

**IN THE COURT OF SYED ABBAS BUKHARI,**  
CIVIL JUDGE-II TEHSIL COURTS, KALAYA, ORAKZAI

Civil Suit No. 54/1 of 2023  
Date of Original Institution: 15.07.2023  
Date of Decision: 05.10.2023

**Mst. Kamila Jan D/O Mohammad Afzal (late) and W/O Shabab Khan,** resident of Kurez, Tehsil Lower, District Orakzai.

(Plaintiff)

VERSUS

1. Noor Afzal,
2. Sher Afzal, both sons of Mohammad Afzal,
3. Mst. Mamila Jan and
4. Lal Maraj, both daughters of Mohammad Afzal, all residents of Kurez, Tehsil Lower District Orakzai.

(Defendants)

**SUIT FOR DECLARATION CUM PERPETUAL  
INJUNCTION**

**Ex-Parte Judgment/Order:**  
05.10.2023

Vide this ex-parte order I intend to dispose of suit in hand filed by plaintiff against defendants.

Brief facts of the case as narrated in the plaint are that plaintiff has filed the instant suit for declaration cum perpetual injunction to the effect that plaintiff and defendants are brothers and sisters inter se and thus are legal heirs of late Mohammad Afzal. Besides parties to the suit, one legal heir, namely Mir Afzal Khan, of deceased Mohammad Afzal had died issueless. She further allege that suit property was owner in possession of late Mohammad Afzal. That after the

death of Mohammad Afzal plaintiff time and again requested defendants to give her legal share in the suit property but they refused, hence, the present suit.

After institution of the instant suit the defendants were summoned and accordingly defendants no. 01 & 02 appeared before the court in person and stated that they will submit power of attorney on behalf of defendants no. 03 & 04 on the next date of hearing. However, subsequently defendants failed to appear before the court and accordingly they were placed and proceeded as ex-parte.


Thereafter, plaintiff was directed to produce her ex-parte evidence, which she did accordingly and examined 02 PWs and closed her evidence. Thereafter ex-parte arguments were advanced by counsel for the plaintiff.

Now on perusal of record, evidence produced by plaintiff and valuable assistance of learned counsel for the plaintiff this court is of the humble view that all the PWs deposed in light and support of the stance of plaintiff previously alleged in the plaint. Furthermore, due to ex-parte proceedings nothing in rebuttal or contradictory is available on the record. It is also pertinent to mention here that admittedly parties to the suit are legal heirs of deceased Mohammad Afzal. It is also worth mentioning here that one of the son/legal heir (Mir Afzal Khan) of deceased

Mohammad Afzal had died issueless but his legal heirs had not made party to the instant suit. In given circumstances, the legacy of deceased Mohammad Afzal is to be divided amongst his three sons and three daughters as per shariah. It is also necessary to mention here that parties to the suit belong to Shia School of thought and thus plaintiff had annexed fitwa issue by Jamia Shaheed Arif Ul Hussaini Peshawar. However, perusal of the said fitwa would reveal that same contains general rule of inheritance with regard to the share of brothers and sisters but did not contain any specification regarding the shares of parties to the suit and specially regarding the share of one of the legal heirs namely Mir Afzal Khan, who has not made party to the instant suit. In given circumstances, this court is of the humble view that as per law of shariah a son inherits double to the share of daughter. Hence the legacy of deceased Mohammad Afzal Khan is to be divided in nine shares and plaintiff has inherit 1/9<sup>th</sup> share in the legacy of deceased Mohammad Afzal.

In light of the above discussion, instant suit of plaintiff is hereby ex-parte decreed as under;

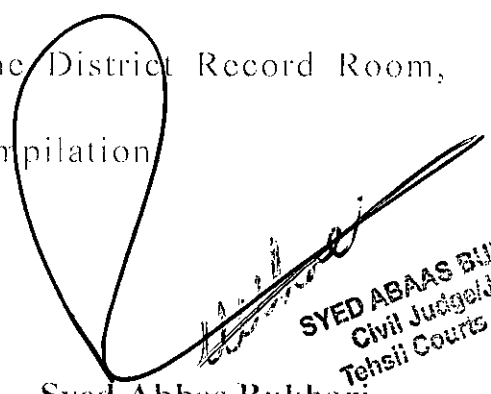
**Relief A;** as it is for declaration to the effect that parties to the suit are legal heirs of deceased Mohammad Afzal and further they are entitle their shari share in the legacy of deceased Mohammad Afzal, is hereby decreed.

  
 SYED ABAAS BUKHARI  
 Civil Judge J-11  
 District Courts Katara  
 05-10-2024

**Relief B;** As it is for possession of the share of plaintiff in the legacy of deceased Mohammad Afzal through partition, is hereby decreed and preliminary decree is hereby passed in favor of plaintiff. No order as to costs.

File be consigned to the District Record Room, Orakzai after its completion and compilation

Announced  
05.10.2023

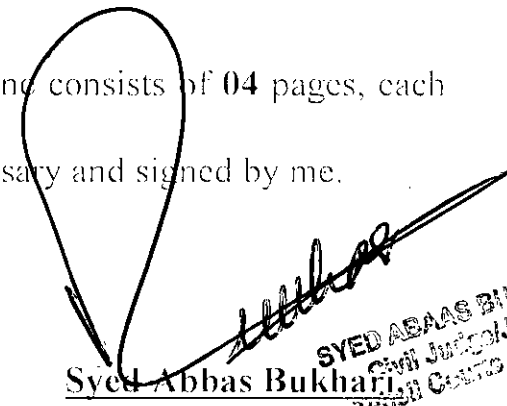


**SYED ABAAS BUKHARI**  
Civil Judge-II  
Tehsil Courts Kalaya

Syed Abbas Bukhari  
Civil Judge-II,  
Tehsil Courts, Kalaya, Orakzai

CERTIFICATE

Certified that this judgment of mine consists of 04 pages, each has been checked, corrected where necessary and signed by me.



**SYED ABAAS BUKHARI**  
Civil Judge-II  
Tehsil Courts Kalaya

Syed Abbas Bukhari  
Civil Judge-II,  
Tehsil Courts, Kalaya, Orakzai