

95

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

Civil Suit No.	115/1 of 2024
Date of Institution:	25.11.2024
Date of Decision:	29.09.2026

1. Rehman Shah s/o Rahim Shah
 2. Yamin Ahmad s/o Yagh Bali Shah.
- Both R/O Qoum Mala Khel, Tappa Char Khela, Kharkay, Tehsil upper District Orakzai.***

..... (Plaintiffs)

VERSUS

1. Masid Gul s/o Radi Gul.
- R/O Qoam Mala Khel, Tappa Char Khela, Kharkay, Tehsil upper District Orakzai.***

..... (Defendant)

**SUIT FOR DECLARATION OF TITLE AND A
CORRESPONDING INJUNCTION ORDER**

JUDGEMENT:

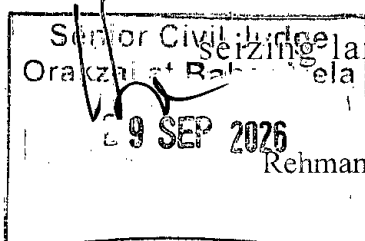
29.09.2026

This order is to decide instant suit filed by Mr Rahman Shah and one other, the plaintiffs, for declaration of title and corresponding injunctions against Mr Masid Gul, the defendant.

Pleadings:

The claim as recounted in the plaint reads that plaintiffs are owner in possession of suit land measuring approximately 3-4 Jirabs, fully detailed in the headnote. It is alleged that defendant, by attempting to raise a wall, is illegally

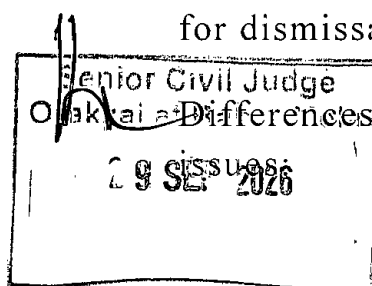
seizing land and blocking access of the plaintiffs to their fields.



It is further alleged that defendant is unwilling to engage in or settle the matter through extra judicial customary means of settlement of the dispute, hence the suit. Plaintiffs pray for declaration of title, and restraining orders against the alleged illegalities.

Defendant has attempted to rebut the claim and refute the assertions made in the plaint through his written reply. In addition to the regular objections to the validity of the form of the suit, and the fitness of the forum, he has denied the factual content too. The written statement asserts that plaintiffs reside at a distance of 2-3 kilometers from the suit land, in a village named Parki.

Defendant alleges that a few years back, he managed to establish a dug-well on the suit property for public good that is still in place and operational. That no passage moves to the field of the plaintiffs from this side, rather it comes from the road from Kharki side. He maintains that structural indicators of demolished construction still exist which show ownership and possession of the defendants. It is strongly held that neither any passage is being blocked, nor is the construction on the land of the defendants. The written statement ends with request for dismissal of the suit.



Differences between the sides were reduced into the following

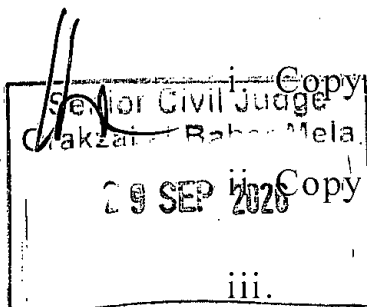
Issues:

1. Whether suit is valid in its legal content and the forum is competent to try it?
2. Whether defendants have illegally raised construction to misappropriate land and block plaintiffs' access to their fields?
3. Relief

Witnesses/Exhibits:

Mr. Fazal Hakim s/o Naray Khan, appeared as PW-01, Mr. Ramazan Khan s/o Ali Badshah, appeared as PW-02, Mr. Khalil Ahmad s/o Muhammad Ibrahim, appeared as PW-03, Mr. Yamin Ahmad s/o Yagh Bali Shah, (Plaintiff No. 02), appeared as PW-04, Mr. Rehman Shah s/o Rahim Shah, plaintiff No. 01 himself and special attorney of Plaintiff No. 02, appeared as PW-05, Mr. Belawar Gul s/o Rana Gul, appeared as DW-01, Mr. Mast Ali Khan s/o Namidar Khan, appeared as DW-02, and Mr. Maseed Gul s/o Radi Gul, the defendant himself, also appeared and recorded his statement.

They have exhibited the following documents;



i. Copy of CNIC of PW-1 as Ex.PW-1/1.

ii. Copy of CNIC of PW-2 as Ex.PW-2/1.

iii. Copy of CNIC of PW-3 as Ex.PW-3/1.

