

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

Suit No.50/1 of 2023

ORIGINAL DATE OF INSTITUTION. 11.07.2023

DATE OF DECISION OF THE SUIT.....12.09.2026

HAJI GULAB ALI SON OF HASSAN GHULAM,
RESIDETN OF QOM BAR MUHAMMAD KHEL,
MERAZI KHEL, DISTRICT ORAKZAI AND & 09
OTHERS

.....PLAINTIFFS

VERSUS

SYED BADSHAH SON OF SYED MEERAM HUSSAIN,
RESIDENT OF KURAIZ, TEHSIL LOWER DISTRICT
ORAKZAI & 05 OTHERS

.....DEFENDANTS

**SUIT FOR DECLARATION, PERMENENT AND
MANDATORY INJUCTIONS ETC.**

Counsel for plaintiffs: Mr. Hamza Gillani Advocate
Counsel for defendants: Mr. Abdul Qayum Advocate

JUDGMENT
12.09.2026

Vide this judgment the Court intends to dispose of suit
captioned above.

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1. It is a suit from the plaintiffs against defendants for declaration, permanent and mandatory injunctions, and possession.
2. Brief facts of the case as narrated in the plaint are, that plaintiffs belong to Qom Bar Muhammad Khel, Tappa Merazi Khel. That Qom Bar Muhammad Khel consists of three Tapas i.e. Tapas Abdul Aziz Khel, Alat Khel and Merazi Khel. That defendants belong to Tapa Saidan and have no relation with Tapa Merazi Khel therefore, have no concern with the suit property. Plaintiffs further claimed that defendants and their predecessors have settled by the people of tapa Alat Khel as tenants in their area adjacent to the suit property. That they are owners in possession of the suit property in the shape of mountain known as *Kaga Tang* to *Karegar Tang* since the time of their predecessors. Defendants have no concern whatsoever with the same. Defendants were asked time and again to refrain from interfering in peaceful possession of plaintiffs over the suit property and stop raising construction but they refused, hence, the instant suit.
3. After institution of the suit, the defendants were summoned, accordingly defendants appeared in person and they


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submitted their written statements with legal and factual objections, raised therein.

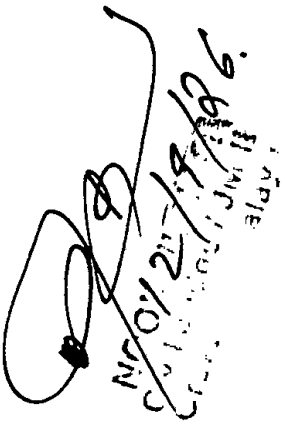
4. Out of controversies of the parties, as raised in their respective pleadings, the Court framed the following issues on 20.04.2024.

1. Whether plaintiffs have got a cause of action? OPP
2. Whether plaintiffs are owners in possession of the suit property, fully detailed in the headnote of plaint, since the time of their predecessors? OPP
3. Whether predecessors of defendants purchased the suit property from ancestors of plaintiffs through deeds dated 1932, 1936 & 1937 and since then defendants are owners in possession of the suit property? OPD
4. Whether plaintiffs are entitled to the decree as prayed for? OPP

Relief.

5. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as six (06) witnesses and thereafter, closed their evidence. Contrary to this the contesting defendants produced as many as two (02) witnesses and thereafter, closed their evidence. Court witness also appeared before the Court as CW-01.

6. Thereafter arguments of both the counsels for the parties were heard at length. Learned counsel for the plaintiffs opened the case and argued that plaintiffs belong to Qom


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Bar Muhammad Khel, Tappa Merazi Khel. That Qom Bar Muhammad Khel consists of three Tapas i.e. Abdul Aziz Khel, Alat Khel and Merazi Khel. While defendants belong to Tapa Saidan, have no relation with Tapa Merazi Khel and also have no concern with the suit property. Counsel for plaintiffs argued that defendants and their predecessors have been settled by the people of tapa Alat Khel as tenants in their area, adjacent to the suit property. He further argued that plaintiffs are owners in possession of the suit property in the shape of mountain known as *Kaga Tang* to *Karegar Tang* since the time of their predecessors. Defendants have no concern whatsoever with the same. Defendants were asked time and again to refrain from interfering in peaceful possession of plaintiffs over the suit property and stop raising construction but they refused, hence, the instant suit.

7. Contrary to the above arguments, learned counsel for the defendants argued that the plaintiffs have got no cause of action. That the claim of plaintiffs is false and baseless. That the suit of plaintiffs is barred by law. Counsel for defendant further argued that defendants purchased the suit property from the ancestors of plaintiffs through various deeds dated 1932, 1936 & 1937 and since then, defendants are owners in possession of the suit property. He further

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argued that ancestors of plaintiffs prepared a bogus and forged agreement deed dated 28.06.2003. He further argued that the suit property is in possession of defendants. He also argued that coal mines are installed/established in the suit property for many years and plaintiffs have no concern with the same. Lastly, he stated that plaintiffs have badly failed to prove their case through cogent, convincing and reliable evidence while on the other hand the defendants succeeded to produce evidence in light and support of their stance stated in the written statement. Hence, prayed that suit of plaintiffs may be dismissed with costs.

