

**IN THE COURT OF SHAUKAT AHMAD KHAN**  
**DISTRICT JUDGE, ORAKZAI (AT BABER MELA)**

MISC. CIVIL APPEAL NO. : 12/14 OF 2022  
DATE OF INSTITUTION : 02.12.2022  
DATE OF DECISION : 07.12.2022

1. HASHMAT ULLAH S/O HAJI MUHAMMAD KARIM
  2. KIRAMAT ULLAH S/O HAJI MUHAMMAD KARIM
  3. SHAUKAT ULLAH S/O HAJI MUHAMMAD KARIM
  4. REHMAT ULLAH S/O HAJI MUHAMMAD KARIM
  5. MUHAMMAD RAHIM S/O MUHAMMAD YASIN
  6. ALI AKBAR S/O MUHAMMAD AKBAR
  7. SAEED AKBAR S/O MUHAMMAD AKBAR
  8. SHAN AKBAR S/O MUHAMMAD AKBAR
  9. RAHIM KHAN S/O MEEN KHAN
  10. BUZARG JAMEEL S/O MEEN KHAN
  11. SAID JAMEEL S/O MEEN KHAN
  12. MIKAEL KHAN S/O MEEN KHAN
  13. SADIQ KHAN S/O MUHAMMAD ANWAR
  14. HAJI REHMAN S/O MUHAMMAD ANWAR
  15. RAZ MUHAMMAD S/O MUHAMMAD ANWAR
  16. NABI UR REHMAN S/O ZIA UR REHMAN
  17. RIZWAN MEEN KHAN S/O ZIA UR REHMAN
  18. MASOOD UR REHMAN S/O ZIA UR REHMAN
  19. FAZAL UR REHMAN S/O ZIA UR REHMAN
- ALL RESIDENTS OF CASTE UTMAN KHEL, PO FERAZ KHEL,  
LOWER ORAKZAI, DISTRICT ORAKZAI

.....(APPELLANTS)

-VERSUS-

1. MUHAMMAD KHAN S/O KAMEEN
  2. SAWAB GUL S/O KAMEEN
  3. HAZRAT AMEEN S/O AQAL MEEN
  4. MUHAMMAD AYYUB S/O JANNAT GUL
  5. ABDUL SALAM S/O BANK KHAN
  6. JANAB KHAN S/O BADSHAH GUL
- ALL RESIDENTS OF TAPA SHABI KHEL, CASTE KARIGARAN,  
UTMAN KHEL, LOWER ORAKZAI, DISTRICT ORAKZAI

..... (RESPONDENTS)

**Present:** Muhammad Hashim Advocate for appellants.  
: Mudassir Ijaz Advocate for respondents.

JUDGEMENT  
07.12.2022

Impugned herein is the order dated 29.11.2022 of learned Civil Judge-II, Tehsil Court Kalaya, District Orakzai vide which application of appellants/plaintiffs for grant of temporary injunction has been partially allowed to the extent of further alienation with no order for restraining the respondents/defendants from making interference in the suit property.

Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai Bahawalpur

(2). The appellants/plaintiffs through a suit for declaration-cum-perpetual injunction with possession claim that they being belonging to caste Shabi Khel, are owners in possession of the suit property to the extent of 06 shares, out of total 24 shares measuring 40 Jeribs situated at Zagh Dara Soor Rawoz. As per averments of the plaint, the property of Zagh Dara Soor Rawoz measuring 40 Jeribs is jointly owned by three tribes of Uthman Khel i.e., Abaa Khel 12 shares and Shabi Khel (appellants/plaintiffs) and Barzan Khel 06 shares each while the respondents/defendants, being "Karigar" of Shabi Khel tribe, having got no concern whatsoever with the suit property, are bent upon making interference by making construction over there. The respondents/defendants submitted written statement wherein they claim that they are not "Karigar" rather belong to caste Shabi Khel, permanently residing in the locality and that the suit property is not the ancestral property of caste Utman Khel rather it has been purchased to the extent of 12 shares by caste Abaa Khel, 06 shares by caste Barzan Khel and 06 shares by the respondents/defendants out of the caste Shabi Khel. They further contended that the respondents/defendants are the permanent residents of the locality, where their old house, after migration of the respondents/defendants from the locality during worst law-

Shaukat Ahriad Khan  
District & Sessions Judge,  
Orakzai at Baber Mela

and-order situation, has also been forcefully occupied by appellants/plaintiffs.

