



proforma defendants No.5 to 11. That the suit property came in their possession and ownership after the demise of their ancestor namely Jumma Khan in 1973. They further contended that due to worst law and order situation in District Orakzai, the plaintiff had shifted to Hangu and after their repatriation, they have found that the contesting defendants no.1 to 4 have levelled the suit property and are trying to build a house on it. The plaintiff prayed through the instant application that the defendants shall be restrained from interference in the suit property.

- 2. After due process of summons the defendants appeared in person and contested the suit by submitting written statement in which contention of the plaintiff was resisted on many legal as well as factual grounds.
- 3. The divergent pleadings of the parties were reduced into the following issues.

**ISSUES.**

- 1. *Whether the plaintiff has got cause of action?*
- 2. *Whether the plaintiff is estopped to sue?*
- 3. *Whether the suit of the plaintiff is time barred?*
- 4. *Whether the plaintiff and proforma defendant No.05 to 11 are owners in the suit property and are entitled to enjoy all the rights associated with the same?*
- 5. *Whether the defendant No.01 to 04 are owners in possession of the suit property from the time of their predecessors?*
- 6. *Whether plaintiff is entitled to the decree as prayed for?*
- 7. *Relief.*

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30.03.2023*

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Civil Judge/JM-I  
Orakzai at (Babar Mela)

- 4. Parties were afforded with ample opportunity to adduce evidence. Plaintiff in support of his claim and contention produced 04

Witnesses. Detail of the plaintiff's witnesses and exhibited documents are as under; -

	WITNESSES	EXHIBITIS
PW-1	Rayat Khan S/o Ameen Khan Resident of Dorri Bandha P.O. Kahe District Hangu	Copy of CNIC is Ex.PW-1/1
PW-2	Najeeb Uldeen S/o Khayal Deen Resident of Dorri Bandha P.O. Kahe District Hangu	Nil
PW-3	Dawood Khan S/o Ameen Khan Resident of Dorri Bandha P.O. Kahe District Hangu	Copy of CNIC is Ex.PW -3/1
PW-4	Muhammad Janan S/o Umar Jan Tappa Kahe Daman Bandha, P.O. Kahe, District Hangu.	Nil

Defendants in support of his claim and contention produced four (04) witnesses. Detail of defendant's witnesses and exhibited documents are as under;

*Sami Ullah*  
30.03.2023  
**Sami Ullah**  
Civil Judge/JM-1  
Orakzai at (Babar Mela)

	WITNESSES	EXHIBITIONS
DW-1	Sardar Khan S/o Daurany Qoam Resident of Taali, District Orakzai.	Copy of CNIC as Ex. DW-1/1 Power of Attorney as Ex. DW-1/2 Copy of CNICs Defendant No.01, 03 and 05 as Ex.DW-1/3. Copy of registration form for IDPs is Ex.DW-1/4. Copy of Cash form for receiving compensation is Ex.DW-1/5.

DW-2	Fazal Badshah S/o Gul Badshah Resident of Qoam Taali District Orakzai.	Copy of CNIC as Ex. DW-2/1
DW-3	Mohabat Shah S/o Lal Shah Resident of Ghiljo District Orakzai	Copy of CNIC as Ex. DW-3/1
DW-4	Meeran Shah S/o Noran Shah resident Ghiljo Kaly District Orakzai	Copy of CNIC as Ex. DW-4/1

5. 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.
6. Learned counsel for the plaintiff Mr. Noor Karim Advocate argued that plaintiff has produced cogent evidence and reliable witnesses to prove that the suit property is ancestral ownership of plaintiff alongwith proforma defendants. The witnesses are consistent in their statements that the suit property is ownership of the plaintiff and proforma defendants left behind by their predecessor namely Juma Khan.
7. Learned counsel for the defendants Mr. Shaheen Muhammad Advocate argued that the plaintiff has not produced sufficient evidence in order to proof his case. It is brought before the court in evidence that the plaintiff and proforma defendants have left the area long ago and they don't have possession of the suit property. It is also established in evidence that defendants have long standing position of suit property. Plaintiff don't have any documentary proof to support his stance. On the other hand, defendant's possession can be established by documents placed on file and exhibited in evidence.

*Sami Ullah*  
*30.03.2023*

**Sami Ullah**  
Civil Judge/JM-I  
Orakzai (Babar Mela)

8. After hearing arguments and after gone through the record of the case with valuable assistance of learned Counsels for both the parties, my issue-wise findings are as under:

**ISSUE NO.2:**

*Whether the plaintiff is estopped to sue?*

9. Burden of proof regarding this issue was on defendants. Estoppel needs cogent, convincing and reliable evidence which is lacking on the part of defendants, therefore issue is decided in negative and against the defendants.

**ISSUE NO.3:**

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

9. Though the defendants have taken the defense that the suit is not within time but they neither produced any evidence nor the point was agitated before the court at the time of arguments. Even otherwise, there is nothing available on record which can suggest the fact that the suit is time barred. Therefore, it is held that the suit is well within time. Hence, the issue is decided in negative.

**ISSUE NO.4:**

*Whether the plaintiff and proforma defendant No.05 to 11 are owners in the suit property and are entitled to enjoy all the rights associated with the same?*

10. The claim of plaintiff is that he alongwith proforma defendants are lawful owner of suit property and the suit property was their ancestral property and defendant have illegally possession of the

*Lamin Ullah*  
*30-03-2023*  
Sami Ullah  
Civil Judge/JM-I  
Orakzai at (Babar Mela)

same. Burdon of proof regarding this issue was on plaintiff.

