

**IN THE COURT OF BAKHT ZADA,**  
SENIOR CIVIL JUDGE, ORAKZAI AT BABER MELA

Civil Suit No.	02/01 Neem OF 2023.
Date of Original Institution:	29.05.2019.
Date of Transfer In:	03.01.2023.
Date of Remand In:	18.12.2023.
Date of Decision:	29.04.2024.

*Muhammad Saeed S/O Ajradin R/O Qaum Sheikhan, Tappa Umarzai,  
Tehsil Central, Village Lak Kanray, District Orakzai*  
.....(Plaintiff)

**VERSUS**

*Khan Zadin S/O Raza Din R/O Qaum Mamozai, Tappa Ado Khel,  
Tehsil Upper, District Orakzai*  
.....(Defendant)

**SUIT FOR DECLARATION-CUM-PERPETUAL AND  
MANDATORY INJUNCTION**

**JUDGEMENT:**

23.04.2024

1. Plaintiff Muhammad Saeed S/O Ajra Din has brought the instant suit against defendants Khan Zadin S/O Raza Din for declaration, possession -cum-perpetual and mandatory injunctions. He alleged in his amended plaint that defendant is his cousin. That the plaintiff is ancestral owner in possession of the suit property consisted of three fields situated at Mian Khel Tarra, Tehsil Central Orakzai and the defendant has got no concern with the same. The description of the suit property is as under;

1. Kohi Patay: field measuring about 20 marlas.

a) Towards east—field of Rashid Khan.

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- b) Towards west—fields of Alam Jan.
- c) Towards North—fields of Khan Zadin.
- d) Towards south—field of Agha Jan

2. Field in the name of Rahman Mula measuring about 10 marlas

- a) Towards east—property of Rahman Mula.
- b) Towards north—property of Rahman Mula.
- c) Towards south—property of Rahman Mula.
- d) Towards west—house of Rahman Mula.

3. Seray Patay: measuring about 22 marlas

- a) Towards east—field of Abdullah
- b) Towards west—field of Khan Zadin (defendant) and Noor Zadin
- c) Towards north—Lak Tarra
- d) Towards south—house of Abdullah

2. That out of the whole suit property, one field in the name of Kohi Patay was given to the great grandmother of the plaintiff by Jahanzeb Khan S/O Awal Jan in her life time and the same was distributed between the predecessors of the parties, out of which one share was given to the predecessors of plaintiff, the second was given to the predecessor of the defendant and the third was given to one Noor Zadin. The said shares are still in the ownership of the parties and Noor Zadin while the other two fields devolved upon the plaintiff from his predecessor. That the suit property was given to one Yar Jan by the father of the plaintiff in the year 1981 on "Ijara" and he used to receive "Ijara". That in the year 1998, the plaintiff took back the possession of

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the suit property from Yar Jan and gave it to the defendant, who is close relative and cousin of the plaintiff. That possession of the suit property remained with the defendant till the year 2017 and the plaintiff used to receive "Ijara" in shape of crop. That the plaintiff took back the suit property from the defendant and the same was given to one Khalil Khan S/O Rahman Mula, but the defendant later on claimed to be the owner of the suit property. That several Jirgas took place between the parties in respect of the suit property with the defendant and one Zara Din. That a Jirga took place on 01.10.2017 wherein the previous Jirga proceedings dated 21.07.2017 are also mentioned. According to the said Jirga, the defendant withdrawn from his claim and decision in favour of plaintiff was made. That later on the defendant refused to accept the decision of Jirga and another official Jirga was convened, wherein the defendant alongwith Noor Zadin participated. The plaintiff was bound down to take oath on Quran, but Noor Zadin defendant again accepted the ownership of plaintiff and refused to take oath in front of the Jirga. That another Jirga between the parties took place on 23.11.2018, according to which Ijara for the year 2018 was waived off in favour of the defendant and again the Jirga was decided in favour of the plaintiff. The Jirga decision was attested by Tehsildar and signed by the defendant, but when the plaintiff went to cultivate the suit property or giving the same on Ijara, the defendant restrained him and rejected the decision of the Jirga. That defendant is an adamant and cruel person who is not admitting the official Jirgas and now he is cultivating the inherited property of the plaintiff and presuming himself to be the owner in

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possession of the same. He prayed for decree as prayed for in favour of the plaintiff.

3. Amended written statement submitted and in view of the divergent pleadings of the parties, my learned predecessor in office framed the following issues on 31.01.2023.

