

**IN THE COURT OF SAMI ULLAH, CIVIL JUDGE-I,  
ORAKZAI (AT BABER MELA).**

Original Civil suit No	7/1
Date of Original institution	22.01.2020
Date of decision	13.01.2023

1. **Said Muhammad S/o Geedarh Shah**  
Resident of Qoam Mala Khel, Tappa Aziz Khel Fareed Khan Mela, PO  
Ghiljo Tehsil Upper Orakzai, Presently Darband Hangu.  
..... (Plaintiff)

**Versus**

1. **Ezat Muhammad S/o Geedarh Shah**
2. **Sadiq Muhammad S/o Niaz Muhammad**
3. **Raziq Muhammad S/o Niaz Muhammad**
4. **Fida Muhammad S/o Niaz Muhammad**
5. **Mst. Rahat Mina D/o Niaz Muhammad**
6. **Mst. Dana D/o Niaz Muhammad**
7. **Mst. Awal Mina W/o Niaz Muhammad**
8. **Mst. Niaz Juma D/o Geedarh Shah**
9. **Mst. Zar Juma D/o Geedarh Shah**
10. **Mst. Gul Juma D/o Geedarh Shah**

All residents of Qoam Mala Khel, Tappa Aziz Khel, Fareed Khan Mela PO  
Ghiljo Tehsil Upper Orakzai.

.....(Defendants)

**SUIT FOR DECLARATION, RECOVERY OF POSSESSION  
THROUGH PARTITION AND PERMANENT INJUNCTION.**

**JUDGMENT:**

1. Brief facts of the case are that plaintiff has filed the instant suit for declaration cum-permanent injunction and recovery of possession through partition to the effect that he is co-owner of landed property consisting of 49 fields and two houses detailed in the head note of

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plaint. That the suit property is his ancestor's property and plaintiff being one of the legal heirs of Geedarh Shah (predecessor of the parties) is entitled to his Shari share in the inherited property. That defendants refused to admit the claim of the plaintiff, hence, the present suit.

2. After due process of summons the defendants appeared in person and contested the suit by submitting written statement in which contention of the plaintiffs were resisted on two factual issues mainly. Firstly, that the undivided inherited property which is yet to be partitioned, doesn't consist of the property mentioned in the headnote of the plaint and some of the property mentioned in the plaint was purchased by the defendants. And secondly, defendant No.4 is the son of the one Geedarh Shah and has been wrongly mentioned as the son of Naiz Muhammad in the plaint.
3. The divergent pleadings of the parties were reduced into the following issues.

**ISSUES.**

1. *Whether the plaintiff has got a cause of action?*
2. *Whether the suit of the plaintiff is time barred?*
3. *Whether the plaintiff is estopped to sue?*
4. *Whether the plaintiff is entitled to his share in the suit property including the suit houses being the legal heir of the predecessor of the parties namely Geedarh Shah?*
5. *Whether 04 of the fields are purchased by the defendants and they are not the ancestral property of the parties.*
6. *Whether the plaintiff has withdrawn an amount of Rs. 300,000/- from the joint Account No. 1902 of the predecessor of the parties in the Muslim Commercial Bank, Hangu and the defendants are entitled to the recovery of their shares in the amount after rendition of accounts?*

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

8. Relief.

4. Parties were afforded with ample opportunity to adduce evidence. Plaintiff in support of his claim and contention produced 02 Witnesses. Detail of the plaintiff's witnesses and exhibited are documents are as under; -

	WITNESSES	EXHIBITIS
PW-1	Said Muhammad S/o Geedarh Shah Qoam Mala Khel Upper, District Orakzai.	Nil
PW-2	Muhammad Ibrahim S/o Abdul Rasheed, Resident of Gul Bagh, District Hangu.	Nil
APW-I	Said Muhammad S/o Geedarh Shah Qoam Mala Khel Upper, District Orakzai.	Nil

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Defendants in support of his claim and contention produced one (01) witness. Detail of defendant's witnesses and exhibited documents are as under;

	WITNESSE	EXHIBITIONS
DW-1	Shah Muhammad S/o Ezat Muhammad Qoam Mala Khel Upper, District Orakzai.	1. Date Registration Certificate from 1 & 2 is Ex. DW-1/1. 2. Copy of New CNIC of Fida Muhammad is <b>Mark-A</b> . 3. Fard of Jamabandi for year 1995-96 is Mark-B 4. Copy of old CNIC of Fida Muhammad is Ex. DW-1/(X-1) 5. Power of Attorney of Fida Muhammad is Ex. Dw-1/(X-2)

