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FORM "A"

FORM OF ORDER SHEET

IN THE COURT OF NOOR UL HAQ, CIVIL JUDGE/JUDICIAL MAGISTRATE-II, KALAYA ORAKZAI
Case Title: _____ Vs _____

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order 13	07.07.2026	Parties present alongwith their counsels. Vide this order the Court intends to dispose of the instant complaint filed u/s 145 Cr.P.C by complainant. Arguments heard and record perused. Perusal of the record would reveal that complainant through instant complaint had stated that he is lawful owner/co-sharers of the suit property measuring about 123 jirib situated near HQ Kalaya, Orakzai. He further alleged that suit property was handed over to complainant through family partition and Qomi Jirga held in 1983-84, since then respondent no. 02 to 14 are tenants/cultivators. Furthermore, respondent no. 02 to 14 belong to Qom Afridi, Qamber Khel, District Khyber and their predecessor Aspeen Gul was settled in Khan Mela as tenants/cultivator. He had been giving the half produce of the suit property to the predecessor of complainant during his life time, and after his demise, the said produce has been given to the complainant, by his legal heirs. That recently, respondent/accused have denied the half produce of the suit property to the complainant. Upon the same many jirgas were convened between the parties, but they refused. Also, stated that respondents/accused has also made firing to commit qatl-e-amd of the complainant party, which

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resulted to lodging of FIR no. 49 dated 17.05.2025 under sections 324/436/427/148/149 PPC against the respondents/accused. Complainant time and again asked the respondent to give lawful and local custom half produce of the suit property but respondents/accused refused to give. He therefore, stated that due to this act and conduct of respondent/accused, there exists apprehension of breach of peace between the parties. Respondent were summoned, they appeared in person and marked their attendance. Consequently, SHO concerned was directed to submit inquiry report. Accordingly, SHO concerned visited the spot prepared site plan and also submitted final report before the Court.

As per report of SHO concerned, the suit property is the ownership of Khan Family, wherein, Saad Khan s/o Khala Jan, Amir Ihsan s/o Ihsan Khan (complainant) etc are owners and no family partition has been made between them. Moreover, SHO report indicates that there exists imminent threat to the breach of peace.

Before proceedings to discussion the case, section 145 Cr. PC is reproduced below:

"Section 145 Cr.P.C. empowers an Executive Magistrate (or the competent Magistrate, as applicable under the relevant provincial law) to take preventive action where a dispute regarding possession of immovable property is likely to result in a breach of the peace".

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Essentials of Section 145 Cr.P.C.:

- *The Executive Magistrate must be satisfied, on the basis of a police report or other reliable information, that:*
 - *a dispute exists regarding land, water, or the boundaries thereof; and*
 - *the dispute is likely to lead to a breach of the peace.*
- *The Magistrate issues a preliminary order requiring the parties to submit their written statements regarding actual possession.*
- *The Magistrate decides which party was in actual possession on the date of the preliminary order, irrespective of the question of title or ownership.*
- *If one party was forcibly and wrongfully dispossessed within two months before the preliminary order, the Magistrate may treat that party as being in possession.*
- *The order remains effective until the rights of the parties are determined by a competent civil court.*

The above section of law provides that it can be invoked when there is an apprehension of breach of peace between parties, over certain immovable property.

Upon the point of attachment, the Hon'ble High Court (AJ&K) in a case reported as 2019 P Cr. L J 364 has held:

"The sole stand of the petitioner is that in presence of civil litigations, proceedings under section 145 Cr. PC cannot initiated. Under section 145 Cr. PC, whenever Magistrate is satisfied that a dispute likely to cause breach of peace exists regarding any land and considers it a case of emergency, he may attach the subject and may an order for proper custody of such subject. In section 145 Cr. PC it is nowhere provided that in presence of civil litigation the Magistrate shall not exercise his powers conferred on him under this section,

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however, the superior courts have laid down principles that when the Magistrate can proceed and when he cannot proceed under section 145 Cr. PC in presence of Civil litigation. In case titled *Gul Khan vs Muhammad Hafiz Khan and 09 others* (1992 MLD 2105) it has been held by the learned Judge of High Court of Azad Jammu Kashmir that mere filing of civil suit would not stand in the way of Magistrate to exercise powers under section 145 Cr. PC and make attachment of subject of dispute. The relevant observation recorded at page 2109 in para 11 of the report is as under: -