98

- iv. Copy of CNIC of PW-4 as Ex.PW-4/1.
- v. Copy of CNIC of PW-5 as Ex.PW-5/1.
- vi. Pictures as Ex.PW5/x1 to Ex.PW-5/x5 consist of 07 pages.
- vii. The statement of Maseed Gul, in which the pictures are exhibited as Ex.PW-1/1 (Ex.PW-3/1), consists of 9 pages.

Reasoning/Ruling:

Issue wise findings of the court followed by ruling on the suit is as follows:

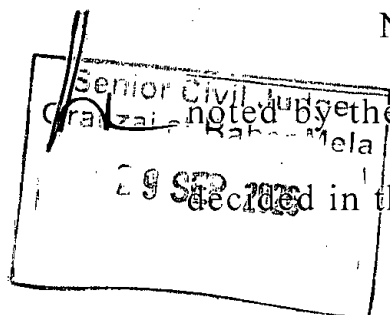
Issue No 01:

This issue poses the regular questions about the validity of the legal form and frame of suit.

During the course of trial, the defence 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.

No legally fatal defect was either pointed out or

noted by the court during the course of trial, hence the issue is decided in the affirmative, for the plaintiffs.



Issues No 02:

The issue envelopes the heart of the controversy: that defendant is engaged in an illegal construction to grab land, and obstruct passage for the defendants.

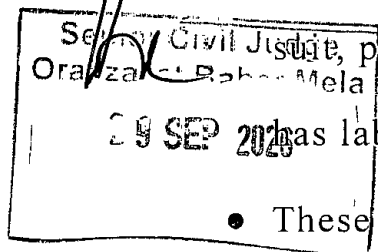
The claim of the plaintiffs as extracted from their pleadings and attached record is that the defendant is engaged in illegal constructions beyond his proprietary entitlement. Further that he has attempted to block access of the plaintiffs by the controversial construction.

The defense counter asserts that the real dispute is about the benefits attached to the dug well on his land. It is alleged that the construction, duly within entitlement, will defeat prospective claims of the plaintiffs to employment and remunerative benefits that might come from the dug well, hence their baseless suit.

The court shall below examine the evidence in light of these positions:

- The first witness for plaintiff is Mr. Fazal Hakim. It is pertinent to mention that said witness is plaintiff in another suit titled Mr. Fazal Hakim Vs Masid Gul. In that suit, pending adjudication, the present witness as claimant has labelled the instant claim as false and baseless.

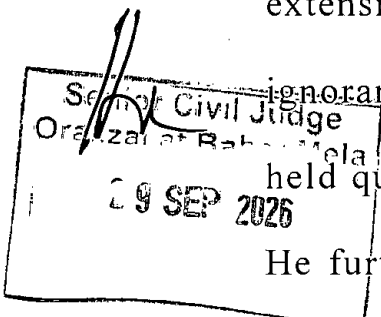
- These contradictory submissions by Mr. Fazal Hakim in solemn judicial proceedings go to the worth of his



160

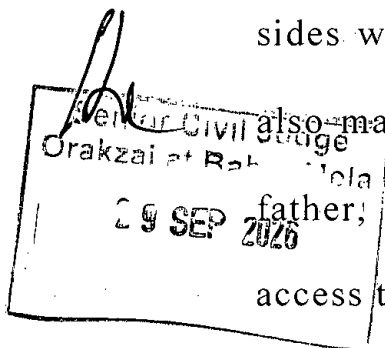
credibility as a witness. The court has been afforded no plausible ground or reason to rely on his statement in the instant suit in disregard of his submissions in the parallel suit.

- In his cross-examination as PW-01, he concedes the contradictory position. In February 2025, his name was added to the list of witnesses for plaintiff, while in July of the same year, he filed his plaint terming the instant claim as baseless.
- In this background, the court is hesitant to rely on the witness for proof or otherwise of any fact.
- Mr. Ramzan Khan, witness no 02 for the plaintiff, is also his nephew. In his statement in chief, he states that a jirga was held in which defendant was bound under security amount of Rs. 50,000/-. Subject Jirga and security amount find no mention in the pleadings and was added during recording of evidence. In his statement, he has omitted particulars such time, date and place of the alleged Jirga.
- In his cross-examination, he concedes that he has not seen the house of the plaintiff on whose alleged illegal extension the present dispute has arisen. He further pleads ignorance as to whether 20 years back, the disputed land held quarters for cattle fodder belonging to the defendant. He further admits that he has not been to the area in the last 08 years.