5. Plaintiff in support of his claim and contention appeared himself and recorded his statement firstly as PW-01 and secondly as APW-01 after the grant of amendment of plaint by the court. He stated that his father has left behind property consisting 49 fields and two houses and that we three brothers including the plaintiff and three sisters are entitled to the partition of the said property. The plaintiff has also produced one other witness, whose statement was recorded as PW-02 and thereafter, plaintiff closed his evidence.
6. Shah Muhammad son of defendant No.1 and power of attorney for the rest of defendants, deposed as DW-02. He denied the claim of plaintiff asserting that defendant No.4 is the son of Geedarh Shah and not of Niaz Muhammad. Further, he contended that their predecessor has not left all property mentioned in the head note of the plaint but instead, the undivided inherited property consists of 30 fields and not 49 fields. Similarly, it consists of one house instead of two houses, as one house had been built by the defendants and not their predecessor. After recording of statement of DW-01, the defendants closed their evidence.
7. After completion of evidence of the parties, arguments of the learned counsel for the parties were heard and record of the case file was gone through. The issue-wise findings of the suit in hand are as under;

**ISSUE NO.2:**

*Whether the suit of the plaintiff is time barred?*

8. Defendants have objected the claim of the plaintiffs on the score of limitation in their written statement. Plaintiffs are admittedly entitled to

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their Sharie share in undivided inherited property. Legally every co-owner can get his share partitioned at any time and there is no question of limitation. As the suit for partition can be sought without the ambit of limitation. Wisdom is drawn from the judgments of Superior Courts and reliance is made on 2015 SCMR 869. Therefore, the suit of the plaintiffs is well within time.

9. As for as the limitation for filling a suit for declaration is concerned. The period of limitation commences either on the accrual of cause of action or on attaining knowledge of any wrong. As per plaint, the plaintiff got cause of action to file the suit after refusal of the defendants to admit the claim of the plaintiffs; few days prior to the institution of the suit. As suit for declaration must be sought within a period of six years under Art: 120 of the Limitation Act 1908, hence, the instant suit is filed well within time.
10. This issue is therefore, decided in negative and in favor of the plaintiff.

**ISSUE NO.3:**

*Whether the plaintiff is estopped to sue?*

11. The issue was raised by the defendants in their written statements but the same was neither discussed nor stressed upon in the evidence, hence, remained redundant.

**ISSUE NO.3:**

*Whether the plaintiff is entitled to his share in the suit property including the suit houses being the legal heir of the predecessor of the parties namely Geedarh Shah?*

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12. The onus of proving the issue was on the plaintiff. The plaintiff has filed the instant suit for the declaration and possession through partition of two houses and landed property in shape of 49 fields. The plaintiff sought partition of the same being one of the legal heirs of the one namely Geedarh Shah.
13. Plaintiff produced two witnesses in support of his claim. Plaintiff firstly appeared as PW-01 and recorded his statement and sought partition of his ancestral land. In his cross examination nothing incrementing was brought on the record but has denied the existence of the daughters of the deceased Geedarh Shah. After the recording of the same, the plaintiff has, after prior permission of the court, filed amended plaint in which the plaintiff has included daughters of the deceased Geedarh Shah which are his sisters in the penal of defendants. Afterwards he recorded his statement as APW-01. He recorded his statement without taking oath. The fact that the plaintiff has not taken oath on his statement was under discussion in the final arguments and it was revealed that the plaintiff has in his plaint denied the fact that Defendant No.4 namely Fida Muhammad is his brother. And for that very reason the plaintiff has not taken oath. As for as other contents of the statements are concerned regarding the ancestral land and houses of the plaintiff, the same has been confirmed in the statement of PW-02, which is on oath. Moreover, the property and share of the plaintiffs in the joint property has been admitted by the defendants but the description of same has been objected by the defendants.
14. Defendants in their written statements has objected the claim of the plaintiff on two grounds. The first pertains to the description of the

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property and the second to the parentage of the defendant No.4 which will affect the share of the plaintiff in the partition.

15. Defendants has objected the description of the property and contended that the suit property which left behind by their ancestor is not the same as described by the plaintiff in the plaint. Two stances came forward from defendants in the written statement. Firstly, the landed property consists of 30 fields instead of 49 fields and secondly one house was left to the legal heirs by their predecessor and the other house was built by the defendants.

16. The matter pertaining to the description of the landed property that whether the same consists of 49 fields or 30 fields was addressed in evidence. The plaintiff in rebuttal of the stance of the defendants has contended that some of the smaller fields has been combined by the defendants and they count the same as one. Needless to mention here, that since District Orakzai is mainly a hilly area and the agricultural property is in shape of smaller fields and the landed property is described in terms of number of fields instead of measurement of fields.

17. The matter pertaining to the houses of the suit property that whether two houses were left behind by the deceased in his legacy or one house, was addressed in the evidence. PWs in their statements has recorded that there are two ancestral houses while DW-01 in his statement has recorded that it consists of one house. The other house was built by the defendants. But DW-01 in his statement, has admitted that the second house was build by the defendants on the land left behind by their deceased predecessor.