**Amended 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 incompetent in its present form due to non-joinder of the necessary parties?*
4. *Whether plaintiff is the owner of the suit property, but the same was given on Ijara to one Yar Jan S/O Sahib Jan by the father of the plaintiff in the year 1981, but the same was retrieved back in the year 1998 from the said person and was given to the defendant on Ijara, who had been cultivating the same till the year 2017 and later on, the same was retrieved and was given on Ijara to one Khalil S/O Rehman Mula?*
5. *Whether the Kohi Patay (part of the disputed property) was given to the great grandmother of the parties i.e., the wife of one Saif U Din by one Jahanzeb Khan S/O Awal Jan in charity, which was later on partitioned between the parties in which both the parties and one Noor Zadin got equal shares?*
6. *Whether the suit property is the ancestral property of the defendant and the plaintiff has nothing to do with the same?*
7. *Whether plaintiff is entitled to the decree as prayed for? Relief?*

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Before the submission of the amended pleadings and framing of amended issues, the plaintiff has already produced and recorded the statements of following PWs on the original issues and in view of the original pleadings.

4. **PW-01: Umar Gul S/O Eid Akbar.** He along with one Fazal Malik were appointed as Jirga members by Political Tehsildar. One Jamil Badshah and Islam Khan were appointed as Jirga members for Khan Zadin while Firdos and Kamil Shah were appointed as Jirga members for the plaintiff Muhammad Saeed. He along with other Jirga members have signed Iqrar Nama dated 21.07.2017 which is Ex. PW-1/1, while the decision of Jirga is Ex. PW-1/2.

5. **PW-02: Record Keeper of Assistant Commissioner, Orakzai.** He brought the record of Jirga convened by Tehsildar Central Orakzai, the record of which is Ex. PW-2/1 consisted of 15 pages.

6. **PW-03: Khan Zeb Gul S/O Amir Jan, R/O Sheikhan, Tehsil Central Orakzai.** He was the Jirga Member in respect of the dispute between the parties. His CNIC is Ex. PW-3/1. He was cross examined by the counsel for the defendant at length.

7. **PW-04: Jahanzeb Khan.** He stated that great grandmother of the parties was sister of his predecessor and her property was distributed between the parties and the share of the plaintiff was also in possession of the defendants. He was also cross examined by the counsel for the defendant.

Later on, after submission of amended pleadings and framing of amended issues, the statements of following PWs were recorded.

8. **PW-01: Sawab Gul S/O Hussain Shah.** He stated that he has seen deed dated 23.01.2018 which correctly bears his signatures and the Jirga decision was made in favour of the plaintiff. His CNIC is Ex. PW-1/1.

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9. **PW-02: Saifur Khan S/O Nawab Khan.** He stated that he is marginal witness to the decision dated 23.11.2018 and the same correctly bears his signatures. His CNIC is Ex. PW-2/1.

10. **PW-03: Khalil S/O Abdur Rehman aged about 34/35 years.** He stated that there was dispute on the suit property which was decided through Jirga in the year 2018 and the suit property was given to him by Saeed on Ijara. The amount of Ijara was not yet decided when he went to the defendant and stated that plaintiff has given him seven fields on Ijara, on which the defendant stated to cultivate only four fields. Later on, he surrendered all the fields. He was cross examined by the counsel for the defendant.

11. **PW-04: Jahanzeb Khan S/O Awal Jan.** He stated that his grand father giveaway one field to his cousin, who is grand mother of the parties. The said field was later on divided into three shares i.e., one share for Saeed, Khan Zadin and Noor Zadin each. He stated that Khan Zadin has now usurp the share of plaintiff also. He was cross examined by the counsel for the defendant at length.

12. **PW-05: Noor Zadin S/O Noora Din R/O Tappa Umarzai, Central Orakzai.** He stated that the parties are his first cousins. That his property was distributed by one Siraj Ud Din, who kept one share for himself and one share each for his father and Khan Zadin. He seen the Jirga decision dated 01.10.2017 on which he verified his signatures. He stated that the suit property is the ownership of the plaintiff. Copy of his CNIC is Ex. PW-5/1. He was cross examined by the counsel for the defendant at length.

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Orakzai District Tribunal  
Jalalpur Jhelum  
Cantonment  
Lahore

13. **PW-06: Umar Gul S/O Eid Akbar:** He was one of the Jirga member in respect of the decision dated July 2018 which is correctly signed by him.

14. **PW-07: Plaintiff Muhammad Saeed S/O Ajra Din:** He repeated the whole story as alleged in the plaint. He stated that Jirgas are being convened with the defendant from the year 2017. Jirga decision dated 01.10.2017 is Ex. PW-7/1. Second Jirga dated 01.01.2018 which proved unsuccessful, however decision was made in favour of plaintiff vide written decision Ex. PW-7/3. Another Jirga took place in July 2018, wherein the defendant refused to take oath. Jirga decision took place vide Ex. PW-7/4. Complaint was made before the Additional Political Agent, Orakzai, on which a Jirga was constituted and Jirga decision was made on 23.11.2018 which is Ex. PW-7/5. He prayed that decree may be granted in his favour. His statement was subjected to lengthy cross examination by the counsel for the defendant.

