

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

Original Civil suit No.....30/1
Date of institution04.03.2020
Date of decision21.12.2022

1. Shahid Gul S/o Nazir Gul
residents of Meer Kalam Khel, District Orakzai.
..... (Plaintiff)

Versus

1. Rashid Gul S/O Jan Gul
2. Yousaf Khan S/O Jan Gul
3. Muhammad Rehman S/O Jan Gul
4. Rabnawaz S/O Jan Gul
5. Momeen Khan S/O Jan Gul
6. Mst. Ajmeena D/O Jan Gul
Residents of Orakzai presently Madrassa Terthel-Al-Quran Faqeer Kali
Peshawar.

7. Gul Nawaz S/O Haji Gul
8. Muhammad Nawaz S/O Haji Gul
9. Syed Nawaz S/O Haji Gul
10. Mst. Noor Gala D/O Haji Gul
Residents of Orakzai presently Hall Baqizai Chock Tappi Tehsil and District
Kohat.

11. Sultan S/O Zain Gul
12. Multan S/O Zain Gul
13. Usman Ghani S/O Zain Gul
14. Mst. Nora D/O Zain Gul
Residents of Orakzai presently Wazir Kaly Jerma Tehsil and District Kohat.

15. Mst. Qader Jana D/O Nazir Gul
Resident of Orakzai presently Khapoor Tehsil and District Kohat.

16. Mst. Awal Jana D/O Nazir Gul
Resident of Orakzai presently Kherasa District Peshawar.
.....(Defendants)

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**SUIT FOR DECLARATION, PERMANENT INJUNCTION AND
POSSESSION THROUGH PARTITION**

JUDGMENT:

1. The leading facts of the case are that the plaintiff is seeking declaration to the extent that he is co-owner in the suit property, fully detailed in the headnote of the plaint, being his ancestral property. In prayer "Bay" the plaintiff prayed for possession through partition up to his extent in his ancestral suit property. In prayer "Jeem" the plaintiff also prayed for permanent and mandatory injunction to the effect that defendants be restrained from any type of interference in suit property, further alienation or changing nature of the suit property. That the defendants were time and again asked to acknowledge the share of the plaintiff and give possession of the same to him but of no avail, hence, the instant 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 plaintiff was resisted on many legal as well as factual grounds. The defendant No.01 claimed that he has purchased the share of the plaintiff in the ancestral property and has already paid the price of the same to the plaintiff. And the plaintiff can't claim his share again.
3. The divergent pleadings of the parties were reduced into the following issues.

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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 being successor of the one Nazir Gul is entitled to the declaration and possession after partition of his Sharee share in the suit property*
5. *Whether the plaintiff has sold out his entire share in the suit property to the defendant No.01 vide sale deed, Dated: 03.03.2009?*
6. *Whether plaintiff is entitled to the decree as prayed for?*
7. *Relief.*

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

Detail of the plaintiff's witnesses and exhibits are as under; -

	WITNESSES	EXHIBITIS
PW-1	Shahid Gul S/o Nazir Gul Qoam Mamozai, Meer Kalam Khel, PO Ghiljo, Tehsil Upper District Orakzai.	Nil

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

	WITNESSES	EXHIBITIONS
DW-1	Rasheed Gul S/o Jan Gul Qoam Mamozai, PO Ghiljo, Tehsil Upper District Orakzai.	Copy of CNIC is Ex.DW-1/1. Copy of Sale Deed is Ex.DW-1/2.
DW-2	Muhammad Ibrahim S/o Gul Bat Khan Qoam Mamozai, PO Ghiljo, Tehsil Upper District Orakzai.	Copy of CNIC is Ex.DW-2/1.

DW-3	Kemya Gul S/o Khayal Gul Qoam Mamozai, PO Ghiljo, Tehsil Upper District Orakzai.	Copy of CNIC is Ex.DW-3/1.
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5. Arguments by learned Counsel for the parties heard.
6. Learned Counsel for the Plaintiff, Mr. Ihsan Ullah Advocate, argued and stressed upon the facts averted in the plaint. The learned counsel raised many objections on the sale deed produced by defendant No.01 and argued that the plaintiff has not sold his share in the suit property. He lastly prayed that the instant suit be decreed in favour of the plaintiff.
7. Learned Counsel for the Defendants Mr. Sana Ullah Advocate, argued that the defendant No.01 has already purchased the share of the plaintiff in his ancestral property in presence of witnesses and scribed a document for acknowledgement of the said fact. Moreover, the learned counsel argued that the rest of the legal heirs of the plaintiff's father do not want partition of the estate of the deceased hence, the present suit be dismissed.
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. The onus to prove the issue was on the defendants. Defendants in their written statement contended that the plaintiff has already sold

