

IN THE COURT OF SYED ABBAS BUKHARI
CIVIL JUDGE - II, KALAYA
ORAKZAI

Suit No. 82/1 of 2022

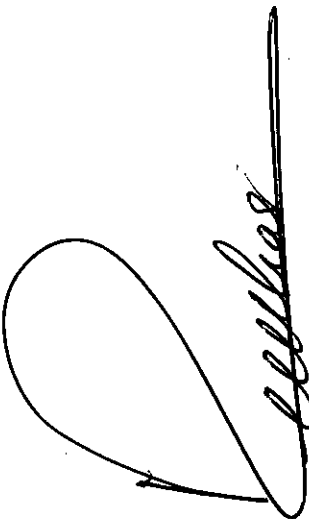
Date of Original Institution.....22.04.2022
Date of transfer in06.07.2022
Date of Decision05.09.2024

1. Sakhi Badshah,
2. Razi Badshah
3. Phool Badshah sons of Jan Badshah, residents of Qom Mishti, Tappa Darvi Khel, Zawan PO Mishti Mela, District Orakzai.

.....Plaintiffs

Versus

1. Aqal Shah,
2. Imam Shah,
3. Muhammad Nazeer, sons of Zaman Shah,
4. Bakht Ali Shah,
5. Fateh Khan,
6. Muhammad Karim,
7. Rayat Shah,
8. Aqal Said,
9. Jamal,
10. Hanan, sons of Abd Bar Shah
11. Abdul Badshah,
12. Muhammad Ayub Khan, sons of Lal Badshah,
13. Khan Said,
14. Khafi Rehman, sons of Mast Ali Shah,
15. Khukali Badshah,
16. Shaheen Khan,
17. Taj Muhammad, sons of Mazhar Shah,
18. Muhammad Ayaz,
19. Rab Nawaz,
20. Gul Nawaz and


05-09-2024
SYED ABBAS BUKHARI
Civil Judge/II-I
Tehsil Courts Kataya

21. Muhammad Nawaz sons of Maveez Gul, all residents o Qom Mishti, Tappa Darvi Khel, PO Mishti Mela, Tehsil Lower District Orakzai.

.....Defendants

SUIT FOR DECLARATION AND PERMANENT INJUNCTION

Counsel for plaintiffs: Mr. Sir Muhammad Khan Khattak Advocate

Counsel for defendants: Mr. Sana Ullah Khan Advocate

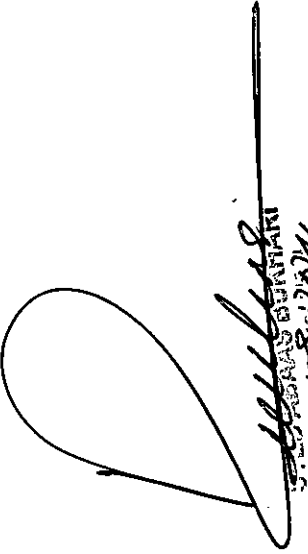
JUDGMENT

05.09.2024

Vide this judgment I intend to dispose of suit captioned above.


2. It is a suit from plaintiffs against defendants for declaration and perpetual injunction to the effect that parties to the suit are legal heirs of one Muhammad Rasool, who had six sons and one of his son namely Mastan Gul died issueless. Plaintiffs are sole owners of the legacy of Mastan Gul, as they previously paid the fine imposed upon their family by Jirga in the year 2001.

3. Brief facts of the case as narrated in the plaint are that plaintiffs allege that parties to the suit are legal heirs of one Muhammad Rasool. They further allege that Muhammad Rasool had six sons and one of his son namely Mastan Gul died issueless. They further allege that family of parties to the suit had enmity with someone else and Jirga imposed a fine of Rs-200000/- upon family of parties to the suit. As


