

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

CIVIL APPEAL NO. : 2/13 OF 2026
DATE OF INSTITUTION : 05.01.2026
DATE OF DECISION : 26.02.2026

GUL HASSAN S/O ABID ALI, CASTE STORI KHEL, TAPA TAZI
KHEL, TEHSIL LOWER, DISTRICT ORAKZAI AND OTHERS

.....(APPELLANTS)

-VERSUS-

ALI MAT KHAN, TAPA TAZI KHEL, TEHSIL LOWER, DISTRICT
ORAKZAI AND OTHERS

..... (RESPONDENTS)

JUDGEMENT

26.02.2026

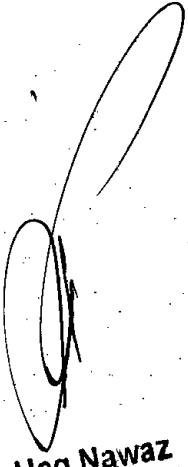
This civil appeal was preferred against the order dated 25.11.2025 passed by the Court of learned Civil Judge, Tehsil Courts Kalaya, Orakzai whereby Civil Suit No. 42/1 of 2023 was dismissed being ambiguous, deficient in material particulars, not maintainable and devoid of cause of action.

2. The suit was brought by the appellants for declaration along with permanent and mandatory injunction to the effect that the plaintiffs/appellants are Tazi Khel of caste Stori Khel and owners/co-sharers of the suit property, described with four boundaries in headnote of the plaint whereas the defendants belong to caste Ali Khel and Sheikhan and they have possessed the suit property forcibly. They have no right of ownership in the area of Tazi Khel. It was further claimed that several jirgas were held regarding the dispute in question and father of the plaintiff and their two brothers were killed in the process. As a result of which, the defendants were expelled from the area by the local jirga in accordance with local customs and their house


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was put on fire. The plaintiff No. 1 and others started living in the said house; however, the same were again forcefully occupied by the defendants when the plaintiff No. 1 went abroad for earning his livelihood. The plaintiffs also prayed for restraining the defendants from raising construction and selling out the suit property.

3. According to averments of the plaint, the plaintiffs belong to Tazi Khel Tapa of Stori Khel whereas the defendants belong to caste Ali Khel and Sheikhan. They have illegally possessed the suit properties situated in Tazi Khel which was inherited by father of the plaintiffs. Several jirgas were conducted about the unauthorized possession of the defendants which were decided in favour of the plaintiff, but the same were not admitted by the defendants. Rather father and two brothers of the plaintiffs were killed. Resultantly, the defendants were expelled from the area and the suit property was handed over to the plaintiff. Later on, it was again possessed forcibly by the defendants when plaintiff No. 1 was abroad for earning his livelihood. His brother Speen Gul made a complaint to local jirga about illegal occupation of the suit land by the defendants who warned the defendants to leave the area and pay fine but they refused. The defendants are bent upon to sell out some portion of the suit property in favour of the defendant No. 8 who have started construction in the suit property. Therefore, the suit was filed.


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4. During the course of evidence of the appellants/plaintiffs, the case was fixed for arguments on application for production of

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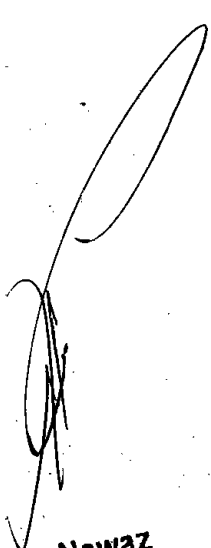
additional witnesses by appellants/plaintiffs. After hearing arguments on the said application, the learned Trial Court passed the impugned order and dismissed the suit being ambiguous, deficient in material particulars, not maintainable and devoid of cause of action. It was observed that exact boundaries of the suit property have not been specified, nature of the property is not given, extent of share of each party is not mentioned and it is not evident that how and when the cause of action accrued to the plaintiff. It was further observed that no supporting documentary evidence regarding inheritance and Shajra-e-Nasab etc. were enclosed with the plaint. Similarly, no particulars of the FIR about murder of the father and brothers of the plaintiff or any judgment of the criminal court regarding conviction of the defendants in the said case or any documentary evidence showing involvement of the defendants in such offence was produced before the court. Feeling aggrieved from the said order, the appellants preferred this appeal.


