(228)

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

Civil Suit No.	61/1 of 2024
Date of Institution:	13.05.2023
Date of Transfer In:	21.05.2024
Date of Decision:	27.10.2026

1. Gul Nawaz s/o Raheem Khan
2. Rajmeen Ali s/o Raheem Khan
3. Amil Hussain s/o Raheem Khan
4. Shamim Ali s/o Raheem Khan
5. Minhaj Ali s/o Ali Man Shah *and 08 others.*

All R/O Qoum Mani Khel, Tappa Bada Khel, Tehsil Lower, District Orakzai.

..... ***(Plaintiffs)***

VERSUS

1. Ajib Ali s/o Yaqeen Ali
2. Minhaj Ali s/o Yaqeen Ali
3. Akan Ali s/o Yaqeen Ali
All residents of Qoam Mani Khel, Tappa Bada Khel, presently, Ahmad Khel, Tehsil Lower, District Orakzai.

Sumira Naz, Noormina Jan, Sidra Naz, Sawira Naz and Subhan Ali are the legal heirs of the deceased namely Akan Ali (defendant No.3)

4. Darwish Ali s/o Noor Ali
5. Asmat Ali s/o Ghulam Ali
Both are residents of Qoam Mani Khel, Tappa Bada Khel, Village Amat Khel, Tehsil Lower District Orakzai.
6. Habib Hussain s/o Shabir Hussain, Contractor, **residents of Qoam Mani Khel, presently Chikarkot, Kohat.**
7. Secretary to Govt KPK Home Department.
8. The secretary Board of Revenue KPK.
9. Commissioner Kohat devision.
10. Chief Executive Officer. (deleted vide order dated: 06.03.2024)
11. Tehsildar Lower Orakzai.
12. AC lower Orakzai. DC Lower Orakzai.
13. Food Department KP, through District Food controller.

..... ***(Defendants)***

IJAZ MAHSOOD
Senior Civil Judge/JM
Orakzai at Baber Mela

229

SUIT FOR DECLARATION OF TITLE, RESTRAINING INJUNCTION ORDER, AND IN THE ALTERNATIVE, FOR PARTION OF SUIT LAND

JUDGEMENT:
27.10.2026

This order is to decide instant suit filed by Mr. Gul Nawaz and 12 others, the plaintiffs, for declaration of title, restraining injunction, and in the alternative, for partition of suit land, against Mr. Ajeeb Ali, and 13 others, the defendants.

Pleadings:

The claim as recounted in the plaint reads that suit land is owned in half by the plaintiffs and defendants, and is yet to be partitioned. It is alleged that defendants are attempting to forcibly occupy in excess to their title, and to misappropriate/sell lands illegally. The plaint holds that suit land is the entitlement of 05 families in equal shares, and that defendants are beyond their rights in illegal interference with title and possession. It is reported that previously petitions were moved before district administration but to no avail, hence the suit. Plaintiffs request for declaration of title, restoration of possession, and partition per shares among the co-owners.

Defendants no 01 to 04 submitted a joint written statement wherein, in addition to regular objections to the validity of the suit, they attempted to refute the factual stance

IJAZ MAHSOOD
Senior Civil Judge (J)
Orakzai at Baber Mela

~~223~~ 236

of the plaintiff. They held that suit land is ancestral ownership of the defendants given to them in family partition some 50 years back, and they have been in possession since. It is stated that suit land has already been acquired by government for Food Godowns, and section 04 proceedings have concluded. It is claimed that 4 shops constructed by the defendants roughly 30/40 years back. It is claimed that before acquisition, a committee of locals commissioned by the District Collector had inquired into the title-holders of suit land, and confirmed defendants as owners in possessions. After the report, a month's period was afforded to potential objectors, but no one came forward, reportedly. The written statement concludes with a prayer for dismissal of the suit.

Defendant no 04 submitted a separate written statement wherein it is held that plaintiffs have no juridical ties to the suit land. It is claimed that suit land is co-owned and held by the defendants. That since suit land has already been acquired by government under section 04 of Land Acquisition Act, defendants are entitled to receive compensation for the land in accordance with their entitlements. The written statement prays for dismissal of the suit.