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18. The second objection which the defendants has raised in the Written statement and which was addressed in the evidence pertains to the fact that whether defendant No. 4 namely Fida Muhammad is the son of late Niaz Muhammad s/o Geedarh Shah or is the son of Geedarh Shah. The plaintiff has asserted that defendant No.4 is the son of their late brother Niaz Muhammad, hence the same is his nephew and not his brother. The plaintiff has produced old CNIC of the Defendant No. 4 which is placed on file and there the father's name mentioned is Niaz Muhammad. But defendants in their written statement have brought the fact before the court that in order to take defendant no.4 abroad with himself, the late Niaz Muhammad s/o of Geedarh Shah has declared the same as his son in Nadra record which in fact is his brother and is entitled to his legal share as a son in the property of their predecessor and not as a grandson. This fact was exploited by the plaintiff and he has included defendant no.4 in the present suit as his nephew and being entitled to his share as a grandson in the undivided property of their predecessor, which will have its bearing on the share of the plaintiff.

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19. DW-01 is his statement has exhibited some documents of Nadra and revenue record of District Hangu, in which parentage of defendant No. 4 is established and the father's name of the same is mentioned as Geedarh Shah. It is pertinent to mention here that even if the old Nadra record wrongly indicate the father's name of the Defendant No. 4, it has been corrected in the new corrected record of Nadra. Moreover, the defendants reproduced certain attested documents before the court, pertaining to a partition case in District Courts Hangu between the same parties. One of the documents is the statement of the present



plaintiff in the said case; in which he has admitted that defendant No. 4 is the son of Geedarh shah and is his real brother and the court of Senior civil Judge Hangu has declared the same as the son of Geedarh Shah.

20. Keeping in view the above discussion on the parentage of Defendant No.4, the same is declared as the son of Geedarh Shah and is entitled to his share in undivided inherited property of the predecessor as a son, along with his brother namely said Muhammad, Izat Muhammad. And since one of the brothers of the plaintiff is dead, his legal heirs (Defendant No.2, 3 and 5 to 7) are entitled to the legal share of their father in the inherited property. Moreover, the daughters of the Geedarh Shah who are defendants No.8 to 10 are entitled to their Sharie Share
21. Keeping in view the above discussion, issue No.02 is decided in favor of plaintiff and he is entitled to his legal share in suit property.

**ISSUE NO. 5:**

*Whether 04 of the fields are purchased by the defendants and they are not the ancestral property of the parties?*

22. The onus of proving the issue was on defendants. Defendants has contended in the written statement that four fields were purchased by defendants.
23. The defendants in the written statement have not specified the description of the fields which they allege to have been purchased by them. Nor did they mention that who among the defendants has purchased the said four fields. And most importantly defendants have

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not produced any evidence in shape of oral evidence of a witness or any documents by which the said four fields were purchased. Ample opportunity was afforded to the defendants to produce the evidence and despite that they produced only one witness and his statement revolved around the parentage of defendant No.4 and the issue regarding ownership of the four fields remained unaddressed and redundant.

24. Keeping in view the above discussion, it is held that defendants have failed to produced cogent, convincing and reliable oral and documentary evidence in support of their claim, therefore, issue No.05 is decided in negative and against the defendant.

**ISSUE NO. 6:**

*Whether the plaintiff has withdrawn an amount of Rs. 300,000/- from the joint Account No. 1902 of the predecessor of the parties in the Muslim Commercial Bank, Hangu and the defendants are entitled to the recovery of their shares in the amount after rendition of accounts?*

25. The onus of proving the issue was on defendants. But the issue remained unaddressed and redundant in the evidence. Hence, defendants have failed to produced cogent, convincing and reliable oral and documentary evidence in support of their claim, therefore, issue No.05 is decided in negative and against the defendant.

**ISSUE NO. 1 and 7:**

*Whether plaintiffs have got cause of action?*

*Whether plaintiffs are entitled to the decree as prayed for?*

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26. Both these issues are interlinked, therefore, are taken together for discussion.
27. Keeping in view my issue wise discussion, it is held that plaintiff has got cause of action and is entitled to the decree as prayed for. Both these issues are decided in favor of plaintiff and against the defendant.

**RELIEF:**

28. As a result of my issue wise findings, suit of the plaintiffs succeeds. It is therefore, decreed. And preliminary decree for the recovery of possession through partition in respect of the suit property is passed in favour of the plaintiff to the extent of his legal and Shari shares. Cost to follow the events.
29. File be consigned to record room after its necessary completion and compilation.

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**CERTIFICATE: -**

Certified that this judgment consists of eleven (11) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

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