IN THE COURT OF HAQ NAWAZ,
DISTRICT JUDGE, ORAKZAI (AT BABER MELA)

CIVIL APPEAL NO.	:	26/13 OF 2026
DATE OF INSTITUTION	:	02.06.2026
DATE OF DECISION	:	10.11.2026

RAFIQ KHAN S/O MIRZA ALI SHAH, CASTE MULA KHEL, TAPA AZIZ KHEL, R/O DABORI, DISTRICT ORAKZAI

.....:(APPELLANT)

-VERSUS-

WILAYAT SHAH S/O NAWAB SHAH, R/O DABORI, DISTRICT ORAKZAI AND OTHERS

..... (RESPONDENTS)

JUDGEMENT
10.11.2026

This Civil Appeal was preferred against the judgment and decree dated 30.04.2026 passed by the Court of Senior Civil Judge, Orakzai, whereby Civil Suit No. 51/1 of 2023 was dismissed.

2. The suit was brought by the appellant for declaration and permanent injunction to the effect that he and defendants No. 4 to 21 are ancestral owners of the suit property situated at Moza Dabori, District Orakzai, described with four boundaries in headnote of the plaint and the defendants No. 1 to 3/respondents have got no concern with the same; therefore, they have got no right to cause interference in peaceful possession of the plaintiff and proforma defendants. In alternative, the plaintiff sought recovery of possession of the suit property and demolition of construction, if raised by the defendants No. 1 to 3 during pendency of the suit.

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3. According to averments of the plaint, the suit property was owned and possessed by the predecessors of the plaintiff and defendants No. 4 to 21 and the same is now in their ownership in possession whereas the defendants No. 1 to 3 have got no concern to claim ownership or cause interference in peaceful possession of the plaintiff and the proforma defendants. But the defendants No. 1 to 3 are bent upon to take possession of the suit property and he has precluded the plaintiff from raising construction in it. The parties have carried out so many jirgas as evident from the earlier as well as present suits, but the defendants have left out the jirga proceedings. That the present plaint is submitted with permission of the court. The plaintiff repeatedly asked the defendants No. 1 to 3 to abstain from their illegal claim and causing interference in the suit land, but they refused; therefore, the suit was filed.

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4. The suit was contested by the defendants No. 2 and 3 by submitting their written statement whereas the defendant No. 1 recorded his statement that he has got no concern with the suit property. In their amended written statement, the contesting defendants submitted that according to Para 3 of the original suit No. 23/1 of 2021, the plaintiff alleged that the suit property was originally owned by the defendants who transferred it in favour of Kandi Langar Khel as Badl-e-Sulah in a murder case about 100 years back. The

predecessor of the plaintiff namely Bahadar Khan purchased it from Kandi Langar Khel thereafter. But in the present plaint a totally different stance has been taken by the plaintiff with regard to ownership of the suit property as ancestral property only. Pleadings of the parties were reduced to the following issues;

I. *Whether the plaintiff has got a cause of action?*

II. *Whether the plaintiff is estopped to sue?*

III. *Whether the suit of the plaintiffs is time barred?*

IV. *Whether the suit of the plaintiff is bad for mis-joinder and non-joinder of the parties?*

V. *Whether the plaintiff and defendants No. 4 to 21 are owners in possession of the disputed property and the same is their ancestral property?*

VI. *Whether the disputed property is ancestral property of the defendants No. 2 and 3 and they are cultivating the same?*

VII. *Whether the plaintiff is entitled to the decree as prayed for?*

VIII. *Relief.*

Additional issue: *IX. Whether the plaintiff substantially changed their factual stance in the suit they filed after*

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withdrawal for removal of a formal defect and therefore the suit is liable to be dismissed.

5. After recording pro and contra evidence and hearing both the parties, the learned trial Court dismissed the suit; hence, this appeal was filed.

6. I have learned counsel for the parties and perused the record.

7. During the course of evidence, the plaintiff produced 03 witnesses as PW-1 to PW-3 besides recording the statement of attorney for the plaintiff as PW-4. The PW-1 produced a jirga verdict in his statement as Ex. PW 1/2. PW-2 and PW-3 endorsed the contents of the said Ex. PW 1/2 and their signatures upon it. The perusal of Ex. PW 1/2 shows that a jirga was held on 20.02.2021 between Razeem Shah (defendant No. 2), Rahim Ullah (defendant No. 3) and Wilayat Shah (defendant No. 1) on the one hand as first party and Shahid Ullah (attorney for the plaintiff/PW-4) on the other hand as second party with regard to property situated at Dabori Bazar. The first party alleged that the suit property is mortgaged in favour of Langar Nawasi whereas the second party alleged that the property in dispute is his ancestral ownership which is in his possession. After hearing the parties, the jirga elders resolved to ask the first party to produce two witnesses from Langar Nawasi. On the

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other hand, two persons from the second party shall take oath. The parties were given 10-days of time. When the jirga was reconvened on 20.02.2021, the first party could not produce any witness, consequently the jirga elders asked the second party to take oath through two persons. But the first party left out the jirga and did not take oath from the second party. The jirga elders, therefore, held the first party *parh* (accountable).