On the other hand, the defendant in order to counter the claim of the plaintiff, produced the following DWs.

15. **DW-01: Khan Zadin.** He is defendant himself. He stated that the suit property consisted of three fields which is his ancestral property and he is coming owner in possession since his forefathers and the plaintiff has got no concern with the same. He was thoroughly cross examined by the counsel for the plaintiff.

16. **DW-02: Muhammad Zareen S/O Khoban.** He also supported the stance of the defendant and stated that the defendant has been coming as owner in possession of the suit property since his forefathers.

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17. *DW-03: Rasool Rehman S/O Sher Zadin.* He stated that the suit property belongs to the defendant and he has never seen anyone claiming to be the owner of the suit property. His CNIC is Ex. DW-3/1.

After closing of evidence of the parties my learned predecessor in office vide his order and judgement dated 25.05.2023 decreed the suit in favour of the plaintiff. The defendant being aggrieved from the said judgement and order preferred Civil Appeal No. 14/13 of 2023 instituted on 05.07.2023 which was decided by the Hon'ble District & Sessions Judge, Orakzai vide his judgement and order dated 13.12.2023 remanded the case file back to this court with the direction to record the statement of one Yar Jan and thereafter, to re-write the judgement a fresh.

After receiving the remand order, Yar Jan S/O Sahib Jan aged about 70/71 years was summoned and his statement was recorded as RPW-01. The gist of his statement is as under;

18. *RPW-01: Yar Jan S/O Sahib Jan.* He stated that father of the plaintiff Muhammad Saeed, his mother Mst. Taliba, uncle Taj Din and his wife Mst. Papina has given him four fields on share for cultivation.

He stated that he used to keep half of the crop for himself and give the remaining half to the above-mentioned people. That the suit property remained with him for seventeen years where after, mother of the plaintiff Mst. Taliba alongwith plaintiff came and asked for handing over the possession where after, he handed over the possession of the suit property to them.

19. After closing of evidence of the parties, arguments of the learned

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Scriber  
Orakzai at Embelwala



counsel for the parties were heard and available record perused.

My Issue wise findings are as under: -

**ISSUE NO. 2:**

20. The burden of proving this issue lies at the shoulders of the defendant, but neither any evidence is produced nor the same is pressed during the course of arguments. Issue is decided in negative.

**ISSUE NO. 3:**

21. The defendant alleged in his written statement that the suit of the plaintiff is incompetent in its present form due to non-joinder of the necessary parties, but the defendant failed to prove any non-joinder of necessary parties. Issue is decided in negative.

**ISSUES NO. 4, 5 & 6:**

Both these issues are linked hence taken together for discussion.

22. It is the case of the plaintiff that the suit property, the description of which is briefly mentioned in the heading of the amended plaint, is the ancestral ownership in possession of the plaintiff which was given by his father to one Yar Jan S/O Sahib Jan on Ijara in the year 1981. That the plaintiff retrieved the possession of the suit property from the said Yar Jan in the year 1998 and the same was given to the defendant on Ijara, who remained in possession of the suit property till 2017. That in the year 2017, possession of the suit property was taken back from the defendant and the suit property was given on Ijara to one Khalil S/O Rahman Mula. That the defendant later on claimed the suit property to be his ownership and in this respect several Jirgas were convened between the parties. That all the Jirgas were decided in favour of the

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plaintiff, but still the defendant asserting himself to be the owner of the suit property and denying the ownership of the plaintiff.


23. The plaintiff produced one Sawab Gul and Saifur Khan as PW-01 and PW-02 respectively as the members of Jirga dated 23.11.2018. They verified their signatures on the Jirga decision. Haji Umar Gul S/O Eid Akbar has recorded his statement as PW-01 before the submission of amended plaint. He categorically stated in his examination in chief that a Jirga was convened at the direction of Political Tehsildar wherein one Jamil Badshah and Islam Khan were Jirga members from the defendant's side, while Firdos and Kamil Shah were Jirga members for the plaintiff. The original decision of Jirga dated 01.01.2018 is available on the case file and has been signed by PW-01, Haji Umar Gul being Jirga member for Political Tehsildar/Political Administration. The Jirga decision is Ex. PW-1/2 wherein it has been categorically mentioned that defendant will produce witnesses in support of his claim and in case of failure, he will be bound to produce five persons for taking oath on Quran. It is also mentioned in the said Jirga decision that five persons including the plaintiff will also take oath on Quran in respect of the disputed property, but later on one Noor Zadin S/O Noora Din withdrew from his claim and the defendant Khan Zadin failed to take oath and thus the Jirga was decided in favour of the plaintiff. Although only one witness namely Umar Gul has appeared before the court in support of the Jirga decision dated 01.01.2018, but his statement has remained unrebutted during the cross examination. PW-01, Umar Gul who later on again recorded his statement as PW-06 after amendment in plaint, is also