Defendants no 07, 08, 09, 13, and 14, being government officials, filed a joint written statement. They contend that suit land has already been purchased by the

IJAZ MAHSOOD
Senior Civil Judge/JM
Orakzai at Baber Mela

(231)

government for construction of food Godowns. It is related that after confirmation of title-holders and market value by a committee of locals, the purchase was finalized. They request for dismissal of suit.

Differences between the positions of the parties were distilled and reduced into the following issues:

Issues:

1. Whether the suit is maintainable in its present form, free of legal defects and if the forum is competent to try it.
2. Whether the suit land is the exclusive ownership of the plaintiffs or it is jointly owned by both sides?
3. If the subject matter is jointly owned what is the measure of entitlement of each side?
4. Whether the plaintiffs are entitled to the relief as claimed for?
5. Relief?

Witnesses/Exhibits:

Mr. Malak Sorat Khan s/o Aman Ullah, appeared as PW-01, Mr. Saifor Khan s/o Muhammad Ghulam, appeared as PW-02, Mr. Syed Noor Akbar s/o Syed Mir Anwar, appeared as PW-03, Mr. Manawar Khan s/o Ghulam Nabi, appeared as PW-04, Mr. Ikhtiar Ali s/o Sultan Ali, appeared as PW-05, Mr.

IJAZ MAHSOOD
Senior Civil Judge/JM
Orakzai at Baber Mela

232

Ashraf Hussain s/o Ahmad Ali, appeared as PW-06, Mr. Zahir Ali s/o Mehar Ali, appeared as PW-07, Gul Nawaz Khan s/o Raheem Khan, special attorney of the plaintiff, appeared as PW-08, Mr. Shafi Ullah, record keeper of DC Orakzai, appeared as DW-01, Mr. Shafi Ullah, record keeper of DC Orakzai, appeared as DW-02, Mr. Muhammad Wazir s/o Gul Mehdi, appeared as DW-03, Mr. Jawad Ali s/o Aman Ali, appeared as DW-04, Mr. Sahir Ali s/o Saeed Ullah Jan, appeared as DW-05. Mr. Mirzali s/o Ahamd Ali, appeared as DW-06, and Mr. Shakeel Khan s/o Sadiq Ali, special attorney for defendant No. 1 to 3, 6 and 7, appeared as DW-07. They have exhibited the following documents;

i. Copy of my statement as Ex.PW-1/1.

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

iii. Copy of CNIC of PW-02 as Ex.PW-2/1.

iv. Copy of CNIC of PW-03 as Ex.PW-3/1.

v. Copy of CNIC of PW-04 as Ex.PW-4/1.

vi. Copy of CNIC of PW-05 as Ex.PW-5/1.

vii. Copy of CNIC of PW-06 as Ex.PW-6/1.

viii. Copy of CNIC of PW-07 as Ex.PW-7/1.

ix. Special power of attorney of PW-08 as Ex.PW-8/1.

x. List of heirs of Barh Khel as Ex.PW-8/2.

IJAZ MAMSOOD
Senior Civil Judge/JM
Orakzai at Upper Mela

xi. Copy of CNIC of PW-08 as Ex.PW-8/3.

xii. Publication as Ex.PW-8/4.

xiii. Copy of Sketch as Ex.PW-8/5.

xiv. Section 4 and 11 as Ex. DW-1/1 and Ex. DW-1/2 (consists of two pages).

xv. Copy of CNIC of DW-3 as Ex. DW-3/1.

xvi. Copy of CNIC of DW-4 as Ex. DW-4/1.

xvii. Copy of CNIC of DW-5 as Ex. DW-5/1.

xviii. Copy of CNIC of DW-6 as Ex.DW-6/1

xix. Special power of attorney as Ex.DW-7/1.

xx. Copy of CNIC of DW-7 as Ex.DW-7/2.

Reasoning/Ruling:

Issue wise reasoning of the court followed by a decision on each issue is as below:

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 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

IJAZ MAHSOOD
Senior Civil Judge/JM
Orakzai at Baber Mela

(234)

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:

This issue questions the claim of the plaintiff that he is owner of the suit land entitled to the extent of his share. Defendants have denied this claim of plaintiff being a co-owner. The burden to prove the claim/issue fell on the plaintiff.