The plaint was accompanied by application for grant of temporary injunctions wherein the appellants/plaintiffs have sought the respondents/defendants to be restrained from making interference by making construction over the suit property and further alienation of the same. The application was contested by respondents/defendants through submission of written reply. The learned trial court, after having heard the arguments, partially allowed the application of appellants/plaintiffs to the extent of further alienation as below;

*"As per documents attached with the plaint and written statement, there exists a dispute between the parties regarding the suit property, it is held that if defendants are not restrained from alienating the suit property during pendency of the suit, the plaintiffs would suffer irreparable loss and possibility of multiplicity of proceeding could not be read out.*


*As a result of above discussion, defendants are restrained from alienating of the suit property for 06 months or till disposal of the suit whichever comes earlier. Application disposed of accordingly. No order as to costs. This order of mine is tentative in nature and shall not affect the merits of the case."*

Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai at Bahar Mela

The appellants/plaintiffs, being aggrieved of the impugned order, filed the instant appeal.

(3). I heard arguments and perused the record.

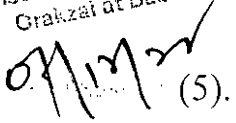
(4). It is evident from the record that as discussed above, the appellants/plaintiffs claim the suit property as the ancestral property of Utman Khel devolved upon Shabi Khel (appellants/plaintiffs), Barzan Khel and Abaa Khel, the sub-tribes of Utman Khel to the extent of 12 shares, 06 shares and 06 shares respectively, excluding the respondents/defendants from caste Shabi Khel claiming that they are "Karigar" of Shabi Khel. But not a single document in the form of any pedigree table etc., regarding the tribal status of respondents/defendants, is annexed with the plaint. On the other hand, appellants/plaintiffs in the headnote of the plaint, themselves describe the caste of respondents/defendants as Shabi Khel. The contention of the respondents/defendants to the fact that they are the permanent residents of the locality, has also not been denied by the appellants/plaintiffs. Similarly, as per CNIC of the respondents/defendants, the caste of respondents/defendants is Shabi Khel. So far, the status of suit property is concerned, as against the claim of appellants/plaintiffs, the respondents/defendants claimed the same as a purchased property to the extent of 06 shares by the respondents/defendants, 06 shares of caste Barzan

  
Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai at Baber Meta

5/1/22

Khel and 12 shares by caste Abaa Khel. The appellants/plaintiffs, in support of their claim, produced copy of a jirga verdict along with record note of Assistant Commissioner, Lower Orakzai of 20.03.2019 and copy of private partition between caste Abaa Khel, Barzan Khel and Shabi Khel; however, the verdict of jirga, as per record note of the then Assistant Commissioner, Lower Orakzai, has been declared inconclusive and has referred the parties to approach the proper forum. On the other hand, respondents/defendants in support of their contention produced copies of the statements of elders of Utman Khel to the fact that the respondents/defendants belong to caste Shabi Khel and copy of lease deed dated 10.08.2019 vide which respondents/defendants have leased-out their 06 shares in the suit property to one, Gul Wazir for mining.

Shaukat Ahmad Khan  
District & Sessions Judge,  
Orakzai at Baber Mela


  
(5).

Hence, in view of what is discussed above, it is held that the question that whether the respondents/defendants belong to caste Shabi Khel or they are "Karigar" of caste Shabi Khel and that whether the suit property is the ancestral property of caste Utman Khel or it has been purchased by caste Abaa Khel, Barzan Khel and the respondents/defendants? are questions of facts which will be determined after recording pro and contra evidence. However, keeping in view the preponderance of evidence

in the light of available record on file, prima facie case, tilts in favour of respondents/defendants. So far, further alienation of the suit property is concerned, counsel for respondents/defendants stated at the bar that they are not going to alienate the suit property and they have got no objection upon the acceptance of the application of appellants/plaintiffs to that extent. Accordingly, the appeal, being devoid of merits, is dismissed; however, keeping in view the factum of no objection on behalf of counsel for respondents/defendants, the impugned order to the extent of restraining the respondents/defendants from further alienation of the suit property, is held maintained. File of this court be consigned to Record Room. Copy of this order be sent to learned trial court for information.




**Pronounced**  
07.12.2022

  
(SHAUKAT AHMAD KHAN)  
District Judge, Orakzai  
at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of six (06) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 07.22.2022

  
(SHAUKAT AHMAD KHAN)  
District Judge, Orakzai  
at Baber Mela