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5. I have heard learned counsel for the parties and perused the record.
6. The defendants in their written statement have alleged a clearcut difference in the boundaries, mentioned in headnote of the plaint, and the map of the suit property attached with the plaint. They denied their relationship with caste Ali Khel or Sheikhan in their written statement and submitted that the suit property is their ancestral ownership. The facts about jirgas

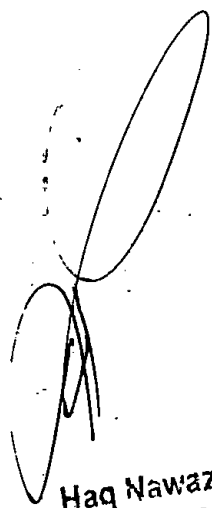
between the parties and blood-feud enmity in the year 1980 were admitted with the submission that the disputes were resolved through jirgas in the years 1988, 1991 and 1994.

7. Since, both the parties were claiming ancestral ownership of the suit property with the exclusion of other party and no share in the inheritance was sought by the appellants; therefore, the question of their share in inheritance does not arise. Needless to mention that no revenue record is available in the area having no settlement as yet; therefore, the production of documentary evidence was not possible. Similarly, the production of FIR etc. before merger of the area was also not practicable. The facts about blood-feud enmity over the suit property was admitted in the written statement; however, the same was not taken into consideration by the Trial Court. The appellants have alleged re-occupation of the suit property by the defendants after their expulsion from the area when the plaintiff was abroad for earning his livelihood which shows that the cause of action accrued upon the refusal of respondents to vacate the same. However, the learned counsel for the appellants could not convince this Court regarding description of the suit property and the four boundaries of the suit property provided in headnote of the plaint could not be found in the map attached with the plaint. In order to remove the said deficiency, the appellant submitted an application for correction in boundaries of the suit properties before this Court during the course of


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arguments. The Hon'ble Baluchistan High Court held in PLD 2018 Baluchistan I as under;

"Legal requirement as contemplated by O.VII, R.3, C.P.C., obliged the plaintiff to mention the description of the property to sufficiently identify the disputed property either by boundaries or numbers in the record of settlement of survey. No ambiguity or difficulty was to exist in locating and determining the disputed property. To ascertain the disputed property with exactitude the court must make all efforts and while performing such duty, the court could call the parties to file better statements, amend the plaint and even require the parties to produce such evidence. To ask for an amendment was an inherent and vested right of a plaintiff subject to two conditions i.e. (i) the proposed amendment would not alter and change the character and complexion of the suit and (ii) all such amendments would be made as might be necessary for the purpose of determining the real questions in controversy between the parties and such right was governed by the provisions of O.VI, R. 17, C.P.C."


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8. Similarly, according to 2010 MLD 1596;

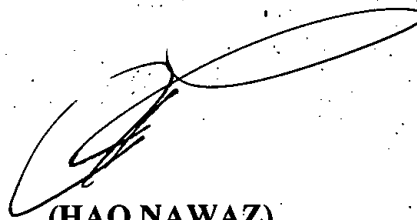
"Sufficient description for identification of the property was required to be given in the plaint. In

case of failure of describing the same properly, further and better particulars, could be asked from the concerned party; or suit be allowed to be amended. Such was no ground for dismissal of suit on very initial stage; that too without recording of any evidence."

9. In view of the above, the appeal is allowed and the impugned order is set aside. The application submitted by the appellants is remitted to the Trial Court for its disposal in accordance with law. Parties are directed to appear before the Trial Court on 07.03.2026 for further proceedings. File of this Court be consigned to record room after its necessary completion and compilation.

Announced:

26.02.2026

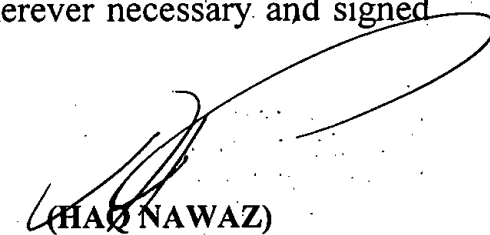


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CERTIFICATE

Certified that this judgment consists of six (06) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 26.02.2026



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