SANA ULLAH KHAN
05.09.2024
Tehsil Courts Kalaya

parties to the suit were poor people and it was not possible for them to pay the fine, hence it was agreed upon that whoever amongst them will arrange and pay fine money, the share of Mastan Gul will be declared as his sole ownership after the demise of Mastan Gul. Plaintiff no.01 had retired from Frontier Constabulary at that very time, hence he alongwith other plaintiffs, arranged the fine and paid the same to Jirga members. They further allege that as Mastan Gul used to reside with the father of defendants no.01 to no.03 and after death of father of defendants no.01 to no.03, he used to reside with defendants no.01 to no.03. In the year 2016 Mastan Gul died and in the year 2017 plaintiffs demanded the delivery of possession of the legacy of Mastan Gul but defendants no.01 to no.03 delayed the matter and finally refused to hand over the possession of suit property to plaintiffs, hence the instant suit.

4. After institution of the suit, defendants were summoned and accordingly they appeared before the court and marked their attendance but subsequently defendants no. 19 to 21 failed to appear before the court and accordingly were placed and proceeded as ex-parte. Defendants no. 12, 13, 17, 18, 22, 23 submitted cognovit, while defendant no. 01




05/08/2024
Civil Judge/JM-II
Tehsil Courts Kalaya

to 03, 05 to 11, 15 & 16 submitted their written statement with legal and factual objections raised therein.


5. Out of controversies of the parties, as raised in their respective pleadings, this Court has framed the following issues on 14.04.2023.

1. Whether the plaintiffs have got a cause of action?
2. Whether the predecessor of parties to the suit namely Muhammad Rasool had six sons and his one son namely Mastan Gul died issueless in the year 2016? **OPP**
3. Whether in the year 2001 the whole family of plaintiffs and defendants engaged into enmity with someone else and later on a fine of Rs. 200,000/- was imposed upon plaintiffs and defendants by elders of Orakzai tribe and due to poor financial condition of the parties to the suit, it was internally agreed by them that the person who would pay the fine of Rs. 200,000/- would be entitled to inherit the share of Mastan Gul after his death and accordingly said fine was paid by plaintiff no. 01 Sakhi Badshah? **OP parties**
4. Whether the plaintiffs are entitled to the decree as prayed for? **OPP**
5. Relief

6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiffs produced as many as six witnesses and thereafter closed their evidence. Contrary to this, the contesting defendants produced three witnesses and thereafter closed their evidence with a note.
7. Both the learned counsels for the parties to the suit then advanced arguments. Learned counsel for the plaintiffs opened the arguments and argued that parties to the suit are


 05-09-2024
 SYED ABAAS BUKHARI
 Civil Judge/JM-II
 Tehsil Courts Kataya

legal heirs of one Muhammad Rasool. They further allege that Muhammad Rasool had six sons and one of his son namely Mastan Gul died issueless. They further allege that family of parties to the suit had enmity with someone else and Jirga imposed a fine of Rs-200000/- upon family of parties to the suit. As parties to the suit were poor people and it was not possible for them to pay the fine, hence it was agreed upon that whoever amongst them will arrange and pay fine money, the share of Mastan Gul will be declared as his sole ownership after the demise of Mastan Gul. Plaintiff no.01 had retired from Frontier Constabulary at that very time, hence he alongwith other plaintiffs, arranged the fine and paid the same to Jirga members. They further allege that as Mastan Gul used to reside with the father of defendants no.01 to no.03 and after death of father of defendants no.01 to no.03, he used to reside with defendants no.01 to no.03. In the year 2016 Mastan Gul died and in the year 2017 plaintiffs demanded the delivery of possession of the legacy of Mastan Gul but defendants no.01 to no.03 delayed the matter and finally refused to hand over the possession of suit property to plaintiffs. He further argued that the plaintiffs succeeded to prove their stance through cogent, convincing and reliable evidence


SYED ABBAS BUKHARI
Civil Courts Kataya
Tehsil Courts Kataya

and further nothing in rebuttal is available on the record, hence prayed that the suit in hand may kindly be decreed in favor of plaintiffs and against the defendants for the relief as prayed for.

