

**IN THE COURT OF MUHAMMAD JUNAID ALAM,**  
CIVIL JUDGE-II, KALAYA ORAKZAI

**Suit No. 63/1 of 2023**

**Date of Original Institution.....07.09.2023**

**Date of Decision of the suit.....19.04.2025**

1. KHADI KHAN SON LAJBAR KHAN,
2. AFZAL KHAN SON OF KHAN GUL,
3. KHIAL MAR KHAN SON OF REHMAN AND
4. RAFI ULLAH SON OF ZAMAN KHAN, ALL  
RESIDENTS OF QOM MISHTI, TAPPA MAMIZAI,  
MARGHIO CHAN, TEHSIL LOWER DISTRICT  
ORAKZAI.

.....PLAINTIFFS

VERSUS

1. SAEED ULLAH SON OF ABDUL MALIK,
2. ABDULLAH KHAN SON OF SENJAB KHAN,
3. AHMAD SON OF AL MAR KHAN,
4. SAIF ULLAH SON OF ABDULLAH KHAN,
5. ALAMZAIB SON OF SAEED ULLAH,
6. MEER AZAM SON OF SENJAB AND
7. AZEEM SON OF KHWAJA MUHAMMAD KHAN, ALL  
RESIDENTS OF QOM MISHTI, CHAPPAR MISHTI,  
DISTRICT ORAKZAI.

.....DEFENDANTS

**SUIT FOR DECLARATION AND PERMANENT  
INJUNCTION**

**Counsel for plaintiffs: Mr. Basit Hafeez Advocate**

**Counsel for defendants: Mr. Noor Karim Advocate**

**JUDGMENT**

**19.04.2025**

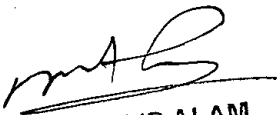
  
MUHAMMAD JUNAID ALAM  
Civil Judge / JM-II  
Orakzai at Kalaya

Vide this judgment the Court intends to dispose of the  
instant suit filed by plaintiffs against defendants for

declaration and perpetual injunction to the effect that the plaintiffs are owners in possession to the extent of their legal shares in the suit property measuring about 10 jeerab situated near Saida Khan Talab, Mishti, district Orakzai and thus defendants have got no right to claim their ownership over the suit property.

2. Brief facts of the case as narrated in the plaint are that plaintiffs and defendants are relative inter se and plaintiffs are owner in possession to the extent of their legal shares in the joint/un-partitioned suit property measuring about 10 jeerab. That the suit property is still un-partitioned and until now no official or private partition has taken place between plaintiffs and defendants. Defendants have got no right to interfere with the suit property and raise construction over the suit property. Furthermore, defendants were time and again asked not to interfere in the legal share of plaintiffs in the suit property or claim their ownership over the same but they refused, hence the instant suit has been instituted.

3. After institution of the suit, the defendants were summoned and accordingly defendant no. 01, 05 & 07 appeared and submitted their written statement with legal and factual objections raised therein, while defendant no. 02, 03, 04 &

  
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06 remained absent despite proper service, hence, placed and proceeded ex-parte.

4. Out of controversies of the parties, as raised in their respective pleadings, the Court has framed the following issues.

1. Whether the plaintiffs have got a cause of action?
2. Whether plaintiffs are owners in possession to the extent of three and half jeerab in un-partitioned suit property measuring 10 jeerab, fully detailed in the headnote of the plaint and defendants are forcibly raising construction over the valuable portion of suit property?  
OPP
4. Whether defendant no. 01, 05 & 07 are owners in possession of the suit property and are mining coal from the suit property since 1995? OPD
5. Whether the plaintiffs are entitled to the decree as prayed for?
6. Relief.

4. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as six witnesses and thereafter closed their evidence. Contrary to this, defendants could not produce any independent witness. Only the defendant no. 01, himself appeared before

  
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the Court and thereafter defendants closed their evidence with a note.

5. After the closure of the evidence, both the learned counsels for the parties to the suit then advanced arguments. Learned counsel for the plaintiffs opened the arguments and argued that plaintiffs and defendants belong to one Qaum. He further argued that plaintiffs are owners in possession to the extent of their legal shares in the joint/un-partitioned suit property measuring about 10 jeerab. That the suit property is still un-partitioned and until now no family or private partition has taken place between plaintiffs and defendants. Defendants have got no right to interfere with the suit property and raise construction over the suit property. Furthermore, counsel for plaintiffs argued that the plaintiffs have succeeded to prove their stance through cogent, convincing and reliable evidence and further nothing in rebuttal is available on the record, hence prayed that the suit in hand may kindly be decreed in favor of plaintiffs and against the defendants for the relief as prayed for.