- Plaintiff produced 08 witnesses in support of his stance. First four witnesses for plaintiff testified to explain their role as committee members appointed by the District Collector for ascertainment of sale rate of the land for the purpose of its acquisition by government.
- These four witnesses did not supply any material information on the claim of the plaintiff being owner of the suit land. They merely confirmed their role of being committee members to fix rates.
- Plaintiff witness no 05 and 06 report a Jirga that allegedly took place between the plaintiff and defendants for partition of suit land. Mr. Ikhtyar Ali, witness no 05 reports that a verbal Jirga took place in which he and Mr. Ashraf Hussain acted as mediators.

IJAZ MAHSOOD
Senior Civil Judge JM
Orakzai

935

- Similarly, Mr. Ashraf Hussain, witness no 06, is purportedly mediator in the alleged jirga for partition of suit land between plaintiff and defendants.
- Interestingly, this Jirga for partition finds no mention in the pleadings. The witnesses don't share any material particular about time, place, date, or venue, and outcome except endorsing the role and presence of the other as a mediator in a jirga for partition. In view of these observations, this narrative about jirga seems an afterthought that was never pled or proved.
- This leaves final two witnesses, both of whom are plaintiffs. Plaintiff witness no 07 Mr. Zahir Ali, confirms that plaintiffs and defendant do not have either common grandfathers or great grandfathers. He concedes that proceedings for purchase of land were conducted between collector and defendants. Further, he admits that suit land is ancestral property of defendants.
- Mr. Gul Nawaz, the lead plaintiff, took the witness stand as PW-08. He admits that dispute over the title of the land has been lingering since 1978 and many jirgas have taken place, but proved fruitless. He concedes that no complaint or petition was filed by him or his predecessors with the erstwhile Political Administration.

IJAZ MAHSOOD
Senior Civil Judge/JM
Orakzai at Baber Mela

936

- He reports that his house is built on land in return of which certain land was given to the defendants. That no dispute arose over the construction. Further that defendants have constructed shops on their land.
- He reports that a coal depot existed on the land in which he served as 'Munshi'/caretaker. He also admits that great grandfathers of the parties are not shared between them. He admits that suit land is in the possession of the defendants. He states that shops on the suit land were constructed in 2003/04, and that no complaint was filed against said construction. He further admits that in Tirah, plaintiffs have lands that they received after partition.

Concluding Observations:

Witnesses for plaintiffs have conceded that plaintiffs and defendant have no common ancestor up until their great grandfathers. They have conceded that they have lands and constructed houses on it after partition. They have admitted that suit land is in possession of the defendants, and that they have shops constructed on it in 2003-04. In view of these observations, the court is unmoved about the proof of the issue. The issue is decided against the plaintiffs.

Issues No 03:

This issue questions about the extent of entitlement of each side if it is established that the land is jointly owned.

IJAZ MAHSOOD
Senior Civil Judge JM
Orakzai at Baber Mela

(237)

The outcome of the previous issue has established that plaintiffs are not co-owners in the suit land.

As for the defendants, Mr. Shakeel Khan, attorney for defendants, admits in his cross-examination that suit land is jointly owned by the defendants. Defendants have admitted the status in their pleadings too.

As for the share of each co-owner from among the defendants, the court is of the considered view that since the instant suit was filed by plaintiff for declaration, determination of shares would create confusion and frustration. The court deems separation of cause of actions advised and imperative. Parties having title in the land may apply for its proper partition before a competent forum in a separate suit. With these observations, the issue stands disposed.

Issue No. 04:

The burden to prove this issue was upon the plaintiffs. In view of the findings recorded on Issues No. 2 and 3, the plaintiffs have failed to establish their ownership or lawful share in the suit land.

They have also failed to prove that the defendants have illegally interfered with any ownership or possessory right belonging to them. Consequently, the plaintiffs have no

IJAZ MAHSOOD
Senior Civil Judge/JM
Orakzai at Baber Mela

(238)

established legal basis for claiming declaration, permanent injunction or partition of the suit land.

Therefore, the plaintiffs are not entitled to the relief claimed in the plaint.

This issue is accordingly decided against the plaintiffs.

RELIEF

In view of the foregoing discussion and findings on the issues, the plaintiffs have failed to prove their ownership or lawful entitlement in the suit land through reliable and convincing evidence.

Resultantly, the instant suit is hereby **DISMISSED** for want of proof and being devoid of merit.

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

Announced
27.10.2026

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

CERTIFICATE

Certified that this judgment of mine consists of 11 pages, each has been checked, corrected where necessary and signed by me.

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