(161)

- Interestingly, in the last lines of his direct statement, the witness states that suit land was donated by father of the plaintiffs for community dug-well. This fact/position finds no mention in the pleadings. Further, in his cross-examination, subject witness denies the suggestion that actual dispute is over the dug-well, not land or passage.
- Mr. Khalil Ahmed, PW-03 in his chief states that the extension by defendant is illegal. He also holds that a jirga prohibiting him from such acts had taken place in which an amount of Rs. 50,000/- was fixed as security amount for breach. He also reiterates the position that disputed dug-well was donated by father of the plaintiff. Again, the Jirga, security/fine, and donation of land for dug-well finds no mention in pleadings. He has volunteered that real dispute is illegal construction, and not the dug-well.
- Plaintiff abandoned witness no 04. Plaintiff himself testified as PW-05. He reiterates the position held by his other witnesses that a jirga fixed boundaries between the sides which have been transgressed by the defendant. He also maintains that land for dug-well was donated by his father, and that defendant has attempted to block his access to the thoroughfare by the illegal construction.
- During his cross examination, he concedes that there is a passage to the west of the disputed of his house. He



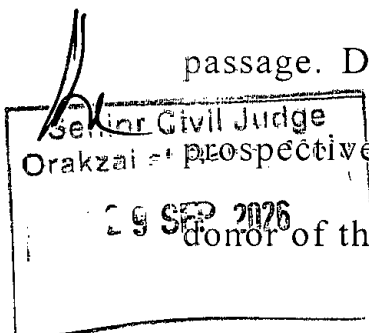
102

concedes that bailiff had twice visited the area for preparing a site report for the court. He admits that a pedestrian passage is open to his fields, and that there is no road for vehicles for the entire village. He further concedes that his field is cultivated, and that it was done with the help of a tractor. He volunteers to state that he had donated land for the tube well, a plea/fact not mentioned or hinted at in the plaint.

- He further admits to having filed an application with the DRC on 22/11/24. In that petition, the plaintiff had held that present defendant was constructing structures '*to the south of his field*', not on his entitlement etc.
- During the cross-examination of the defendant, it was suggested to him that he had illegally occupied the ground and is carrying out constructions for seizing employment of staff to the dug well. It was further suggested to him that all owners are entitled to the front of their fields.

Concluding Observations:

Plaintiffs claim that defendant has illegally seized a portion of their field, is raising construction to block their passage. Defense has countered that plaintiffs are covetous of prospective employments the government might offer to the donor of the land housing the disputed dug-well.



Evidence for the plaintiff, in its cumulative effect, impresses that the alleged Jirga the plaintiffs claim to have taken place between the sides, is not mentioned let alone being relied upon in the pleadings. It is an addition to the stance at the trial stage.

The claim of the plaintiff that they donated land for the dug-well finds no mention in the pleadings, and was revealed only at the trial stage. Throughout the trial, defendant has alleged that plaintiffs are coveting the benefits of the dug-well, hence the suit. The plaintiffs initially omit to mention the dug well etc. however, in trial, they not only claim to having donated the land, but also alleges against the defendant the intent to grab benefits of the dug well.

Plaintiff appearing as witness has conceded that there is no witness or proof of him or his ancestor having donated the land for dug-well. He admits that passage and access exist to his field. His witnesses have stated that plaintiffs are entitled to 'sar-seem' and it has been suggested to defendant in his cross, that an owner is entitled to the land in front of his ownership. Apparently, the plaintiffs are treating

exclusively-owned land as Shamilaat.

Senior Civil Judge
Grazai - Bahawalpala
29 SEP 2026

In view of the foregoing, the plaintiffs have failed to prove the issue, and the claim. The matter is decided against them.

Relief:

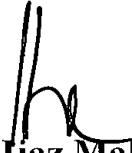
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In view of the findings recorded above, plaintiffs have failed to prove the cause of action pleaded in the plaint. They have also failed to establish, through reliable and legally sufficient evidence, that the defendant has encroached upon their land, raised illegal construction thereon, or obstructed their lawful access to their fields.

Consequently, the plaintiffs are not entitled to the declaration or consequential injunctive relief sought by them. Suit is dismissed.

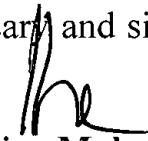
Case file be consigned to the record room after its necessary completion and compilation.

Announced
29.09.2026


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

CERTIFICATE

Certified that this judgment of mine consists of Ten (10) pages, each has been checked, corrected where necessary and signed by me.


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