Plaintiffs, in order to discharge this duty, produced four PWs.

11. Plaintiff himself deposed as PW-01 and stated on oath that the disputed property is his ancestral property alongwith proforma defendants. That the suit property was given to the predecessor of the contested defendants for cultivation purpose only by our predecessor. However, the contested defendants have illegally taken possession of the suit property and are denying our rights at present. The said PW stated in his cross examination that he is of 52/53 years of age and was born in Hangu. And further admitted that they have never been residing in District Hangu. Also admitted that he don't have possession of the suit property. Further stated that defendants had received compensation of the land which was spared for construction of road

12. PW-02 is the statement of relative of the plaintiff, who supported the stance of the plaintiff and said that the suit property is the ownership of plaintiff and proforma defendants. The said PW stated in his cross examination that neither the plaintiff has any house in district Orakzai nor plaintiff has recently moved to Hangu.

13. PW-03 is the statement of brother of the plaintiff who has supported the stance of the plaintiff in his examination-in-chief. He also admitted that they have not moved to Hangu recently and don't have any house in district Orakzai. Similarly, the statement of PW-04 pertains to the same facts.

14. The statements of the plaintiffs' witnesses brought the facts before the court, mentioned here in after, which provided reason for deciding the issues in their favor. Firstly, the witnesses were consistent in their statement that the plaintiff along with proforma

*Sami Ulfah*  
*30-03-2023*  
**Sami Ulfah**  
 Civil Judge/JM-I  
 Orakzai (Babar Mela)

78 96

defendants had moved to District Hangu long ago and that the plaintiff don't have a house in district Orakzai. Similarly, the disputed property is in possession of the defendant No.1 to 4, which established the fact that the said defendants have long standing possession over the disputed property. Secondly, as admitted by the plaintiff in his statement that compensation of the land which was spared for construction of road, was received by the contested defendants which strengthen the stance of the defendants that the suit property is their ownership. And lastly, there is no documentary prove of any description with the plaintiff which might have strengthened his stance.

15. Keeping in view the above discussion, it is held that plaintiff failed to produce any cogent, convincing and reliable oral and documentary evidence in support of their claim, therefore, issue No.02 is decided in Negative and against the plaintiff.

**ISSUE NO. 5:**

*Whether the defendant No.01 to 04 are owners in possession of the suit property from the time of their predecessors?*

16. The onus of proving the issue was on defendants and defendants produced four witnesses in their favor. The essence of their statements is as below.
17. Defendant No.2 namely Sardar Khan deposed as DW-01. He denied the claim of the plaintiff and contended that the suit property is his ancestral ownership and in their possession since long. He also stated that the suit property has been partitioned between his brothers. Further stated that their IDP registration

Lami  
Ullah  
30.03.2023  
Sami Ullah  
Civil Judge/JM-I  
Orakzai (Babar Mela)

form is placed on record and is Ex.DW-1/4. Moreover, they also have received compensation amount which was given to them in lieu of providing land for construction of road (the relevant document is Ex.DW1/5). Nothing contradicting was recorded in his cross examination which might prove fatal to the stance of defendant No.1 to 4.

18. DW-02 is his statement approved the stance of defendant No.1 to 4 and stated that the suit property is in possession of the same since long. Similarly, DW-03 and DW-04 also recorded their statements in support of the stance of the defendants.

19. It is pertinent to mention that deposition of the witnesses produced by contesting defendants remained unshattered and nothing contradictory to the stance of the said defendants were recorded in course of evidence. The exhibited documents although is not the title documents of ownership but they are sufficient to establish possession of the disputed property in absence of any revenue record. Moreover, DWs in their statement have also admitted the possession of the contesting defendants over the suit property.

20. Thus, keeping in view the above discussion, it is held that defendants have produced convincing and reliable oral and documentary evidence in support of their claim, therefore, issue No.04 is decided in positive and against the plaintiff.

**ISSUE NO. 1 and 6:**

***Whether plaintiffs have got cause of action?***

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

21. Both these issues are interlinked, therefore, taken together for

*Sami Ullah*  
30.03.2023  
Sami Ullah  
Civil Judge/JM-1  
Orakzai (Babar Mela)



100 98

discussion.

22. The discussions on the above referred issues show that plaintiff has failed to prove his case by fulfilling the requirements of law and by producing cogent and confidence inspiring evidence; therefore, he has got no cause of action. Therefore, the plaintiffs are not entitled to the decree as prayed for.

23. The issues No.01 and 06 are decided in negative and against the plaintiffs.


**RELIEF:**

24. The detailed discussion on issues mentioned above transpires that the plaintiff has failed to prove his case against the defendants by proceedings cogent and confidence inspiring oral or documentary evidence. Hence, suit of the plaintiffs is **Dismissed**.

Costs to follow the events.


25. File be consigned to record room after its necessary completion and compilation.

**Announced**  
30.03.2023

  
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Civil Judge/JM-I,  
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**CERTIFICATE: -**

Certified that this judgment consists of Nine (09) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

  
**Sami Ullah**  
Civil Judge/JM-I,  
Orakzai (At Baber Mela)