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

CIVIL APPEAL NO.	:	16/13 OF 2026
DATE OF INSTITUTION	:	17.03.2026
DATE OF DECISION	:	11.11.2026

JAMAL KHAN S/O ISMAIL KHAN, CASTE MALAK DEEN KHEL, TEHSIL BARA, DISTRICT ORAKZAI, PRESENTLY RESIDING AT LERI, LOWER ORAKZAI

.....(APPELLANTS)

-VERSUS-

GUL KHAMEEN S/O NOOR HAMEED, R/O MANDRA KHEL, LOWER ORAKZAI AND OTHERS

..... (RESPONDENTS)

JUDGEMENT
11.11.2026

This Civil Appeal was preferred against the judgement and decree dated 28.02.2026 passed by the Court of learned Civil Judge, Tehsil Courts Kalaya, District Orakzai, whereby Civil Suit No. 16/1 of 2022 was dismissed.

2. The suit was brought by the appellant/plaintiff for declaration and specific performance to the effect that the plaintiff is purchased owner of the suit property measuring 20 Kanals and 3 Marla towards north of the river at Mandra Khel for a consideration of Rs. 412,000/- from defendant No. 1 vide Iqrar Nama 21.06.1997. He further prayed for specific performance of the said agreement to sell an area of 04 Kanals from Afridi village to the bank of Laghoney road by the defendant No. 1 in favour of the plaintiff for a consideration of Rs. 80,000/-. In relief 'B' of the plaint, the appellant/plaintiff sought mandatory injunction against the defendant No. 1 to hand over possession of the 04 Kanal of the area to him whereas permanent injunction was sought for against the defendants No. 2 and 3 from causing

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interference in the suit area of 20 Kanals and 3 Marlas, cutting trees there and dispossessed the plaintiff forcibly.

3. As per averments of the plaint, the suit properties were purchased by the plaintiff from the defendant No. 1 for a total of sale consideration of Rs. 492,000/-. The property measuring 20 Kanals and 3 Marlas was handed over to the plaintiff and it was agreed that the property measuring 04 Kanals will be handed over to the plaintiff in 05-years. The defendants No. 2 and 3 have got no concern with the suit property measuring 20 Kanals and 3 Marlas but they are causing interference in the same and cutting down trees over there; therefore, the plaintiff sought permanent injunction against them. The plaintiff repeatedly asked the defendant No. 1 to hand over the property measuring 04 Kanals to him but he initially delayed the matter and ultimately denied the sale of said property; therefore, the suit was filed.

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4. The respondents/defendants contested the suit by filing their written statement. The defendant No. 1 denied the sale of the suit land in favour of the plaintiff; however, he submitted that being a close friend he handed over the suit property to the plaintiff for cultivation, but he was restricted from its sale and purchase. Pleadings of the parties were reduced to the following issues;

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

II. Whether suit property consisting upon 20 Kanals and 03 Marlas had been purchased by plaintiff from defendant No. 1 vide agreement deed dated 21.06.1997 in lieu of Rs. 492,000/- as sale consideration?

III. Whether the plaintiff is in possession of the suit property since 1997?

IV. Whether defendant No. 1 is owner of the suit property and had leased the same to plaintiff while the sale deed dated 21.06.1997 is forged, fake and void?

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

VI. Relief.

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5. After recording pro and contra evidence and hearing both the parties, the learned trial Court dismissed the suit through his impugned judgment and decree; hence, this appeal was preferred.

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

7. After hearing both the parties and perusal of the record, it was found that the suit properties are two different pieces of land measuring 20 Kanals and 3 Marlas at a *Toye* (river) at Mandra Khel and 04 Kanals from Afridi village to the bank of Laghoney road. During the course of trial, the suit property measuring 20 Kanals and 03 Marlas was inspected twice by the Bailiff as well

as by the local commission. However, the record and the reports of Bailiff and local commission were silent as to which of the property was inspected. Since, the report of local commission was accepted on the basis of 'no objection' of both the parties without recording statement of the local commission; therefore, the local commission was called by this Court who confirmed the inspection of suit property measuring 20 Kanals and 03 Marlas at the bank of river Mastora. Similarly, both the counsel for the parties confirmed the inspection of said piece of land by the Bailiff on 05.06.2023.

