

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

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Original Civil suit No.....70/1  
Date of institution .....02.12.2019  
Date of decision .....27.09.2022

1. Gul Akbar S/o Muhammad Akbar
  2. Sadiq S/o Fazal Akbar
- Both residents of Tora Wari, Tehsil Thall, District Hangu**  
..... (Plaintiffs)

Versus

1. Deen Shah S/o Muhammad Shah
  2. Wazir Badshah S/o Muhammad Shah
  3. Peer Badshah S/o Muhammad Shah
- All residents of Qoam Mamozai, Tappa Abdur Rehman, Village Karhapi,  
District Orakzai.**  
.....(Defendants)

**SUIT FOR RECOVERY OF POSSESION THROUGH PARTITION**

**JUDGMENT:**

1. The leading facts of the case are that the plaintiffs are seeking recovery of possession through partition in respect of property in shape of a house (fully detailed in the head note of the plaint) to the extent of half shares in the disputed house possessed by the defendants. In prayer "Bay" plaintiffs prayed for permanent perpetual, mandatory and directory injunction to the effect that defendants be restrained from any type of interference in suit

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property, further alienation or changing nature of the suit property. Plaintiffs have contended that they are owners of the suit property to the extent of half share in the same, which is yet to be partitioned. Further that they want to get their share partitioned, 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 many legal as well as factual grounds. The defendants claimed that the present suit is aimed at pressurizing the defendants to settle a dispute relating to a plot situated in Karachi. That the disputed house is the sole ownership of the defendants and they are the possessors of the same since long.
3. The divergent pleadings of the parties were reduced into the following issues.

**ISSUES.**

1. *Whether the plaintiffs have got cause of action?*
2. *Whether the suit of the plaintiffs is wrong and baseless?*
3. *Whether the plaintiffs are estopped to sue?*
4. *Whether suit of the plaintiffs is time barred?*
5. *Whether the plaintiffs are the owners of half of the suit property?*
6. *Whether the plaintiffs are entitled to the possession of half of the suit property after partition?*
7. *Whether the defendants have taken illegal possession of the*

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*share of the plaintiffs in the suit property?*

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

9. *Relief.*

4. Parties were afforded with ample opportunity to adduce evidence.

Detail of the plaintiff's witnesses and exhibits are documents are

as under; -

	WITNESSES	EXHIBITIS
PW-1	Gul Asgher S/o Abdullah Shah Qoam Mamozai, Tehsil Upper District Orakzai	Nil
PW-2	Rehman Shah S/o Abdullah Shah Qoam Mamozai, Tehsil Upper District Orakzai	Nil
PW-3	Jamal Khan S/o Meer Mat Khan Qoam Mamozai, Tehsil Upper District Orakzai	Nil
PW-4	Saeed Ullah Khan S/o Ghafar Khan Qoam Mamozai, Tehsil Upper District Orakzai	Nil
PW-5	Sadiq Akbar S/o Fazal Akbar Tora Wari, Tehsil Thall, District Hangu	CNIC of PW-05 as ExPW-5/1

Detail of defendant's witnesses and exhibited documents are as under;

	WITNESSES	EXHIBITIONS
DW-1	Jamal Deen S/o Rakham Deen Age 69 Years Qoam Mamozai, karhapi, Tehsil Upper District Orakzai	Nil

DW-2	Habib Rehman S/o Niaz Badeen Age 59 Qoam Mamozai, karhapi, Tehsil Upper District Orakzai	Nil
DW-3	Asghar Khan S/o Edat Khan Age 40 Qoam Mamozai, karhapi, Tehsil Upper District Orakzai	Nil
DW-4	Deen Shah S/o Muhammad Shah Qoam Mamozai, karhapi, Tehsil Upper District Orakzai	Power of Attorney is Ex. DW-4/1. CNICs are Ex. DW-4/2 and Ex. DW-4/3.

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5. Arguments by learned Counsel for the parties heard.
6. Learned Counsel for the Plaintiffs, Mr. Muhammad Abid Wazir Advocate, argued and stressed up the fact averted in the plaint that after the start of military Operation against the militants in district Orakzai; erstwhile Orakzai agency, the plaintiffs had moved to district Hangu and the defendants have since then the possessor of the suit house.
7. learned Counsel for the Defendants Mr. Malik Hameed Khan Afridi Advocate, argued that the plaintiffs had left their ancestral place forty to fifty years back and not in the wake of the military operation. That the plaintiffs have not sought declaration as relief in the absence of revenue record or any other document which might have shown their ownership in the disputed house. That there is even contradiction in the evidence of plaintiff's witnesses regarding the measurement and description of the suit house. That

some of the witnesses also claimed share in the disputed house and some of them are having depute with the defendants regarding cutting down of trees in the Shamilati forest, hence the evidence adduced by them is not confidence inspiring.

