

84

**IN THE COURT OF REHMAT ULLAH WAZIR,**  
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No. 43/1 of 2021  
Date of Original Institution: 20.03.2021  
Date of Transfer In: 23.06.2022  
Date of Decision: 10.11.2022

1. Malak Bahadur Khan s/o Kamal Khan
2. Palos Khan s/o Musharaf Khan
3. Zameen Khan s/o Musharaf Khan
4. Muhammad yasir s/o Rustam Khan
5. Tehsil Khan s/o Malak Bahadur Khan

*All R/O Laghonai, Qoum Mandra Khal, Tappa Maddad Khel,  
Tehsil Lower, District Orakzai*

*(Plaintiffs)*

**VERSUS**

1. Zyarat Gul s/o Ghani Khan
2. Jahangir Khan s/o Ghani Khan
3. Dolat Khan s/o Ghani Khan
4. Member Khan s/o Ghani Khan
5. Sajid s/o Ghani Khan
6. Asmat Ullah s/o Zarif Khan

*(All R/O Qoum Mandra Khel, Laghonai, Tappa Maddad  
Khel, District Orakzai)*

7. Provincial Government through District Education Officer,  
Orakzai
8. Mian Khel s/o Zari Bat Khan
9. Tehsildar Orakzai

*(Defendants)*

*REHMAT ULLAH WAZIR  
Senior Civil Judge/JM,  
Orakzai at Baber Mela*

**SUIT FOR DECLARATION-CUM-PERPETUAL AND  
MANDATORY INJUNCTION, POSSESSION THROUGH  
PARTITION AND DEMOLITION**

**JUDGEMENT:**

Plaintiffs Malak Bahadur Khan and 04 others have brought the instant suit for declaration-cum-perpetual and mandatory injunction, possession through partition and demolition against the defendants, seeking therein that the

suit property the boundaries of which are fully mentioned in the head note of the plaint, is the joint ownership of plaintiffs and the defendant No. 01 to 06. That earlier in the year 1982, a portion of the said joint property was given by the parties to the defendant No. 07 for construction of a primary school, which was accordingly constructed. That now the defendants are about to extend the building of the said school by upgrading the same to middle level by taking illegal possession of the property of the plaintiffs without any acquisition and without consent of the plaintiffs and without partition of the suit property between the parties. That the defendants were asked time and again not to do the aforesaid acts, but they refused, hence, the present suit.

Defendants were summoned through the process of the court in whom the defendant No. 01 to 05, 07, 08 & 09, appeared. The defendant No. 08 submitted cognovit in favour of the plaintiffs while the other said defendants submitted their respective written statements in which they denied not only the claim of the plaintiffs but also raised legal and factual objections.

Divergent pleadings of the parties were reduced into the following issues;

**Issues:**

1. Whether the plaintiffs have got a cause of action?
2. Whether the plaintiffs are estopped to sue?
3. Whether suit of the plaintiffs is time barred?

4. Whether the suit property is the joint ownership of the parties and still un-partitioned and earlier in the year 1982, a portion of the joint property was given by the parties free of cost to the defendant No. 07 for construction of a primary school?
5. Whether the defendant 01 to 06 in connivance with defendant no. 07, are going to extend the school building of the said school by upgrading the same to middle level and by taking illegal possession of the property without acquisition and consent of the plaintiffs?
6. Whether the plaintiffs are entitled to the decree as prayed for?
7. Relief.

Later on, the contesting defendants failed to appear before the court, hence, they were placed and proceeded ex-parte.

Plaintiffs produced ex-parte evidence.

I have heard ex-parte arguments of the learned counsel for the plaintiffs and have perused the record.

My issue-wise findings are as under;

**Issues No. 02**

The contesting defendants alleged in their written statement that the plaintiffs are estopped to sue but later on failed to prove the same, hence, the issue is decided in negative.

**Issues No. 03:**

The contesting defendants in their written statement raised the objection that suit of the plaintiffs is time barred but I am the opinion that as per Article 120 of the

Limitation Act, 1908 there is a period of 06 years for the institution of such like suits but the aforesaid Limitation Act, 1908 is extended to the erstwhile FATA on 31/05/2018 through the 25th constitutional amendment and the same has become operational from the aforesaid date while the instant suit has been filed on **20.03.2021**. Thus, the same is well within time. The issue is decided in negative.

**Issues No. 04 & 05:**

Both these issues are interlinked, hence, taken together for discussion.

The plaintiffs alleged in their plaint that the suit property, the boundaries of which are fully mentioned in the head note of the plaint, is the joint ownership of plaintiffs and the defendant No. 01 to 06. That earlier in the year 1982, a portion of the said joint property was given by the parties to the defendant No. 07 for construction of a primary school, which was accordingly constructed. That now the defendants are about to extend the building of the said school by upgrading the same to middle level by taking illegal possession of the property of the plaintiffs without any acquisition and without consent of the plaintiffs and without partition of the suit property between the parties. That the defendants were asked time and again not to do the aforesaid acts, but they refused, hence, the present suit.

REHMAT ULLAH WAZIR  
Senior Civil Judge, District  
Orakzai at Saber Mela

In order to prove their claim, the plaintiffs produced witnesses in ex-parte, in whom Mr. Abdur Rauf Khan, appeared as PW-01, Mr. Malak Amin, appeared as PW-02, Mr. Muhammad Yasir, the plaintiff No. 04 for himself and as a special attorney for the rest of the plaintiffs, appeared as PW-03, who all narrated the same stories as in the plaint. The PW-03 produced the Shajra-e-Nasab of the parties, which is Ex.PW-3/5 and pictures of the site which are Ex.PW-3/8. All the witnesses fully supported the stance of the plaintiffs. There is nothing in rebuttal. The court is left with no other option, hence, both these issues are decided in positive.

**Issues No. 01 & 06:**

Both these issues are interlinked, hence, taken together for discussion.

As sequel to my findings on issue no. 04 and 05, the plaintiffs have got a cause of action and thus, they are entitled to the decree as prayed for. Hence, both these issues are decided in positive.

**Relief**

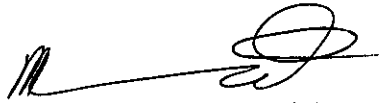
As sequel to my above issue-wise findings, suit of the plaintiffs is hereby **ex-parte preliminary decreed** as prayed for with costs.

*REHMAT ULLAH NAZIR*  
Senior Civil Judge, IM,  
Orakzai at Sabar Mela

89

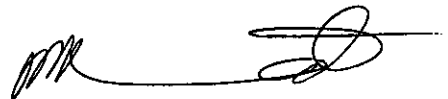
File be consigned to the Record Room after its necessary completion and compilation.

**Announced**  
10.11.2022

  
**(Rehmat Ullah Wazir)**  
Senior Civil Judge,  
Orakzai (at Baber Mela)

**ERTIFICATE**

Certified that this judgment of mine consists of 06 pages, each has been checked, corrected where necessary and signed by me.

  
**(Rehmat Ullah Wazir)**  
Senior Civil Judge,  
Orakzai (at Baber Mela)