6. Contrary to this learned counsel for the defendants argued that plaintiffs have got no cause of action. He further adduced that neither parties to the suit are relative inter se nor suit property is joint ownership of the parties to the suit



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rather suit property is the sole ownership of the defendants. He further argued that defendants spent a lot of money to dig out coal mine. He further argued that defendants have also dig out a dug well in the suit property. He also argued that defendants started coal mining since 1995. He further argued that plaintiffs failed to prove their stance through cogent, reliable and convincing evidence. While, on the other hand, the defendants have succeeded to produce evidence in light and support of their stance alleged in their written statement. Hence, prayed that as plaintiffs had failed to prove their case, accordingly the suit in hand may kindly be dismissed.

7. In the light of perusal of record, available evidence and valuable assistance of both the learned counsels for the parties, the issue wise findings of the Court are as under.

**ISSUE NO. 2:**

**Whether plaintiffs are owners in possession to the extent of three and half jeerab in un-partitioned suit property suit property measuring 10 jeerab, fully detailed in the headnote of the plaint and defendants are forcibly raising construction over the valuable portion of suit property? OPP**

  
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Plaintiffs have claimed in their plaint that they are owners-in-possession of the suit property to the extent of their legal

shares in the joint/un-partitioned suit property. That the suit property is still un-partitioned and until now no family or official partition has taken place between plaintiffs and defendants. To prove their stance plaintiffs produced one Iltaf Ali ASHO police station Kuraiz Boya in the witness box as PW-01 who deposed that on the directions of learned Senior Civil Judge Orakzai, he conducted a Jirga between parties to the suit, whereby the defendants refused the Jirga. In this regard he scribed the jirga verdict, which is Ex. PW-1/1. During cross examination he deposed that the possession of the suit property was with defendants. It is also correct that he has no written proof regarding the requisition of the parties for jirga.

One Muhammad Salim son of Miraj Gul was produced and examined as PW-02, who was the jirga member. He deposed on oath in light and support of the stance of plaintiffs as contained in the plaint. He produced his CNIC which is exhibited as Ex. PW-2/1. During cross examination he stated that it is correct that suit property is in possession of defendants.

  
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یہ درست ہے کہ جائیداد متدعو یہ پر قبضہ مدعا علیہم کا ہے

He also admitted that defendants are coal mining coal from the suit property since 1995.

یہ درست ہے کہ مدعا علیہم سال 1995 سے جائیداد متدعوہ میں کوئٹہ مانگ کر رہے ہیں

He said that it is incorrect that defendants have made *Painda Khan* pond in the suit property. Self-stated that defendants have concrete/pavement the said pond. It is correct that plaintiffs are in possession of the suit property since less than thirty years. Self-stated that parties to the suit have exchanged the suit property.

یہ کہنا غلط ہے کہ مدعا علیہم نے جائیداد متدعوہ میں پائینڈہ خان تالاب بنایا ہے۔ از خود کہا کہ مدعا علیہم نے

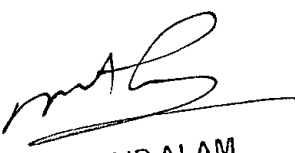
تالاب کی چنگلی کی ہے۔ یہ درست ہے کہ مدعیان 30 سال سے کم عرصہ سے جائیداد متدعوہ پر قابض

ہیں۔ از خود کہا کہ جائیداد متدعوہ فریقین نے بذریعہ تبدیلی ایک دوسرے کو دئے ہیں۔

He also said that it is correct that suit property is not ancestral.

جائیداد متدعوہ موروثی زمین نہ ہے

One Mujahid Khan was produced and examined as PW-03, he deposed on oath in light and support of the stance of plaintiffs as contained in the plaint. He produced his copy of CNIC which is Ex. PW-3/1. During cross examination he stated that suit property is not ancestral rather parties to the suit have exchanged.

  
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جائیداد متدعوہ موروثی نہ ہے۔ از خود کہا کہ جائیداد متدعوہ کا تبادلہ ہوا تھا۔

He further stated in his cross examination that *Painda Khan* pond had been there in the suit property since long.

پائندہ خان تالاب عرصہ دراز سے جائیداد متدعوئیہ میں موجود ہے۔

One Peer Gul son of Samand Gul was produced and examined as PW-04, he stated that he was present on 02.09.2023 in the police station as jirga member regarding suit property. Today I have seen Ex. PW-1/1, wherein my thumb impression has correctly been mentioned. During cross examination he stated that it is correct that the defendants have dig out the coal mine

یہ درست ہے کہ جائیداد متدعوئیہ میں مدعا علیہم کا کوئلہ نکلا ہے۔

One Hadi Khan son of Lajbar Khan was produced and examined as PW-05 i.e. plaintiff no. 01 himself appeared in the witness box. He deposed on oath in light and support of the stance as contained in the plaint. During cross examination he stated that it is correct that suit property is in possession of defendants since decades.