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.4:**

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

The onus to prove this issue lies on the plaintiff. The plaintiffs filed suit for possession through partition. As per averments of the plaint, cause of action accrued to the plaintiffs few months prior to the institution of this suit, when the defendants refused the share of the plaintiffs in the disputed house. But even without considering this fact, 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.

Hence, the issue is decided in positive and in favor of the plaintiffs.

**ISSUE NO.2:**

*Whether the suit of the plaintiffs is wrong and baseless?*

Handwritten notes: Sami Ullah, 27-09-2022

Printed signature block: Sami Ullah, Civil Judge/JM-1, Orakzai (Babar Mela)

10. The onus of proving the issue was on defendants. Defendants in their evidence produced four witnesses and their statements remained un-shattered. The statements of DWs are in favor of the defendants and they acknowledged the fact that the defendants are residents of the disputed house since long. DW-01 in his statement stated that the defendants are residing in the disputed house from past several decades and as far as I remember and plaintiffs have never been residents of the said house. Likewise, the statements of all other DWs also supported the stance of the defendants. Hence, the issue is decided in positive and in favour of the defendants.

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**ISSUE NO.3:**

*Whether the plaintiffs are estopped to sue?*

11. The issue was neither discussed nor stressed hence remained redundant.

**ISSUE NO. 5 & 6.**

*Whether the plaintiffs are owner of half of the suit property?*

*Whether the plaintiffs are entitled to the possession of half of the suit property?*

12. Both these issues are interconnected and material, therefore are discussed and decided together.

Plaintiffs are seeking recovery of possession through partition in

respect of suit property detailed in the heading of the plaint. Defendants have denied the claim of the plaintiffs.

The foremost controversy to be resolved in the light of the issue No. 5 is the ownership of the plaintiffs and their entitlement to half shares in the disputed house. The plaintiffs claimed that the disputed house is their ancestral property and they are entitled to half shares in the same but the defendants have taken possession of the whole of the disputed house and have denied the share of the plaintiffs. But plaintiffs have not produced any documents before the court whether it's in the form of pedigree table or family tree according to NADRA record or even the oral evidence adduced by the plaintiff's witnesses didn't determine the true relations of plaintiffs with defendants and with their ancestors. Moreover, there is no other document available on file by which the court can ascertain the said fact. The onus of proving the above stated fact was on plaintiffs which they have failed to prove.

- 13. Plaintiffs produces as many as five witnesses in their favour but nowhere in their statements they have establish the relation of plaintiffs with their ancestors which is the basic component to lay claim in a property through partition. Moreover, it wasn't established that whether the disputed house was actually a legacy of the ancestors of the plaintiffs or not. In addition, some of the plaintiffs witnesses also claimed share in the disputed property. In

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this regard the statement of PW-01 is worth mentioning which stated that the said PW and the plaintiffs are entitled to 1/4 shares in the disputed house. Likewise, PW-02 also claimed share in the suit property along with the land and forest.

14. Plaintiffs in their pleadings asserted that they left the said house in the wake of military operation in district Orakzai erstwhile Orakzai Agency and after repatriation, the defendants had took possession of the whole disputed house but the statements of the PWs negate this stance. PW-01 in his statement stated that the plaintiffs have left their alleged ancestors land some 50 years back and they are residing in another area called Gurgurai since then. Pw-02 also stated in his statement that the plaintiffs have left Mamozai area some 30 to 35 years back and have admitted in his cross examination that defendants are residing the disputed house from last 30 years. And further stated that no application of what so ever has been filed with the then authorities regarding any dispute on the said disputed house. PW-03, PW-04 and PW-05 also stated in their statements that the plaintiffs have left the area long before the start of military operation.

15. Hence, in view of above discussion, issues No. 5 & 6 are decided in negative and against the plaintiffs.

**ISSUE NO. 7:**

*Whether the defendants have taken illegal possession of the*

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*share of the plaintiffs in suit property?*

16. The onus of proving this fact was on plaintiffs as the same was asserted in the plaint.

For what has been held in issue No. 2, 5 & 6, this court is of the opinion after the appreciation of the available evidence that defendants have the lawful possession of the suit house since long and plaintiffs didn't prove their dispossession at the hands of the defendants. Hence, issues No. 7 is decided in negative.

**ISSUE NO. 1 & 8:**

*Whether the plaintiffs have got cause of action?*

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

The discussions on the above referred issues show that plaintiffs have failed to prove their 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.

The issues No.01 and 08 are decided in negative and against the plaintiffs.

**RELIEF:**

18. The detailed discussion on issues mentioned above transpires that the plaintiffs have failed to prove their case against the defendants

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by proceedings cogent and confidence inspiring oral or documentary evidence. Hence, suit of the plaintiffs is dismissed.

Costs to follow the events.


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

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**CERTIFICATE: -**

Certified that this judgment consists of Ten (10) pages. Each and every page has been read over, corrected and signed by me where ever necessary.

  
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