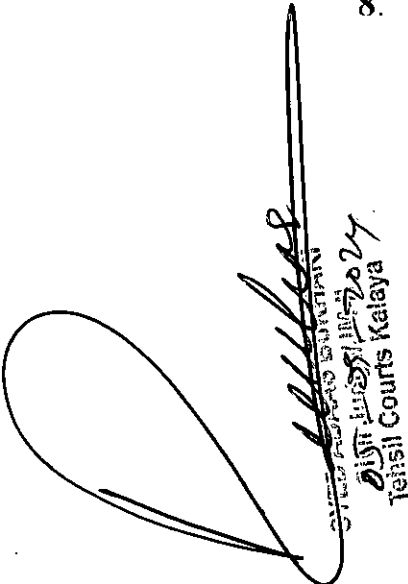
8. Contrary to this learned counsel for the contesting defendants argued that plaintiffs have got no cause of action. He further adduced that contesting defendants had no enmity with anyone else. He further argued that plaintiffs failed to prove their stance through cogent and convincing evidence. On the other hand, the defendants succeeded to produce evidence in light and support of their stance previously alleged in their written statement. Hence, prayed that as plaintiffs failed to prove their case, accordingly the suit in hand may kindly be dismissed.

9. Now on perusal of record, available evidence and valuable assistance of both the learned counsels for the parties my issue wise findings are as under.

ISSUE NO. 2:

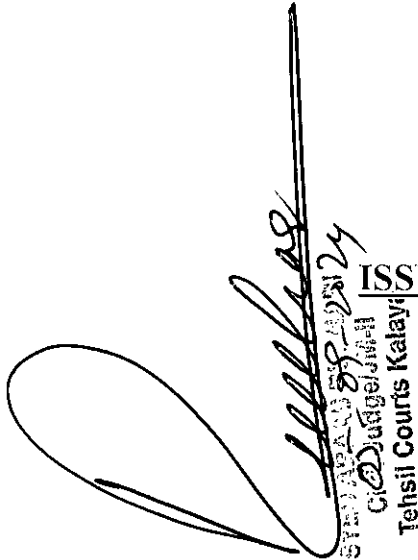
Whether the predecessor of parties to the suit namely Muhammad Rasool had six sons and his one son namely Mastan Gul died issueless in the year 2016? OPP

Plaintiffs has previously alleged in their plaint that predecessor of parties to the suit namely Muhammad Rasool had six sons and his one son namely Mastan Gul died



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issueless. In given circumstances perusal of written statement as well as evidence produced by parties to the suit would reveal that this fact has been admitted by both the parties to the suit that Muhammad Rasool had six sons and one of his son namely Mastan Gul died issueless. Hence accordingly issue in hand is hereby decided in positive in favour of plaintiffs and against defendants.


 C. D. JUDGE
 Tehsil Courts Kalay

ISSUE NO. 03:


Whether in the year 2001 the whole family of plaintiffs and defendants engaged into enmity with someone else and later on a fine of Rs. 200,000/- was imposed upon plaintiffs and defendants by elders of Orakzai tribe and due to poor financial condition of the parties to the suit, it was internally agreed by them that the person who would pay the fine of Rs. 200,000/- would be entitled to inherit the share of Mastan Gul after his death and accordingly said fine was paid by plaintiff no. 01 Sakhi Badshah? OP parties

Plaintiffs had previously alleged in their plaint that the family of parties to the suit engaged in to enmity with someone else in the year 2001 and during Jirga proceedings a fine of Rs-200000/- was imposed upon parties to the suit by Jirga members. They further allege that due to weak financial condition of parties to the suit, it was agreed upon by them that the person amongst them, who will arrange and pay the fine, will be entitled to inherit the legacy of Mastan Shah after his death and accordingly plaintiffs paid the fine. Contrary to this defendants deny the stance of plaintiffs and


state that they had no enmity with any one and furthermore, they are also entitled to inherit their share in the legacy of Mastan Shah being legal heirs of Muhammad Rasool.

