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**IN THE COURT OF IJAZ MAHSOOD,**  
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No.....73/1 of 2024

Date of Institution: .....03.06.2024

Date of Decision: .....09.09.2026

Haji Said Sharif s/o Said Akbar  
R/O Qoum Ali Khel, Tappa Jasrat Khel, Tehsil Upper, Village  
Ghotak, District Orakzai.

..... (Plaintiff)

**VERSUS**

1. Ali Akbar s/o Mir Haider
2. Walayat Khan s/o Mir Akbar
3. Fazal Ur Rehman s/o Muhammad Sadiq
4. Khan Gul s/o Chinar Gul
5. Esal Khan s/o Mir Taza
6. Jamal Khan s/o Nazar Gul
7. Saeed Khan/Muhamad Saeed s/o Masli Khan  
All R/O Qoam Sheikhan, District Orakzai
8. Saif Ullah s/o Said Hakim

..... (Defendants)

**SUIT FOR RECOVERY OF RS. 6,500,000/-**

**JUDGEMENT:**

09.09.2026

This order is to decide instant suit filed by the  
plaintiff, namely **Mr. Haji Said Sharif**, against **Mr. Ali Akbar**  
s/o Mir Haider and seven others, seeking recovery of an

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amount of **Rs. 6,500,000/-** (Rupees Six Million Five Hundred Thousand only).

**Pleadings:**

The claim as held in the plaint reads that plaintiff is in the business of coals, and that on **16/11/21** he purchased 7 Anay shares in **B11** situated in Bashi Paty Gazdari Sheikhan. The share corresponded to profits, without labour, which entailed that plaintiff was entitled to a share of the profit without partaking in the process of exploration and exploitation. An amount of **Rs. 1 crore 05 lacs** were paid to the defendants at the rate of **15 lacs** per 'Ana'.

However, subsequently, the mine was found over-exploited already, and deficient with reference to its representation by the defendants. Accordingly, the plaintiffs entered into mediation proceedings which culminated into an agreement dated **19th December**. The local elders, serving as mediators imposed a liability of **Rs 65 lacs** to be paid within a stipulated time by the defendants. The plaintiff maintains that despite the said settlement/decision, the defendants have failed and neglected to pay the aforesaid amount. It is also alleged that the defendants have neither paid the amount determined through mediation nor provided the plaintiff with his agreed share of profits from the proceeds of the mining operation.

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The defendants contested the suit by filing their written statement. They denied the claim of the plaintiff and maintained that the matter had already been referred to a Jirga. According to the defendants, the Jirga was held on **11.09.2023**, and its decision was not in favour of the plaintiff. The defendants further alleged that, after the decision of the Jirga, the plaintiff committed theft of coal worth approximately **Rs. 40,000,000/-** from the subject mine.

Differences between the sides were distilled into the following issues:

**Issues:**

1. Whether the suit is bad for legal defects i.e. cause of action, limitation, legal standing, non-joinder etc. and is not maintainable in its present form?
2. Whether plaintiff is entitled to recovery of amount of Rs. 65,00,000/- as per settlement agreement?
3. Whether plaintiffs have illegally exploited and transported from the disputed coal mine to the tune of Rs. 4,000,0000/-?

Thereafter, both sides were requested to produce their respective evidence. Defendants defaulted on attendance during course of trial and were proceeded as ex-parte.

  
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**Witnesses/Exhibits:**

Mr. Malak Said Noor Akbar s/o Said Mir Anwar appeared as PW-01, Izat Gul s/o Sahib Hussain appeared as PW-02, Said Sharif s/o Said Akbar, the plaintiff himself, appeared as PW-03, Shabir Khan s/o Waris Khan, appeared as PW-04 and Muhammad Dawood s/o Muhammad Farooq, appeared as PW-05. They have exhibited the following documents; Defendants have already been proceeded against ex-parte.

- i. Copy of CNIC of PW-01 as Ex.PW-1/1.
- ii. Copy of CNIC of PW-02 as Ex.PW-2/1.
- iii. Copy of CNIC of PW-03 as Ex.PW-3/1.
- iv. Stamp paper dated: 16.11.2021 as Ex.PW-3/2.
- v. Stamp paper regarding survey of mine as Ex.PW-3/3.
- vi. Deed regarding receiving of amount in instalment as Ex.PW-3/4.
- vii. Copy of CNIC of PW-04 as Ex.PW-4/1.
- viii. Copy of CNIC of PW-05 as Ex.PW-5/1.

**Reasoning:**

Issue wise discussion of the court followed by decision on each issue, and ultimately on the suit is as follows:



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**Issue No. 01:**

This issue poses the regular questions about the validity of the legal form and frame of suit. They raise the questions of non-joinder and limitation.

During the course of trial, the defense could not successfully establish the fact of the suit being hit by any of these legal bars and defects. Given that jurisdiction of civil courts was extended to the area in 2019, the question of limitation rarely arises, as the law provides 06 years for claims of declaration of title. Instantly, the court is seized of complaint against persisting periodical interference.

Throughout the course of trial, defendants did not mention any necessary party that might have been left out. The court could not find any fatal defect on that score. The issue is decided for the plaintiffs.

**Issue No 2:**

As mentioned earlier the trial was conducted ex-parte. Other than written defense in the form of pleadings, the evidence produced by the plaintiffs is neither rebutted nor refuted.

Civil litigation proceeds on the principle of preponderance of evidence. A side with 51% favourable

  
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evidence wins. In light of these preliminary submissions, we proceed to examine the evidence.

Plaintiff claims recovery of amount Rs. 65,00,000/- on the basis of agreement/settlement available on file as ex-PW 3/4. The marginal witnesses of the deed, Mr. Noor Akbar and Mr. Izat Gul appeared in court and testified for the plaintiff. The endorsed the claim as represented in the plaint.

Under QSO Order 1984, two marginal witnesses testifying in favour of a deed are sufficient legally for its proof. In absence of any evidence to the contrary, being an ex-parte trial, the court is inclined to decide the issue for the plaintiffs.

**Issue No 03:**

Defendants have alleged that plaintiffs illegally removed coal from the mine to the tune of Rs. 400,00000/- . They defaulted on participation in trial, and were proceeded ex-parte.

A claim raised in pleadings has to be established through cogent evidence failing which it is destined to be dismissed. Claim minus evidence is nullity. Issue is decided against the defendants.

**Relief:**

In view of the findings recorded above, the plaintiff has successfully established his claim for recovery of

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**Rs.6,500,000/-** (Rupees Six Million Five Hundred Thousand only) on the basis of the settlement/agreement Ex.PW-3/4.

Consequently, the suit is decreed in favour of the plaintiff and against the defendants for recovery of **Rs.6,500,000/-**, in accordance with law.

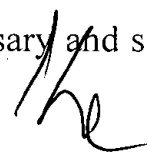
Case file be consigned to the record room after its necessary completion and compilation.

**Announced**  
**09.09.2026**

  
**Ijaz Mahsood)**  
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**CERTIFICATE**

Certified that this judgment of mine consists of seven (07) pages, each has been checked, corrected where necessary and signed by me.

  
**(Ijaz Mahsood)**  
Senior Civil Judge,  
Orakzai at (Baber Mela)