8. The Bailiff was sent to the spot by the trial Court vide order dated 27.05.2023, after submission of application by the plaintiff to allow them to cultivate the suit land as both the parties were claiming possession of the suit property measuring 20 Kanals and 03 Marlas. In his report dated 05.06.2023, the Bailiff submitted that the said piece of land is cultivated by the defendant No. 1 Gul Khameen at present; however, it was being cultivated by the plaintiff previously. The learned trial Court, in his order dated 05.07.2023, observed that the suit property was previously cultivated by the plaintiff and the defendant has cultivated the same for the first time. The application of the plaintiff was disposed of in the manner that as the defendant No. 1 has cultivated the suit property; therefore, he is allowed to harvest his crop in its proper time and thereafter hand over possession of the suit property to the plaintiff for cultivation.

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9. The said order dated 05.07.2023 was challenged before the Court of Additional District Judge, Orakzai in Civil Misc. Appeal No. 11/14 of 2023. It was disposed of with mutual consent of the parties for appointment of local commission and further proceedings accordingly. The trial Court vide order dated 23.10.2023 appointed local commission to ascertain that who is in possession of the suit property and cultivated the same. The local commission was further directed to ascertain previous possession of the suit property and record statements of the inhabitants of the locality regarding ownership, possession and cultivation of the suit land. The local commission inspected the spot and submitted his report dated 25.02.2024 before the trial Court. Both the parties extended their 'no objection' on the confirmation of the report of local commission on 01.04.2024. The commission concluded in his report that the landed property around the suit land is owned by Mandra Khel and possession of the suit land is with the defendant for the last two years and earlier it was not in possession of the plaintiff rather it was in possession of his tenant Aziz Khan. Hence, previous possession of the plaintiff in respect of the suit land measuring 20 Kanals and 03 Marlas situated at the bank of river Mastora was admitted in the Bailiff report dated 05.06.2023 as well as in the report of local commission. As the commission report dated 25.02.2024 was confirmed on the basis of 'no objection' of both the parties, therefore, it can safely be inferred that the suit property

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measuring 20 Kanals and 03 Marlas at the bank of river Mastora was in possession of the plaintiff before February, 2022 and it was the alleged interference by the defendants which prompted the institution of present suit on 07.10.2022, which fact is also evident from a copy of the FIR, available on record, bearing No. 87, dated 13.09.2022, registered at Police Station Kalaya u/s 506, 504, 427, 352, 147, 149 PPC on the complaint of Aziz Khan/PW-1, who is tenant of the plaintiff, against the defendants No. 2 and 3.

10. Though the plaintiff, in his statement before the Court as PW-2, has shown his ignorance about boundaries of the suit property as well as sale consideration and submitted that the same are known to his tenant Aziz Khan through which the suit property was purchased by him from the defendant No. 1. He further submitted that the sale consideration is written in the sale deed dated 21.06.1997. These facts were observed by the trial Court in the impugned judgment as the main reasons for dismissal of the suit. The perusal of sale deed dated 21.06.1997 (produced by the plaintiff/PW-2 as Ex. PW 2/2 in his statement before the Court, but not marked so on the copy available on record) shows that the suit property measuring 20 Kanals and 03 Marlas was purchased for a consideration of Rs. 412,000/-. According to the plaintiff/PW-2, the suit property in question was in his possession for the last 28-years which was being cultivated by his tenant Aziz Khan/PW-1. The fact that the suit property was purchased from the defendant No. 1 by the plaintiff through

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Aziz Khan for a consideration of Rs. 412,000/- was affirmed by the said Aziz Khan in his statement before the Court as PW-1. He further deposed that the defendant No. 1 asked him to sell out the suit property due to some compulsion. The PW-1 tried his level best but no one was ready to purchase the suit land. He, ultimately, asked the plaintiff to purchase it who did so on the recommendations of PW-1.

