely Deen Khan and his cousin Lobat Khan. The PW-1, PW-3 and PW-4 narrated a different story that the suit property was given on lease about 40/50 years ago by the plaintiffs to Bahadar Nawasi. When they were asked to return, they claimed ownership. When the plaintiffs tried to cultivate the suit land, the defendants opened fire resulting into killing of two bulls. Due to this enmity Bahadar Nawasi committed the murder of Lobat Khan. Resultantly, the suit property was handed over to plaintiffs. However, the defendants started claiming ownership of the suit property upon their return from displacement from the area due to law-and-order situation. In his cross examination, the PW-1 admitted that the defendant belongs to Sarokhel Kande whereas the plaintiffs belong to Beemar Kande and both of them are Mala Khel by caste having Tapa Aziz Khel. He admitted that the defendant has constructed a house in the suit land. He submitted that he does not know the grandfather and grand-grandfather of the plaintiff. He also admitted that the suit property was being cultivated by defendant through a tenant. Similarly, PW-3 also admitted the existence of the house of defendant in the suit land. The PW-4 also admitted the construction of a room by the defendant in the suit property.

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7. The plaintiff No. 1 submitted in his statement as PW-2 that the suit property is their ownership which is in their possession.

They had enmity with Bahadar Nawasi about the suit property and one of their family members Nobat Khan was murdered. The defendant No. 1 is residing at Hangu and he has constructed a room in the suit land during the period of militancy. In his cross examination, PW-1 admitted the existence of two-story house of the defendant in the suit land. He also admitted the registration of FIR on account of firing when the defendant was cultivating the suit land.

8. It is thus evident that the appellants were claiming ownership of the suit land being legal heirs of Deen Khan and his issueless cousin Nobat Khan, but during the course of evidence all the PWs produced a different story of possession of the suit property by Bahadar Nawasi on account of lease about 40/50 years ago with blood-feud enmity with them at the time of taking possession of the suit property. Secondly, the plaint is self-contradictory in which the appellants on one hand claim sole ownership of the suit property and on the other hand submit that the defendant has constructed a house on the suit property without private or legal partition; hence, he was admitted to be a co-owner. Thirdly, the construction of a house by the defendant and cultivating the suit land by him through himself or through tenant were admitted by almost all the PWs in their cross examinations.

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9. On the other hand, the respondent submitted in his written statement that the suit land is their ownership as Sarokhel and the plaintiffs are belonging to a different caste; therefore, they

have got no concern with the suit property. However, it was in possession of the plaintiffs for a period of two years on lease, but they stopped payment of lease amount by alleging ownership.

10. During the course of evidence, the respondent produced his four neighbours before the Court as DW-1 to DW-4. All of them deposed that the suit property is the ancestral ownership of the defendant which is in his possession since long and his two-story residential building is also situated in the suit land.

11. In view of the above facts and circumstances, the appellants could not establish the ownership of their predecessor Deen Khan and his cousin Nobat Khan in respect of the suit land and their entitlement to their legacies. The learned Trial Court has rightly dismissed the suit. This appeal being devoid of merits is dismissed. File of this Court be consigned to record room after its necessary completion and compilation.

Announced:
28.02.2026

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CERTIFICATE

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

Dated: 28.02.2026

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at Baber Mela