یہ درست ہے کہ جائیداد متدعوئیہ پر عرصہ دراز سے مدعا علیہم کا قبضہ ہے۔

  
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He admitted that it is correct that they were not made party in the case Sunab Haji etc, because they are not owners.

یہ درست ہے کہ دعویٰ از سناپ حاجی وغیرہ میں ہمیں فریقین اس لئے نہیں بنایا تھا کہ ہم مالکان نہیں تھے۔



It is correct that one coal mine of defendants was successful in the year 2008 in the suit property.

یہ درست ہے کہ مدعا علیہم کا سال 2008 میں جائیداد متدعویہ میں ایک کوئلہ مائن کامیاب ہوا تھا۔

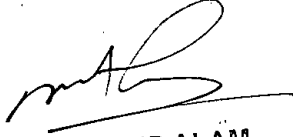
He said that it is also correct that no share was given to us in the said coal mine.

یہ بھی درست ہے کہ اس کوئلہ مائن میں ہمیں کوئی حصہ نہیں دیا تھا۔

One Khayal Mar Khan son of Rehman was produced and examined as PW-06 i.e. plaintiff no. 03 himself appeared in the witness box. He deposed on oath in light and support of the stance as contained in the plaint. During cross examination he stated that plaintiffs have not mentioned in the plaint that the suit property is ancestral. Self-stated that the suit property has been exchanged.

دعویٰ ہذا میں ہم نے یہ تحریر نہیں کیا ہے کہ جائیداد متدعویہ موروثی ہے۔ از خود کہا کہ جائیداد متدعویہ کا

تبادلہ ہوا ہے۔

  
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Also admitted that it is correct that defendants had been mining coal from the suit property since 1995.

یہ درست ہے کہ مدعا علیہم جائیداد متدعویہ میں سال 1995 سے مائننگ کی کھودائی کر رہے ہیں۔

It is correct that we have not annexed the family tree with the plaint.

یہ درست ہے کہ دعویٰ ہذا کیساتھ ہم نے شجرہ نسب نہیں لگایا۔

It is correct that we have not mentioned the exchange of the suit property in the plaint.

یہ درست ہے کہ تبادلہ کا ذکر ہم نے دعویٰ ہذا میں نہیں کیا ہے۔

It is correct that we have not measured the suit property.

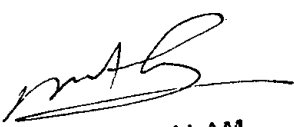
Self-stated that suit property comprises of 10-15 jeerabs.

یہ درست ہے کہ جائیداد متدعو یہ کی پیمائش ہم نے نہیں کی ہے۔ از خود کہا کہ جائیداد متدعو یہ بر مشتمل 10

سے 15 جریب ہوگی۔

In light of the above evidence produced by the plaintiffs to prove the issues in hand, it has been noticed that although PWs deposed in light and support of the stance of plaintiffs as claimed in their plaint. However, during cross examination all the PWs were contradicted in material particulars. A brief of said contradictions is mentioned as under;

As for as the possession of the suit property is concerned, it is pertinent to mention here that PW-01 admitted in his cross examination that the suit property is in possession of defendants. Furthermore, PW-02 also stated in his cross examination that the suit property is in possession of the defendants and they are mining coal since 1995 from the suit property. The PW-05, i.e. plaintiff no. 01 himself appeared in the witness box who also admitted that

  
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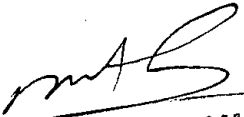
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in his cross examination that it is correct that the suit property is in possession of defendants since long.

As for as, the stance that suit property is ancestral property is concerned, it is pertinent to mention here that plaintiffs have stated in their plaint that the suit property is joint and un-partitioned ownership of the parties and plaintiffs are entitled to their legal shares of three and half jeerab in the suit property, however, when plaintiff's witnesses appeared in the witness box, they admitted in their cross examination that the suit property is not ancestral, even PW-03 & PW-06 admitted in their cross examination that the suit property is not ancestral, rather it was exchanged by the defendants.

As far as Painsa Khan Pond is concerned, it is pertinent to mention here that PW-02 stated in his cross examination that defendants have cemented the said pond. PW-03, stated in his cross examination that Painsa Khan pond does exist in the suit property since long.