11. The PW-3 deposed that the suit property was purchased by the plaintiff from the defendant No. 1 through Aziz Khan/PW-1. In his cross examination, the sale of suit property, consisting upon four fields, was admitted by the defendant through positive suggestions that no other transaction was taken place except the suit property and no other transaction was taken place with the defendant except four fields. PW-6 and PW-8 deposed that the sale deed dated 21.06.1997 bears the signatures of their deceased fathers.

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12. On the other hand, the DW-1 deposed that the suit property is ancestral ownership of the defendant No. 1 and the plaintiff has got no concern with it whereas the DW-2 and DW-3 deposed that they were sent by the defendant as jirga members to inquire from the plaintiff about the capacity of his possession upon the suit land. Similarly, DW-4 and DW-6 submitted that the suit property was being purchased by the defendants No. 2 and 3, but the plaintiff claimed its purchased ownership; therefore, the dispute arose between the parties. The DW-5 deposed about

possession of the suit property by the defendant No. 1 since long.

13. None of the said DWs except DW-6, who himself is defendant No. 2 in the suit, deposed about the contention of the defendant No. 1 that the suit property was handed over by the defendant No. 1 to plaintiff in friendship as alleged in Para 11 of the preliminary objections in the written statement. The statement of DW-6, in this respect, is also based on the basis of information given by the defendant No. 1 to him. Whereas statement of the DW-5 regarding prolonged possession of the defendant No. 1 is negated by the Bailiff report as well as the commission report which was accepted by the parties without any objection. It also contradicts the contention of defendant No. 1, advanced in the written statement, with regard to delivery of possession to the plaintiff on the basis of friendship.

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14. The defendant No. 1 recorded his statement through commission as DW-7. He stated that he has neither sold out the suit land nor will do so. Hence, he also did not mention, in his examination in chief, about the fact of delivery of possession to the plaintiff in his friendship with him, as alleged in the written statement. In his cross examination, he stated that the plaintiff is known to him through Aziz Khan. This fact endorsed the statements of PW-1 that he managed the sale transaction between the parties. The plaintiff/PW-2 also narrated the same facts that the defendant No. 1 was not known to him before the sale in question. Though in his cross examination, the defendant

No. 1/DW-7 stated that the suit land was handed over by him to plaintiff for one year on the basis of his friendship, but his said statement was contradicted by his earlier narration that the plaintiff is known to him through Aziz Khan. The defendant No. 1, in his cross examination, also admitted the involvement of his brother in a murder case which further substantiates the stance of PW-1 that the defendant No. 1 asked him to sell out his land due to some compulsion.

15. The above facts of the case sufficiently establish that the suit property measuring 20 Kanals and 03 Marlas at the bank of river Mastora was purchased by the plaintiff from the defendant No. 1 in the year 1997 through PW-1 and it remained in his possession through his tenant as purchased owner up till 2022.

16. So far, the other piece of land of 04 Kanals from Afridi village to the bank of Laghoney road for a consideration of Rs. 80,000, for which specific performance of the contract dated 21.06.1997 was sought in the plaint, is concerned, the plaintiff produced PW-4 and PW-5 before the Court in this respect. Both the PWs deposed that they were sent by the plaintiff towards the defendant No. 1 as jirga members to ask him to fulfil his agreement and hand over the said property to him for the construction of a house, but the defendant No. 1 refused. None of the said witnesses or any other witness deposed about the payment of sale consideration of Rs. 80,000/- against the purchase of said piece of land or any commitment by the defendant No. 1 to hand over the said 04 Kanals of land within

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five years from 1997 as alleged in the plaint. Therefore, the plaintiff could not establish his case for specific performance of agreement dated 21.06.1997 for the purchase of 04 Kanals of land from Afridi village to the bank of Laghoney road.

17. In view of the above circumstances, the appeal is accepted partially. The impugned judgment and decree are modified. The suit is decreed to the extent of one piece of land measuring 20 Kanals and 03 Marlas situated at the bank of river Mastora at Mandra Khel and it is dismissed to the extent of 04 Kanals of land from Afridi village to the bank of Laghoney road. Cost shall follow the events. File of this Court be consigned to record room after its necessary completion and compilation.

Announced:
11.11.2026

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CERTIFICATE

Certified that this judgment consists of ten (10) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 11.11.2026

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