Plaintiffs produced one Sakhi Badshah, Plaintiff no.01 and special attorney for rest of plaintiffs, as PW-01, who deposed on oath in light and support of the stance of plaintiffs previously alleged in the plaint. During cross examination he deposed that Mastan Gul died in the year 2018-19. Till his death, Mastan Gul used to cultivate his agricultural property. It is correct that in my absence and without my permission no one can sell my property. It is correct that neither in my plaint nor in my statement I have disclosed that with whom our enmity was. It is correct that my grandfather and defendants father had separated their share prior to my birth. It is correct that he has got no written proof regarding Jirga verdict and payment of fine. It is correct that all family members are entitled to inherit their due share in the legacy of Mastan Shah. It is correct that I have not mentioned the names of Jirga members in my plaint.

PW-02 was produced and examined as one Razi Badshah, plaintiff no.02, who deposed on oath in light and support of the stance of plaintiffs. During cross examination he


 SYED ABAS BUKHARI
 05/05/2019
 Tehsil Courts Kalaya


deposed that it is correct that it is not mentioned in the plaint that with whom they were previously engaged in enmity. It is also correct that it is not mentioned in the plaint that who were Jirga members. It is correct that he had got no written proof regarding imposition of fine by Jirga members. It is correct that today no Jirga member or any other person of Qom Mishti is present before the court as witness. It is correct that as per Shariah my sisters are also entitled to inherit their share in my ancestral property.


 SYED ABBAS HUSSAIN
 Civil Judge/III
 Tehsil Courts Kataya

PW-03 was produced and examined as one Khuli Badshah s/o Mazar Shah, defendant no.17 and special attorney for defendants no.18, 22 and 23, who deposed in light and support of the stance of plaintiffs. During cross examination he deposed that it is correct that it is not mentioned in my statement that with whom said enmity was. It is correct that I have also got share in the legacy of Mastan Gul. It is also correct that defendants have also got share in legacy of Mastan Shah. It is correct that during my life time no one can sell my property in my absence and without my prior permission. Self-stated that it was decided that during the life time of Mastan Shah no one will tell him that his property has been sold.

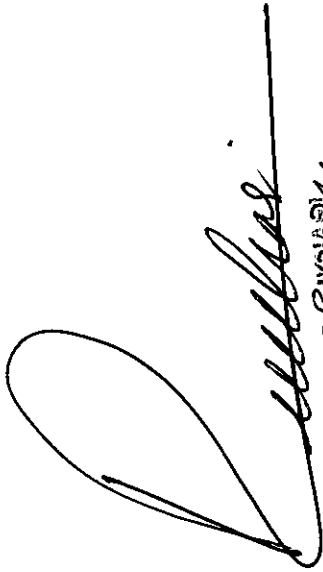
One Gul Nawaz s/o Muwaz Khan, defendant no.22, was produced and examined as PW-04, who deposed in light and support of the stance of plaintiffs. During cross examination he deposed that he is not in knowledge that with whom their enmity was. It is correct that neither he has got any proof regarding payment of fine of Rs-200000/- nor he has got any will of his father in this regard.

PW-05 was produced and examined as one Abdul Badshah s/o Lal badshah, defendant no.12, who deposed on oath in light and support of the stance of plaintiffs. During cross examination he deposed that it is correct that no one can sell my property without my permission during my life time. Self-stated that during life time of Mastan Shah due to the enmity the elders of family in absence of Mastan Shah and without obtaining his consent and permission had decided that his property will be given to the person who will pay the fine. It is correct that he has got no proof regarding payment of fine. It is also correct that he has got no proof regarding registration of case before Political Agent regarding our enmity. It is correct that I have not mentioned in my statement that with whom we were engaged in enmity. It is also correct that I have not mentioned the names of Jirga members in my statement. It


 SYED ABAAS BUKHARI
 QJF JUDGE
 Tehsil Courts Kalaya

is correct that my uncle Mastan Shah used to reside with defendants no.01 and no.02 till his death.