  
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As far as, exchange of suit property concerned, it is pertinent to mention here that plaintiffs have not mentioned the fact in the plaint rather this fact had been concealed from the court. PW-06, the plaintiff no. 03 and PW-03 Mujahid Khan stated in their cross examination that the suit

property was not ancestral rather it was exchanged. On one pretext the plaintiffs claim it to be ancestral one and on the other hand they admit that the suit property had been exchanged. Therefore, contradictions exist in the statements of plaintiffs and their witnesses.

It is also worth mentioning here that plaintiffs had alleged in their plaint that plaintiffs belong to Qaum Mishti while during cross examination PW-02 Muhammad Saleem stated that plaintiffs belong to Qaum Ali Khel.

It is also worth mentioning here that plaintiffs alleged in their plaint that the suit property is joint/un-partitioned and until now no private or official partition has been made. However, on perusal of the statements of PWs it has been noticed that all the PWs failed to utter a single word regarding the abovementioned facts.

It is also worth mentioning here that plaintiffs in addition to their stance alleged in the plaint also made improvements by introducing new facts in their evidence and in this respect PW-06 stated in his cross examination that it is correct that they had not measured the suit property, however, self-stated that the suit property consisting upon 10-15 jeerab.

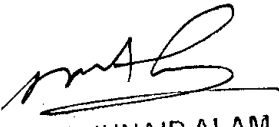
  
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In light of the above discussion, it has been noticed that all the PWs were contradicted in material particulars and furthermore, plaintiffs failed to prove the issue in hand through cogent, convincing and reliable evidence, hence accordingly the issue is hereby decided in negative against the plaintiffs and in favor of the defendants.

**ISSUE NO. 04**

**Whether defendant no. 01, 05 & 07 are owners in possession of the suit property and are further mining coal from the suit property since 1995? OPD**

Defendants have stated in their written statement that neither parties to the suit are relative inter se nor suit property is joint ownership of the parties to the suit rather suit property is the sole ownership of the defendants. They further stated that defendants spent huge money to dig out coal mine. They further stated that defendants have dig out a dug well in the suit property as well. They further stated that defendants are mining coal since 1995. To prove their stance defendant no. 01 personally appeared as DW-01 in the witness box and deposed in light and support of their previous stance stated in the written statement. Neither worth mentioning contradiction was recorded in his cross examination nor any new fact came before the court in the

  
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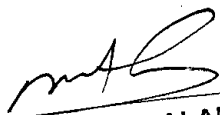
same. This stance of the defendants has already been accepted by the plaintiffs during their evidence.

In light of the above discussion, the evidence produced by defendant no. 01 to prove the issue in hand, it has been noticed that the DW has supported the stance of defendants in his respective examination chief and in his cross examination, while nothing contradictory or in rebuttal has been brought on record by plaintiffs.

In light of the above discussion as defendant no. 01 succeeded to prove the issue in hand through his cogent, convincing and reliable evidence and furthermore nothing in rebuttal or contradictory has been brought on the record by the opposite party during cross examination, hence issue in hand is hereby decided in positive in favour of defendants and against plaintiffs.

**ISSUE NO. 01**

**Whether the plaintiffs have got a cause of action? OPP**

  
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Civil IM-II  
Orakzai at Malaya

In wake of issue wise findings above, the plaintiffs have got no cause of action, hence issue in hand is hereby decided in negative in favour of defendants and against plaintiffs.

**ISSUE NO.04:**

**Whether plaintiffs are entitled to the decree as prayed for? OPP**

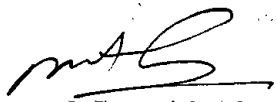
In wake of the issue wise findings above, plaintiffs are not entitled to the decree as prayed for, hence issue in hand is hereby decided in negative in favour of defendants and against plaintiffs.

**Relief:**

As per issued wise findings above the instant suit of plaintiffs is hereby dismissed. No order as to costs. File be consigned to the record room after its necessary completion, compilation and scanning.

**Announced**

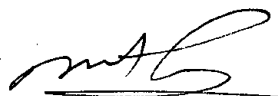
19.04.2025

  
**Muhammad Junaid Alam,**  
Judicial Magistrate-II,  
Tehsil Courts Kalaya, Orakzai

**C E R T I F I C A T E**

Certified that this judgment of mine consist upon fifteen (15) pages. Each page has been read over, checked and signed after making necessary correction therein.

**Dated: 19.04.2025**

  
**Muhammad Junaid Alam,**  
Judicial Magistrate-II,  
Tehsil Courts Kalaya, Orakzai