"The other aspect of the proposition is that once the civil court took the cognizance of the subject of dispute and issued interim injunction or appointed its receiver, or passed a decree, such order of the civil court was to be given complete effect. Whenever, any dispute in respect of such property arose between the parties, the Magistrate or the police, as the case maybe, was empowered to take measure in order to maintain the peace, under section 107 Cr.PC. It was not permitted to proceed under section 145 Cr.PC into pass the order in derogation to the order of the civil court. Of course, when mere civil suit was instituted and no interim injunction was issued or receiver was appointed or decree finally passed, the institution of the civil court would not stand in the way of Magistrate to exercise powers under section 145 Cr.PC and make attachment of the subject of dispute. This was in exception to the aforesaid rule. This principle finds approval of the Supreme Court of Azad Jammu & Kashmir in *Suleiman's case* (1983 PCr-LJ 2590), *Muhammad Ashraf Khan's case* (1981 PCr-LJ 1018) and *Mst. Fatima's case* (1971 SCMR449).

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Similarly, the Hon'ble Peshawar High Court Peshawar, in a case reported as PLD 2013 Peshawar 61 has held:

Admittedly, the land in question is shamilat belonging to four tribes, therefore, provisions of section 145, Cr.P.C. are applicable because object of section 145 is prevention of dispute of immoveable property likely to cause breach of peace and to maintain status quo till the controversy is decided by the court of competent jurisdiction. This section aimed to meet an emergent situation only causing threat to the peace and the same cannot be used for settling the rights of the parties. Though, the trial court under section 145(4) Cr.P.C. is legally bound to inquire into the matter but it is on record that seven persons have been murdered and in this respect criminal cases have been registered, so, keeping in view the facts and circumstances of the case, there is likelihood of breach of peace between the parties. Besides the above, the trial court gave opportunity to parties to submit their objections, if any, with regard to the attachment order. The present petitioners were required to have filed their objections/reply or claim before the Divisional Magistrate/respondent No.17 as per order dated 18-1-2010. Moreover, it is on record that till today no official or private partition has taken place neither any demarcation proceedings have been conducted, in this regard. The matter prima facie, seems to be a civil dispute and no one, at present can claim its exclusive/absolute ownership.

The basic purpose of proceedings under section 145, Cr.P.C. is to meet an emergent situation in order to maintain peace and further to enable parties to set the controversies at naught through civil court regarding title or claim of property in dispute. It is mandatory requirement of section 145, Cr.P.C. that there must not only be a dispute but it is essential that a dispute is likely to cause breach of peace, thus, in the given circumstances,

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when already 7/8 murders have been committed over the same dispute, therefore, the learned lower forums rightly and legally passed the impugned orders. The impugned orders are concurrent, which require interference only when the same are suffering from jurisdictional defect, illegality or material irregularity but nothing has been established on record.

The record of present case reveals that an FIR no. 49 dated 17.05.2025 under sections 324/436/427/148/149 PPC against the respondents has already been lodged (copy placed on file), and during pendency of this petition, parties reportedly made altercation over the subject property, which resulted into lodging of report vide Naqal Mad no. 06 dated 04.07.2026 (copy annexed with the file).

In given circumstances, after hearing both the parties in person as well as through their learned counsels and perusing the SHO/Inquiry Officer report, worthy case laws referred to above, FIR and other criminal proceedings between parties, it is observed that a dispute concerning the subject property exists which indicates that there is every likelihood of breach of peace between the parties. In order to prevent any disturbance of public tranquility and to maintain peace between parties, this Court is satisfied that proceedings under Section 145 Cr.P.C. are warranted. Accordingly, the subject property is hereby attached. However, this order shall not apply to the land, acquired by

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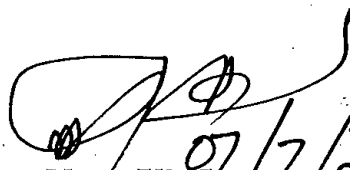
the Federal or Provincial Governments.

It is further clarified that these proceedings are preventive in nature and this Court in capacity of Judicial Magistrate, proceeding under section 145 Cr. PC, cannot adjudicate upon the question of title. This order shall not be meant to declare any title of any party. The parties are at liberty to approach the competent civil court or any other proper forum for determination of their respective rights over title, if they so desire.

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

Announced:

07.07.2026


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Noor Ul Haq,
Judicial Magistrate-II,
Tehsil Court Kalaya, Orakzai