

**IN THE COURT OF NOOR UL HAQ,
CIVIL JUDGE-II, KALAYA, ORAKZAI**

Suit No. : 17/1 of 2026.
Date of Institution : 23.02.2026.
Date of Decision : 10.09.2026.

Keptan Khel S/O Sheikh Gul, resident of Qoum Sultanzai, Wacha
Dara, Tehsil Lower, District Orakzai.....(*Plaintiff*)

VERSUS

Stana Khel S/O Sheikha Gul & 03 others, all resident of Qoum
Sultanzai, Wacha Dara Tehsil Lower District Orakzai.
.....(*Defendants*)

Mr. Taza Khan Advocate for plaintiff

Ex-Parte Order/Judgment:

10.09.2026

Plaintiff alongwith counsel present. Ex-parte arguments already
heard and record perused.

F A C T S:

Brief facts of the instant suit are that, parties to the suit are real
brothers inter se and legal heirs of one late Sheikh Gul. That after the
demise of Sheikh Gul, the entire ancestral property was privately
partitioned between the parties to the suit. In this respect a written
agreement was scribed in the presence of witnesses. After partition
each party has been enjoying exclusive ownership and possession of
their respective shares. That plaintiff had started construction of a
house, on his own share, but defendants illegally and forcibly stopped
the construction work, without any lawful justification. Furthermore,

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plaintiffs claim that defendants had admitted the partition between the parties, but now they have taken a false and contradictory plea that the specific portion of property, where the plaintiff is constructing house, was un-partitioned, which is false and against the record. That the act of defendants is illegal, mala fide, without lawful authority and amounts to unlawful interference in the peaceful possession and ownership of the plaintiff in the above-mentioned property. That defendants were asked time and again, but in vain, hence the present suit.

Upon institution of the suit in hand, defendants were summoned, they remained absent despite proper services, therefore, placed and proceeded ex-parte and thereafter, plaintiff was allowed to produce his ex-parte evidence.

After submission of list of witnesses, plaintiff produced four (04) witnesses in support of his claim.

Plaintiff himself appeared and recorded his statement as PW-01, who produced his copy of CNIC, which is Ex.PW-1/1. He stated that parties to the suit are the legal heirs of late Sheikh Gul. He also stated that the suit property was amicably partitioned between the parties, in this regard a written deed was scribed, copy of deed is Ex.PW-1/2. When the plaintiff started construction of his house on his owned share, the defendants illegally made interference and stopped the construction work. He also narrated that rather defendants have admitted the private/family partition; however, they are not

allowing him to construct a house on his own share, and stated that they allege that the suit property was not partitioned between the parties. That this assertion is contrary to the actual facts, as the partition of the entire ancestral property left by their predecessor late Sheikh Gul had had already been duly affected. That the suit field was allotted him in the said private/family partition. He lastly requested to decree the suit in his favor against the defendants.

Badshah Khel appeared and recorded his statements as PW-02, who is defendant No.04 in the instant case. Copy of his CNIC is Ex.PW-2/1. He stated that the legacy of late Sheikh Gul was partitioned between the parties and each party has received their respective share. He further stated that the field, where plaintiff wants to construct his house is his own partitioned portion of property. He lastly requested to stop the defendant No.1 to 03 from peaceful possession of plaintiff.

Sanab Gul (Jirga member) appeared and recorded his statements as PW-03. During his evidence he stated that the dispute between parties to the suit regarding the joint property was amicably resolved between the parties with their mutual consent. In this respect a deed was scribed between the parties. That defendant No. 1 to 3 shall not make any unlawful or unnecessary interference, and defendant No. 1 to 3 shall pay a fine of Rs. 1,000,000/- to the members of Jirga, in case of violation of Jirga verdict. That the Jirga regarding the property was convened and conducted in our presence. Copy of his CNIC is Ex.PW-3/1.

One Sadrah Gul (Jirga member) appeared and deposed as PW-04. He stated that Jirga between the parties were convened in his presence and the dispute the parties amicably resolved with their mutual consent. He further stated that he verified the statement of plaintiff and Sanab Gul PW-03 (Jirga member). That defendant No. 1 to 3 were bound not to make any unlawful or unnecessary interference in the suit property and lastly through Jirga and requested to decree the suit in favour of plaintiff. Copy of his CNIC is Ex.PW-4/1.

Thereafter, plaintiff closed its evidence.

From the pleadings of the parties and the material available on record, it is apparent that the parties are real brothers and legal heirs of late Sheikh Gul (deceased). Plaintiff sought affirmation of private partition, reportedly and allegedly taken place between the parties, through the instant suit. However, for the said affirmation of private partition, section 147 of the West Pakistan Land Revenue Act is clear, for which affirmation, proper forum is available. Plaintiff's counsel could not refer to any provision of law, through which the Civil Court could affirm such private partition.

However, defendants are not authorized to take law into their own hands and restrain plaintiffs from making construction of their own possessed property, save as in accordance with law. If defendants deny the private partition, they could knock the door of proper forum. As per evidence produced by plaintiff, and as there is nothing in rebuttal due to ex-parte proceedings, the suit of the plaintiff is hereby

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partially ex-parte decreed in favour of plaintiff and against the defendants, only to the extent of permanent injunction. Defendants are directed not to interfere in the peaceful possession of plaintiff, otherwise than through due course of law. Plaintiff is however, at liberty to approach the proper forum for affirmation of private partition, if he desires so. This ex-parte decree shall be subject to the final outcome of affirmation of partition by the proper forum.

File be consigned to the record room after due completion.

Announced
10.09.2026


(Noor Ul Haq) 10/9/26
Civil Judge-II, Tehsil Court
Kalaya, Orakzai