

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

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Civil suit No	39/1 of 2023
Date of institution	16.06.2023
Date of decision	31.10.2023

1. Lal Jan S/O Abdul Rahim
2. Mst. Yar Mina D/O Abdul Rahim
3. Mst. Jan Mina D/O Abdul Rahim
4. Hanif Jan S/O Fazal Jan
5. Saeed Ullah S/O Fazal Jan
6. Anar Jan S/O Fazal Jan
7. Awal Jan S/O Fazal Jan
8. Hamid Ullah S/O Fazal Jan
9. Muhammad Nawaz S/O Fazal Jan
10. Shaukat Ullah S/O Fazal Jan
11. Mst. Pina Bibi D/O Fazal Jan
12. Mst. Bakhila Jan D/O Fazal Jan
13. Bostan S/O Chaman Khan
14. Gulistan S/O Chaman Khan
15. Noor Muhammad S/O Chaman Khan
16. Mst. Niaz Mewa D/O Chaman Khan
17. Khial Janan S/O Mewa Khan
18. Khial Bat Khan S/O Mewa Khan
19. Gul Shah S/O Zar Mina Jan
20. Liaq Shah S/O Zar Mina Jan
21. Didan Shah S/O Zar Mina Jan
22. Sadam Khan S/O Zar Mina Jan
23. Mst. Shahzad Khela D/O Mewa Khan
24. Mst. Roqia D/O Mewa Khan
25. Mst Jahana D/O Mewa Khan

All residents of Qoam Ali Khel, Tappa Sher Khel, Alaf Khel Kande Torab  
Nawasi, Tehsil Upper, PO Ghiljo, District Orakzai.

..... (Plaintiffs)

Versus

1. Dosti Khan S/O Sharif Khan
2. Gul Khan S/O Khiwa Khan

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3. Wazir Khan S/O Khiwa Khan
  4. Gulab Khan S/O Khiwa Khan
  5. Hayat Khan S/O Wazir Khan
  6. Malik S/O Khial Jan

All residents of Qoam Ali Khel, Tappa Sher Khel, Alaf Khel Kande Torab  
Nawasi, Tehsil Upper, PO Ghiljo, District Orakzai.

.....(Defendants)

**SUIT FOR DECLARATION WITH PERPETUAL MANDATORY  
INJUNCTION, POSSESSION THROUGH PARTITION AND  
RECOVERY OF RS.300,000/-.**

**EX-PARTE JUDGMENT:**

1. Brief facts of the case are that plaintiffs filed the instant suit for declaration-cum perpetual & mandatory injunction and possession to the effect that they are owner of 3/4 shares of the suit property consisting of ten fields (fully detailed in the head note of the plaint) since time of their ancestors. The plaintiffs also sought declaration and possession through partition of a joint house measuring one Jareeb to the extent 3/4 shares and recovery of 3/4 shares in Rs.400,000/- which were received by the defendants in lieu of compensation from the government. That defendants have no right to deny the legal rights of plaintiffs and to interfere in the suit property. That defendants were asked time and again to admit the legal claim of plaintiffs but in vain, hence, the present suit.
2. Defendants were summoned but they remained absent despite service, therefore, placed and proceeded against ex-parte.

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Thereafter, plaintiffs were allowed to produce their ex-parte evidence after submission of list of witnesses.

3. Detail of plaintiff's witnesses and exhibited documents are as under: -

	WITNESSES	EXHIBITIONS
PW-1	Kabal Badshah S/O Jan Badshah R/O Qoam Ali Khel, Tappa Sher Khel, Tehsil Upper, District Orakzai.	Copy of CNIC is Ex.PW-1/1.
PW-2	Jan Afzal S/O Akbar Jan R/O Qoam Ali Khel, Tappa Sher Khel, Tehsil Upper, District Orakzai.	Copy of CNIC is Ex.PW-2/1.
PW-3	Abdul Latif S/O Akbar Jan R/O Qoam Ali Khel, Tappa Sher Khel, Tehsil Upper, District Orakzai.	Copy of CNIC is Ex.PW-3/1.
PW-4	Lal Jan S/O Abdul Rahim R/O Qoam Ali Khel, Tappa Sher Khel, Tehsil Upper, District Orakzai.	Power of Attorney is Ex.PW-4/1, Copy of written partition is Ex.PW-4/2, Pi-Degree table is Ex.PW-4/3, Jirga decision dated 17.01.2023 is Ex.PW-4/4.