8. Upon perusal of record, available evidence and assistance of both the learned counsels for the parties, the issue wise findings of the court are as under.

ISSUE NO. 02

2. **Whether plaintiffs are owners in possession of the suit property, fully detailed in the headnote of the plaint, since the time of their predecessors? OPP**

Burden of proof of this issue was on plaintiffs. During course of court proceedings, the court noted that proper description/boundaries of the suit property is not clearly mentioned in the plaint, hence, court ordered to conduct a local commission to identify/mark the full description of the

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suit property. Accordingly, court appointed Mr. Taza Khan Advocate for the local commission. He conducted the commission and submitted commission report. Both the learned counsels for the parties raised objections over the commission report. Statement of commissioner recorded before the Court as CW-01, which is reproduced as under;

He stated, "pursuant to order no. 28 dated 22.03.2025, I have been appointed as local commission of this Hon'ble court for inspection of disputed property, wherein certain directions were given by this Hon'ble Court, details whereof are mentioned in ibid order. I visited the spot on 06.05.2025 and inspected the spot in presence of the parties, and obtained their signatures on the attendance sheet. Commission report is Ex. CW-1/1."

10. The local commissioner cross examined by both the learned counsels for the parties. During cross examination of learned counsel for the plaintiffs, he stated that it is correct that he has not mentioned the details of 05 houses, mosque, hujra, hospitals etc in my report Ex. CW-1/1. Self-stated that he has obtained pictures in respect of said construction from google map which are annexed with the report.


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During the cross examination of learned counsel for defendants, he stated that it is correct that at time of inspection of disputed property, no party objected to the identification and measurement as mentioned in Ex. CW-1/1.

11. Plaintiffs produced the following witnesses in their support.

Abid Ali son of Ghamcen Ali, appeared and deposed as PW-01. He supported the stance of plaintiffs as narrated in the plaint. He produced his copy of CNIC which is Ex. PW-1/1. During cross examination he admitted that it is correct that he has no proof regarding the ownerships of the suit property of Tapa Merazi Khel.

یہ درست ہے میرے پاس ایسی کوئی تحریر موجود نہ ہے جس سے یہ ثابت ہو کہ جائیداد متحدہ عویہ تپہ میرازی

نیل کی ہے۔

PW-02 is the statement of **Syed Jaffar Hussain son of Zari Shah**. He also supported the contention of plaintiffs as claimed in the plaint. He produced his copy of CNIC which is Ex. PW-2/1. During cross examination he admitted that the suit property is in possession of defendants and they have constructed residential houses in the suit property. It is also correct that defendants are settled over the suit property since the time of their predecessors.

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یہ درست ہے کہ جائیداد متدعو یہ مدعا علیم کے قبضے میں ہے ان کے رہائش گھر بھی اسی جگہ تعمیر شدہ ہے۔

یہ بھی درست ہے کہ مدعا علیم آباد اجداد کے وقت سے جائیداد متدعو یہ میں رہائش پذیر ہے۔

PW-03 is the statement of Jamal Hussain son of Nazar Hussain, who stated in light and support of the stance of plaintiffs as narrated in the plaint. He produced his copy of CNIC, which is Ex. PW-3/1.

During cross examination he stated that he has seen the suit property. He does not know that whether defendants were in possession of the suit property since the time of their predecessors or not? His cross examination is reproduced as under;

یہ درست ہے کہ میں نے جائیداد متدعو یہ دیکھی ہے۔ مجھے علم نہ ہے کہ آیا قبضہ بر جائیداد متدعو یہ آباد

اجداد کے وقت سے ہے یا نہ۔

PW-04 is the statement of Rashid Ali son of Piyo Ali Hussain, who stated on oath in light & support the stance of plaintiffs as narrated in the plaint. He produced his copy of his CNIC which is Ex. PW-4/1. The witness was cross examined, during his cross examination he admitted that the houses of defendants have been constructed over the suit property since long. Self-stated that the said houses were

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constructed in the property of Iqbal Khel and the same are not in suit property.

یہ درست ہے کہ مدعا علیہم کے مکانات عرصہ دراز سے تعمیر شدہ ہیں۔ از خود کہا کہ تپہ الخیل میں مذکورہ مکانات ہیں اور جائیداد متدعوئہ میں نہ ہے۔

He also admitted that the suit property is in possession of defendants since the time of their predecessors, and before his birth.