8. The jirga verdict Ex. PW 1/2 placed the defendants No. 1 to 3 on one hand as first party to the jirga proceedings with their contention that the property in question was mortgaged by them in favour of Langar Nawasi, but the statement of defendant No. 1, recorded before the Court of Civil Judge during the course of trial, that he has got no concern with the suit land, negates the contents of Ex. PW 1/2 to the extent of defendant No. 1. Secondly, the fact of mortgaged of the property in dispute by the defendants in favour of Langar Nawasi is nowhere mentioned in pleadings of the parties, rather it was alleged by the plaintiff in his earlier suit No. 23/1 of 2021 that the suit property was given to Kandi Langar Khel by the defendants about 100 years ago on account of Badl-e-Sulah in a murder case, which was sold out in favour of Bahadar Khan, predecessor of the plaintiff, by Kandi Langar Khel. The plaintiff in his present plaint has not reiterated the said facts in their fresh

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plaint but has straightaway claimed ownership of the suit property as ancestral ownership presumably to avoid the burden of proof of purchase by his predecessor. Thirdly, the jirga verdict Ex. PW 1/2 ended up without any decision except to held the first party (including defendant No. 1) accountable. Fourthly, the dispute seems to be had its history of 100 years, but the only jirga available on record is pertaining to the year 2021.

9. A careful perusal of the statements of PWs with the valuable assistance of counsel for the appellant did not disclose their deposition about ownership of the appellant except the cross examination of PW-1; hence, only one witness has deposed about the ownership of appellant/plaintiff.

10. On the other hand, the original ownership of the suit property by the defendants has not only been admitted in earlier plaint in Civil Suit No. 23/1 of 2021 but the respondents/defendants have produced two witnesses before the Court as DW-1 and DW-2 besides the statement of defendant No. 2 as DW-3. The DW-1 submitted that he was working with the defendant No. 2 in the suit property as labour up till 2005. The defendant No. 2 used to arrange a Mela on Fridays in the suit property and the DW-1 used to collect rent from the stallholders and pay it to defendant No. 2 for commission. Similarly, the DW-2 submitted that

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he was working with defendant No. 2 for about 30/35 years up to 2008. He was also working for collection of rent from different vendors and tenants for the defendant No. 2 for commission up till 2008 when they left the area and became IDPs.

11. The above facts show that the appellant/plaintiff remained miserably failed to prove his ownership or possession of the suit property whereas the defendants' evidence disclose possession of the property by them since long up till 2008 when the area was left out by the inhabitants due to law-and-order situation. The original ownership of the suit property by the defendants is also admitted in the earlier plaint by the plaintiff as stated earlier.

12. Needless to mention that being a newly merged district, the District Orakzai has no settlement record. In such circumstances, the burden to prove that the respondents were not owners of the suit property was upon the appellant under Article 126 of the Qanun-e-Shahadat which provides as under;

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> *"When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner."*

13. The **Hon'ble Baluchistan High Court** in its judgment in the case of ***"Abdul Khaliq and another VS Muhammad Ismail and others"*** reported in ***2024 YLR 2757*** held that; ***"possession was prima facie evidence of ownership".*** It was further held in the said judgment that; ***"'Potior est condition poosidentis' (the condition of actual possessor is stronger) where both the parties are equally at fault, then law will favour the party who is in possession".***

14. When neither party has any title document and the land is in an area with no settlement record, mere possession alone still does not automatically entitle a person to a declaration of ownership. However, in such cases, ownership is decided on the basis of "better title", and long, peaceful, exclusive possession often becomes the decisive factor. So, the person who proves better, older, continuous and exclusive possession would have a strong case in his favour not because possession is equal to ownership but because he has a better claim than the opponent. The **Hon'ble Supreme Court of Pakistan** in the case of ***"Abdul Majeed VS Raisuddin"*** reported in ***PLD 1975 Supreme Court 331*** has also held that; ***"in areas without reliable or formal land record, possession coupled with length and exclusivity becomes strong evidence of ownership as against a rival claimant with no better title".***

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15. In such circumstances, the learned trial Court has rightly dismissed the suit through his impugned judgment. The appeal is dismissed being meritless. File of this Court be consigned to record room after its necessary completion and compilation.

Announced:
10.11.2026

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CERTIFICATE

Certified that this judgment consists of nine (09) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 10.11.2026

(HAQ NAWAZ)
District Judge, Orakzai
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