4. Ex-parte arguments heard and record perused.
5. Learned counsel for the plaintiffs, Mr. Abid Ali Advocate, argued that the plaintiffs claimed declaration, permanent injunction and possession on the basis of the fact that the

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plaintiffs are owners of the suit property in shape of ten field to the extent of 3/4 shares and joint owners to the extent 3/4 shares in joint house. He stated that in absence of revenue record in District Orakzai, reliance is placed on evidence of the PWs and exhibited documents. The PWs admitted the stance of the plaintiffs and ownership in the suit property. He further argued that the defendants are willfully avoiding court proceedings in the instant case despite proper service of summons. Further stated that the plaintiffs have proved their stance by producing cogent and confidence inspiring oral and documentary evidence in support of stance of the plaintiffs while there is nothing in rebuttal hence, prayed for decree of the suit.

6. The plaintiffs produced four witnesses in their ex-parte evidence in support of their claim. Kabal Badshah, Jan Afzal, Abdul Latif and plaintiff No.1 himself appeared and recorded their statements as PW-1, PW-2, PW-3 and PW-4. They supported the claim of plaintiffs. The essence of the ex-parte evidence of plaintiffs is as under.

7. Kabal Badshah appeared as PW-01 and explained in his statement the ancestral lineage of the plaintiffs and stated that every kandy (Family) had given their property on tenancy basis to different people in District Orakzai. That the plaintiffs and defendants are cousins, therefore, the plaintiffs had given the suit property to the defendants in tenancy in

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event of their migration. He also stated that the defendants had received an amount of Rs.400,000/- in lieu of compensation. He also stated that the plaintiffs' stance in the instant suit is correct.

8. Jan Afzal appeared before the court as PW-02 and recorded in his statement in favour the plaintiffs and stated that the plaintiffs are owners of eleven fields.

9. Abdul Latif appeared before the court as PW-03 and recorded his statement in favour of the plaintiffs and stated that the plaintiffs have also written a deed with the defendants at the time of survey, regarding the fact that the plaintiffs being members of Kandy Turab Namasi has shares in the suit property.

10. Lal Jan who is plaintiff No.1 and attorney for the rest of plaintiffs appeared before the court as PW-04 and recorded his statement as follow. That his ancestors had entrusted our land to the defendants on the basis of tenancy. That we are owners of eleven fields including the one on which a house is situated. That the shares of every kandy have been declared vide a written document which is Ex.PW-4/2. That a jirga has taken place on 11.01.2019 between the parties regarding the dispute on the suit property which is Ex.PW-4/4. At the end of his statement, he prayed for decree in favour of the plaintiffs.

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11. Thereafter, ex-parte evidence of plaintiffs was closed.
12. After hearing of ex-parte arguments and perusal of the record, this court is of the opinion that the plaintiffs established their case through oral and documentary evidence and as there is nothing in the rebuttal, therefore, the suit of the plaintiffs is hereby ex-parte decreed as prayed for in prayer "Alif" of the plaint and preliminary decree of partition of a joint house is passed as prayed for in prayer "Jeem". As far as recovery of amount is concerned in prayer "Jeem", the same was not proved in the evidence, hence, cannot be granted in absence of sufficient evidence.
13. Costs to follow the events.
14. File of the Court be consigned to record room after its completion and compilation.

**Announced:**  
31-10-2023

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**CERTIFICATE: -**

Certified that this judgment consists of Six (06) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

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