یہ درست ہے کہ مدعا علیہم جائیداد متدعوئہ پر قبضہ آباء اجداد کے زمانے سے ہے جو میری پیدائش سے پہلے کا ہے۔ یہ بھی درست ہے کہ دعویٰ ہذا سے پہلے جائیداد متدعوئہ کی بابت کوئی دعویداری نہیں کی ہے۔

PW-05 is the statement of Rehan Ali son of Sabir Ali, the plaintiff no. 01, who stated on oath in light & support their stance as previously narrated in the plaint. During cross examination, he stated that it is correct that defendants have constructed their houses before his birth. He has no written proof regarding the ownership of the suit property.

یہ درست ہے کہ مدعا علیہم کے مکانات میرے پیدائش سے پہلے تعمیر شدہ ہیں۔ میرے پاس ایسا کوئی ثبوت نہیں ہے جس سے ثابت ہو کہ جائیداد متدعوئہ تپہ میراخیل کی جائیداد ہے۔

He also stated that he cannot say the details of those people, which have the possession of the suit property.

میں ان لوگوں کی تفصیل نہیں بتا سکتا جس کا اراضی متدعوئہ پر قبضہ ہے۔

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He also stated that the suit property was earlier cultivated by defendants.

پہلے مدعا علیہم اس اراضی کو کاشت کیا کرتے ہیں۔

PW-06 is the statement of Sonaib Ali son of Iswan Ali, the special power of attorney on behalf of plaintiffs. His special power of attorney is Ex. PW-6/1. Who stated on oath in light & support the stance of plaintiffs as previously narrated in the plaint. During cross examination, he stated that they have got no objection over the area, where defendants have constructed their houses, however, they have objected over the encroachment by defendants. He has no written proof regarding the encroachment of defendants on their area. Self-stated that in this respect commission report is placed on file.

مدعا علیہم جس رقبہ پر مکانات تعمیر شدہ ہیں اس پر ہمارا کوئی اعتراض نہ ہے البتہ ہمارے رقبہ پر مدعا علیہم نے

جو تجاوز کیا ہے اس پر ہمیں اعتراض ہے۔ ہمارے پاس ایسا کوئی تحریری ثبوت موجود نہ ہے کہ مدعا علیہم

نے ہمارے رقبہ پر تجاوز کیا ہے۔ از خود کہا کہ اس بابت رپورٹ اعلیٰ کمیشن میں موجود ہے۔

He also stated that they have no concern with the houses, schools and hospitals, which are constructed over the property of Tapa Alat Khel, however, defendant made encroachment over the property of plaintiffs, and they have

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filed the instant suit. Thereafter, counsel for plaintiffs closed their evidence with a note.

12. 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 stated in their plaint. However, during cross examination all the PWs admitted the long and peaceful possession of defendants and could not bring on record any material which could support the stance of plaintiffs.

Moreover, plaintiffs stated in their cross examination that they have got no objection over the constructed area of defendants, but they claim that they have brought the instant suit that if defendants have encroached upon their land, they may be restrained. But, no clear description of property and encroachment thereupon has been mentioned in the plaint or their evidence.

As for as the ownership of the suit property is concerned, it is mentioned that PW-01 admitted that the suit property is in possession of defendants and they also constructed their houses. PW-04 stated in his cross examination that suit property is in possession of defendants since their forefathers.


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The admission of the plaintiffs' witnesses that the defendants are in possession of the suit property substantially weakened the plaintiffs' claim regarding the issue in hand. They have failed to establish their lawful title/right to possession of the suit property.

Also, according to commission report, five houses, one Mosque, one hujra, hospital and one Ufone Tower are in the possession of defendants.

13. In light of the above discussion, it has been noticed that all the PWs were contradicted in material particulars and even negated the stance of the plaintiffs. Therefore, the court safely holds that the plaintiffs have badly failed to prove the issue in hand through cogent, convincing, documentary and reliable evidence, hence accordingly the issue is hereby decided in negative against the plaintiffs and in favor of the defendants.

ISSUE NO. 03:

Whether the predecessors of defendants purchased the suit property from ancestors of plaintiffs through deeds dated 1932, 1936 & 1937 and since then defendants are owners in possession of the suit property? OPD

14. Burden of this issue was on defendants. Defendants produced as many as two witnesses to prove their stance. Defendants in their written statement contended that they

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purchased the suit property from the ancestors of plaintiffs through various deeds dated 1932, 1936 & 1937 and since then defendants are owners in possession of the suit property. Defendants also stated that ancestors of plaintiffs prepared a bogus and forged agreement deed dated 28.06.2003. To prove their stance, defendants produced one Syed Muhammad Bashir, the defendant no. 05 and attorney for defendants, in the witness box as DW-01, who deposed on oath in light and support of the stance of defendants as stated in the written statement. He produced his special power of attorney, which is Ex. DW-1/1. He produced different deeds dated 1932, 1936 & 1937, which are Ex. DW-1/2 & Ex. DW-1/4 respectively. During cross examination, the counsel for plaintiffs puts a question to said DW, which otherwise led to admission, he replied as *"that the suit property from Dero Ghakhay to Mia Khel Mela was purchased in the year 1932"*.