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witness of Jirga decision/Iqrar Nama dated 21.07.2017 which is Ex. PW-7/1 and Jirga decision dated 01.10.2017 Ex. PW-7/2. Both the said Jirgas were also concluded in favour of the plaintiff, but during his cross examination nothing contradictory has been brought on record. PW-03, Khanzeb Gul S/O Ameer Jan, PW-01 Sawab Gul, (recorded after amended plaint), and PW-02 Siafur Khan, are Jirga members of Jirga dated 23.11.2018. According to which the plaintiff has waived off his right of Ijara in favour of the defendant and the disputed property was released in favour of the plaintiff. The statement of marginal witnesses/Jirga members of Jirga dated 23.11.2018 namely Sawab Gul recorded as PW-01, Khanzeb Gul S/O Ameer Jan recorded as PW-03 and Siafur Khan recorded as PW-02 have remained intact during cross-examination on material points and there is no ambiguity regarding their presence in Jirga dated 23.11.2018. They have put their signatures on the Jirga decision dated: 23.11.2018 as Jirga members. PW-04 Jahanzeb s/o Awal Jan confirmed that one field was given by his grandfather to the grandfather of the parties which was distributed by them in equal shares. Most importantly PW-03 Khalil s/o Abdur Rehman also confirmed the stance of the plaintiff regarding Ijara in his favour by the plaintiff. His statement on the point of getting the suit property on Ijara from the plaintiff in the year 2018 has remained intact.


24. Later on, after remand the statement of one Yar Jan s/o Sahib Jan aged about 70/71 years was recorded as RPW-01 who also confirmed the stance of the plaintiff and stated that the suit property has remained with him on "Batai" for 17 years and he vacated the same at the demand

  
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of the plaintiff and his mother. He confirmed the factum of handing over possession of the suit property to the plaintiff.

25. On the other hand, the defendant recorded his own statement as DW-01. He admitted during cross-examination that the grandfathers of the parties were brother inter-se and the suit property devolved upon the parties in inheritance and the jirgas were conducted by the people between them regarding property situated at Lakh Kanri. He admitted that Jirga was conducted by one Firdos Haji, Jamil Badshah, Islam Badshah and Umar Gul. This admission of the defendant has also confirmed both the Jirga decisions dated 21.07.2017 Ex. PW-7/1 and Jirga dated 01.10.2017 Ex. PW-7/2 which both clearly bears the signatures of above-mentioned Jirga members.

26. The crux of the above discussion is that almost all jirgas have been decided in favour of the plaintiff in respect of the suit property. The statement of Yar Jan recorded at the direction of the Hon'ble District Judge, Orakzai vide his remand order dated 13.12.2023, also confirmed that Yar Jan was in possession of the suit property till 1998 and after retrieving the possession of the suit property by the plaintiff and the same was given to the defendant on Ijara, who had been cultivating the same till the year 2017 and after retrieving the possession from the defendant, the suit property was given to one Khalil S/O Rehman Mula by the plaintiff. It is admitted by the defendant that he has no knowledge of partition between the parties because it has been done in the lifetime of the great grandfathers of the parties and he has no knowledge that which one of the property was handed over to the plaintiff at that time.

  
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The defendant also admitted that the suit property was given to one Khalil S/O Rehman Mula, but he restrained him from cultivating all the fields. It is also admitted by the defendant that the Jirga bound down both the parties to produce five persons each for taking oath on Quran, but the defendant failed to do so, meaning thereby that the defendant admitted that Jirgas were conducted between the parties in respect of the suit property. Issues No. 4 & 5 are decided in positive while issue No. 6 is decided in negative accordingly.

**ISSUES NO. 1 & 7:**

Both these issues are linked with each other, hence decided together.

27. As per my detailed discussion over issues No. 4, 5 & 6, the plaintiff is the owner of the suit property, therefore, he has got a cause of action and is entitled to the decree as prayed for. Issues No. 1 & 7 are decided in positive..

**RELIEF:**

28. As sequel to my above issue-wise findings, the plaintiff proved his case through cogent and confidence inspiring evidence, therefore, preliminary decree is hereby granted in favour of plaintiff as prayed for.

No order as to cost.

29. Case file be consigned to the record room after its completion and compilation.

**Announced**  
29.04.2024

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29.4.24  
**(Bakht Zada)**  
Senior Civil Judge,  
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**CERTIFICATE**

Certified that this judgement of mine consists of fourteen (14) pages, each has been checked, corrected where necessary and signed by me.

*Bakht Zada*  
29.4.24  
**(Bakht Zada)**  
Senior Civil Judge,  
Orakzai at Baber Mela