

**IN THE COURT OF ZAHIR KHAN CIVIL JUDGE-I, KALAYA, ORAKZAI**

Case #	=	126/1 of 2020.
Date of Original Institution	=	01.10.2020.
Date of Present Institution	=	12.03.2022.
Date of Decision	=	21.12.2022.

1. Subaidar Jameel,
2. Pir Badshah,
3. Zirmat Khan,
4. Talib Jan all sons of Lal Bat Khan,
5. Ilyas Khan and
6. Maweez Khan both sons of Sarbat Khan, all residents of Qaum Mishti, Tappa Haider Khel, Village Ibrahim Zona, Tehsil Central, District Orakzai.


.....(Plaintiffs)

**Versus**

1. Kashmir Khan,
2. Raees Khan both sons of Haji Niaz Bat Khan,
3. Eid Badshah S/O Samandar Khan,
4. Muhammad Younas S/O Muzafar Khan,
5. Fazal Subhan S/O Subaidar Akhtar Jan,
6. Abdul Qayyum S/O Mir Mat Ullah and
7. Gul Habib S/O Khial, all residents of Qaum Mishti, Tappa Haider Khel, Village Ibrahim Zona, Mishti, Tehsil Central, District Orakzai.

.....(Defendants)

**SUIT FOR DECLARATION CUM-PERMANENT INJUNCTION AND  
POSSESSION AS ALTERNATE**

  
**ZAHIR KHAN**  
**Civil Judge/JM**  
**Kalaya Orakzai**  
21/12/2022

**JUDGEMENT**  
**21.12.2022**

Through this judgement, I am going to decide the suit in hand filed by plaintiffs Subaidar Jameel and five others against the defendants Kashmir Khan and six others for declaration cum-permanent injunction and possession as alternate.

(1). Brief facts of the case in hand are that plaintiffs have filed the instant suit for declaration-cum permanent injunction and possession as alternate against the defendants to the effect that plaintiffs are exclusive owners in possession of the suit property measuring 6/7 Jirab fully detailed in the headnote of the plaint while defendants have got no concern whatsoever with the same. That the suit property is the ancestral ownership of plaintiffs. That defendants have got no right to alienate the same through exchange or make interference 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). With due process of law and procedure, defendants were summoned, out of whom defendant No. 1 to No. 4 appeared before the court and contested the suit by filing written statement and reply while defendant No. 5 to No. 7 did not contest the suit, hence, placed and proceeded against ex-parte.

Defendant No. 1 to No. 4 have raised several legal and factual objections in their written statement. Defendant No. 1 to No. 4 have contended that they are owners in possession of the suit property as a



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result of family partition between the elders of the parties effected in the year 2002. They have further averred that they have exchanged some portion of the land with defendant No. 5 to No. 7 on 02.05.2019 and some portion of the suit property has also been donated for construction of a veterinary dispensary/hospital and in the year 2017, some portion of land was donated for a public solar tube well. That due to donation of the land for the public purpose, a government job was given to them.

- (3). From divergent pleadings of the parties, the following issues were framed for adjudication of real controversy between the parties.

ISSUES

1. Whether plaintiffs have got cause of action? OPP
2. Whether suit of plaintiffs is within time? OPP
3. Whether this court has got jurisdiction to entertain the suit of plaintiffs? OPP
4. Whether suit of plaintiffs is hit by res-judicata? OPD
5. Whether suit of plaintiffs is bad due to non-joinder and mis-joinder of the parties? OPD
6. Whether plaintiffs are estopped to sue? OPD
7. Whether plaintiffs are owners in possession of suit property?  
OPP

*Jud*

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8. Whether suit property is the ancestral ownership of plaintiffs?

OPP

9. Whether family partition between the parties was affected in the year 2002 as a result of which property situated at Mishti Bazar was given to defendant No. 1 to No. 4 and property situated at Ibrahim Zona, Mishti Mela was given to plaintiffs?

OPD

10. Whether plaintiffs are entitled to decree as prayed for? OPP

11. Relief?

(4). Upon submission of list of witnesses, both the parties on being provided with an opportunity to adduce their desired evidence, the parties produced their respective evidence.

(5). During course of recording evidence, plaintiffs in support of their claim and contention produced 03 witnesses.

(6). Plaintiff No. 1, who is also special attorney for rest of the plaintiffs appeared and deposed as PW-01. Special power of attorney is Ex. PW-1/1. Sketch of the suit property is Ex. PW-1/2. He requested for decree of suit against the defendants as prayed for.

(7). Sarwar Shah, was examined as PW-02. He stated that the disputed property was the ownership of Hindus but defendant No. 1 to No. 4 have forcibly occupied the same.



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- (8). Syed Janan, appeared and deposed as PW-03. He stated that parties to the suit are relatives and the disputed property is the joint undivided ownership of the parties.

Thereafter, evidence of plaintiffs was closed.

- (9). On the other hand, contesting defendants in support of their claim and contention produced three witnesses.

- (10). Defendant No. 1, who is special attorney for defendant No. 2 to No. 4 appeared and deposed as DW-01. Special power of attorney is Ex. DW-1/1. Copy of his CNIC is Ex. DW-1/2. He denied the claim of plaintiffs asserting that contesting defendants are owners in possession of the suit property since their forefathers as a result of family partition between the forefathers of the parties and that claim of plaintiffs is baseless. He lastly requested for dismissal of the suit of plaintiffs.

- (11). Naseeb Gul and Akhtar Gul appeared and deposed as DW-01 and DW-02 respectively. They supported the plea of defendants. Copies of their CNICs are Ex. DW-2/1 and Ex. DW-3/1.

Thereafter, evidence of contesting defendants was closed.

- (12). After completion of evidence of the parties, arguments of the learned counsels for the parties were heard and record of the case file was gone through with their valuable assistance.

My issue wise findings are as under: -

  
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