his share on defendant No.01 and the plaintiff is not entitled to his share in the estate of their deceased father. To prove this fact defendants have produced three witnesses and a document by which the plaintiff has sold his share on 30.03.2009. For the above mentioned fact which is also discussed in detail in issue No.05, the plaintiff is estopped to sue due to his conduct and the deed which is exhibited as Ex.DW-1/2, to claim his ancestral share in property of his deceased father. Hence, issue No.02 is decided in positive and in favour of defendants.

ISSUE NO.3:

Whether the suit of the plaintiff is time barred?

10. The onus to prove this issue was on the plaintiff. The plaintiff filed the instant suit for declaration cum perpetual injunction and possession through partition. As per averments of the plaint, cause of action accrued to the plaintiff few days prior to the institution of this suit, when the defendants refused to give share of the plaintiff in the ancestral property. Therefore, the suit is well within time, hence, the issue is decided in positive and in favor of the plaintiffs.

ISSUE NO. 04:

Whether the plaintiff being successor of the one Nazir Gul is entitled to declaration and possession after partition of his Sharee share in the suit property?

11. The onus of proving the issue was on plaintiff. Plaintiff in his evidence appeared as PW-01 for himself. This fact remained

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unchallenged that whether the plaintiff was legal heir of the deceased Nazir Gul or not. The plaintiff was in fact true born son of the one Nazir Gul, as admitted by the defendants. But the fact that whether the plaintiff has got his legal share share in the estate left behind by his deceased father was contested by the defendants. Defendants in their written statement have contended that the plaintiff has sold his share on defendant No.1 and hence, is not entitled to any further shares in the estate. The evidence produced by defendants on this fact is to be discussed in detailed in issue No.05. Plaintiff in rebuttal of the same has recorded his statement that he has not sold his share to anyone. He recorded his statement that he is entitled to 1/5 share in the estate and to that effect he has conducted many jirgas but of no avail. It pertinent to mention here that the plaintiff has not produced any single witness who could testified on his behalf. Neither has he produced any document by which it can be ascertained that the estate of the deceased truly consists of the property mentioned in the headnote of the plaint. The plaintiff in his cross examination admitted the fact that his father has died long ago and that he has neither approached any forum before institution of this suit to claim his share in the disputed property.

12. For what is discussed above, it is clear that the plaintiff is the legal heir of the one deceased Nazir Gul but due to what is discussed in issue No.05, the plaintiff failed to produce any cogent and confidence inspiring evidence to the fact that he is entitled to his

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share in the disputed property. Hence, the issue is decided in negative and against the plaintiff.

ISSUE NO.5:

Whether the plaintiff has sold out his entire share in the suit property to the defendant No.01 vide sale deed, Dated: 03.03.2009?

13. The onus of proving the issue was on defendants. Defendants in their written statement have contended that the plaintiff has sold his share on defendant No.1 on 30.03.2009 and hence is not entitled to any further share in the estate of their deceased father. Defendants in their evidence produced three witnesses. Defendant No.01 namely Rashid Gul appeared as DW-01 and recorded his statement that he has purchased the share of the plaintiff in their ancestral property for two lac rupees and has made full payment to the plaintiff. That he has also scribed a document to that effect which is Ex.DW-1/2. Defendants also produced Muhammad Ibrahim and Kemya Gul as DW 02 and DW 03 respectively, who are witnesses of the sale deed exhibited as Ex.DW-1/2. The statements of the DWs remain consistent on the mode and manner of sale of plaintiff share on defendant No.01. Nothing contradictory was recorded in their examination in chief. Moreover, all the DWs acknowledged the stance of defendants supported by a sale deed. Hence, the issue is decided in positive and in favour of the defendants.

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ISSUE NO. 1 & 6:

Whether the plaintiff has got cause of action?

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

14. 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 plaintiff is not entitled to the decree as prayed for.

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


RELIEF:

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

Costs to follow the events.


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

Announced
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CERTIFICATE: -

Certified that this judgment consists of Eight (08) 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)