دیروغافے سے لے کر اور میاں خیل کی زمین تک جملہ رقبہ ہم نے خرید لیا ہے۔

Furthermore, stated in his cross examination that since 1932 no one has ever raised any objection against us, nor has anyone ever laid any claim regarding the suit property.

سال 1932 سے لے کر کسی نے بھی ہمارے خلاف نہ تو کوئی اعتراض کیا اور نہ ہی کوئی دعویداری کی ہے۔

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He further stated that according to Ex. DW-1/3, the one Malak Afzal Khan sold his share in the property from *Dero Ghakhay to Khushali Talab* to Tapa Merazi Khel. It is also correct that there is no mention in the Ex. DW-1/3, regarding, that Malak Afzal Khan was the sole owner of the suit property. Self-stated that he¹ alongwith his family members scribed the agreement deed dated 21.04.1936. It is also correct that according to Ex. DW-1/3, the share of Malak Afzal Khan was not mentioned.

Ex. DW-1/3 کی رو سے ملک افضل خان نے خیمہ باز کے پاس زمین ڈیر وغانے سے خوشالی طالب تک

حصہ میرازی خیل فروخت کیا۔ یہ درست ہے کہ Ex. DW-1/3 میں ایسی کوئی تحریر موجود نہ ہے کہ

ملک افضل خان نے کورہ بالا جائیداد کا واحد مالک تھا۔ از خود کہا کہ ملک افضل خان نے اپنے خاندان کی جانب

سے نہ کورہ دستاویز مورخہ 21.04.1936 تحریر کیا۔ یہ بھی درست ہے کہ ملک افضل خان نے اپنا حصہ کا

ذکر نہیں کیا۔

15. Moreover, from the evidence of plaintiffs, mentioned in above paragraphs, the long standing, undisputed and peaceful possession of defendants over the suit property has been admitted by plaintiffs. The revenue record is not available in district Orakzai, therefore, long and peaceful possession is worth consideration. Apart from this, defendants have in their possession certain hand written

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documents, which also support their stance. Besides, *"plaintiffs' stance that they have got no objection upon constructed property of defendants and that if defendants have encroached upon any of their land, they claim the same"*, show that they do not know as to which portion of their property has been encroached upon by defendants. They have also not mentioned description of the property and encroachment, in their pleadings and evidence.

16. Now in light of the above evidence produced by defendants to prove their stance as well as the issue in hand, it has been noticed that all the DWs have fully supported the stance of defendants in their respective examination in chief. On the other hand, during cross examination nothing in rebuttal or contradictory has been brought on the record by the opposite party rather such questions were put to the witnesses, which were otherwise admission of the stance of defendants by plaintiffs. During cross examination of DW-02 the admissions are reproduced for ready reference as *"it is correct that the suit property is his inherited property and has not been purchased from anyone"*. Similarly, during cross examination of DW-03 the admissions brought on the record are *"it is correct that the suit property is inherited property of the defendants"*.

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17. In light of the above discussion as defendants succeeded to prove the issue in hand through their 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 favor of defendants and against plaintiffs.

ISSUE NO. 1

Whether plaintiffs have got a cause of action? OPP

ISSUE NO.06:

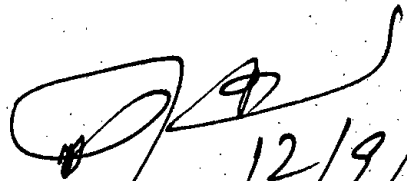
Whether plaintiffs are entitled to the decree as prayed for? OPP

18. In wake of issue wise findings above, the plaintiffs have got no cause action, and they are not entitled to the decree as prayed for, accordingly these issues are decided in negative against the plaintiffs and in favor of defendants.

Relief:

19. As nutshell of my detailed discussion upon various issues, the suit of plaintiffs is hereby dismissed. Cost shall follow the events. File be consigned to record room after its necessary completion.

Announced.
12.09.2026

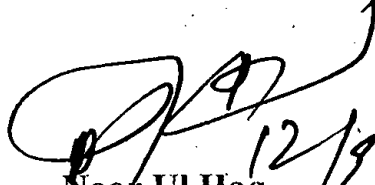

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C E R T I F I C A T E

Certified that this judgment consists of seventeen (17) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 12.09.2026


Noor Ul Haq,
Civil Judge -II,
Tehsil Courts Kalaya, Orakzai

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