PW-06 was produced and examined as one Muhammad Ayub Khan s/o Lal Badshah, defendant no.13, who deposed on oath in light and support of the stance of plaintiffs. During cross examination he deposed that it is correct that whenever the property of a person is sold, his prior permission is obtained. Self-stated that five elders decided that this fact will not be disclosed to Mastan Shah that his property has been sold, for the reason that he is issueless and it will hurt his sentiments. It is correct that it is not mentioned in my statement that with whom we were engaged in enmity. It is correct that he has got no proof regarding the imposition of fine of Rs-200000/- and setting on fire of the house. Defendants no.01, 02, 05, 06, 07, 08, 09, 10, 15 and 16 reside in separate houses prior to his birth. It is correct that Mastan Gul used to reside with defendants no.01 and no.02 till his death.


 SYED ZIAUDDIN
 Civil Judge/JMI-II
 Tehsil Courts Kalaya

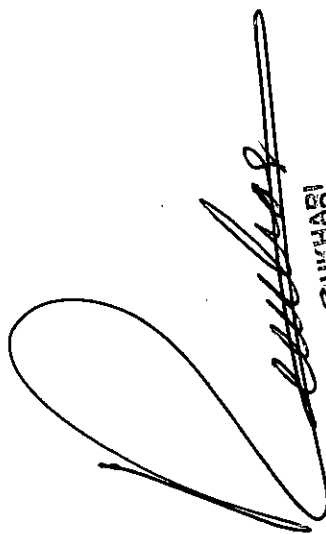
Contrary to this defendants produced one Aqal Shah s/o Zaman Shah, defendant no.01 and special attorney for defendants no. 02, 03, 05 to 11 and 15 to 16, was produced as DW-01, who deposed on oath in light and support of the stance of defendants previously alleged in the written

statement. During cross examination he deposed that Mastan Gul had got no enmity in the year 2001. No fine was imposed upon them by any person or tribe. Mastan Gul died in the year 2016-17 and he used to reside with me.

DW-02 was produced and examined as one Bakht Ali Shah s/o Eidbar Shah, who deposed on oath in light and support of the stance of defendants. During cross examination he deposed that in the year 2001 Mastan Shah had got no enmity with anyone. Neither Mastan Gul was detained by anyone nor he had got any enmity. The property of Mastan Gul is in possession of Aqal Shah. My father and father of Mastan Gul were brothers.

DW-03 was produced and examined as one Khan Said s/o Mast Ali Shah, who deposed on oath in support of the stance of defendants. During cross examination he deposed that Mastan Gul had got no enmity with anyone in the year 2001. He is not in knowledge that plaintiffs have paid Rs-200000/- as fine to anyone. Mastan Gul was also kidnaped due to the issue of plaintiffs and that enmity was of the plaintiffs and we had got no concern with the same.

Now in light of the above evidence produced by both the parties to the suit , it is pertinent to mention here that as for as plaintiffs evidence is concerned, all the PWs have

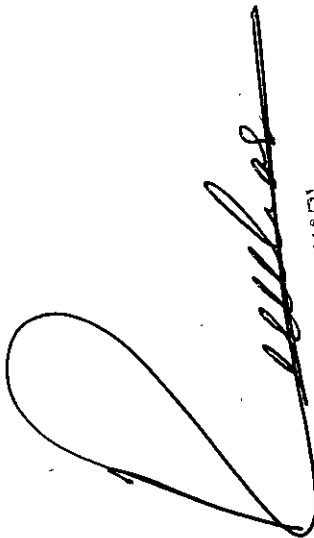

 SYED AHSAN RAZA
 Civil Judge, Jirani
 Tehsil Courts Kataya

deposed in light and support of the stance of plaintiffs. However during cross examination a series of admissions has been brought on the record by the opposite party and a brief of the same is narrated as under;


As for as the year of the death of Mastan Shah is concerned, same has been mentioned as 2016 in the plaint by plaintiffs while during cross examination of PW-01 (plaintiff no.1 and special attorney for rest of the plaintiffs) he stated that Mastan Gul died in the year 2018-19.

Furthermore, as for as the names of the person or persons, with whom parties to the suit were engaged into enmity is concerned, it is pertinent to mention here that neither their names have been mentioned in the plaint by plaintiffs nor they subsequently mentioned the same in the examination in chief of PWs. Furthermore, despite repeated questions in cross examination they admitted that they have not mentioned the names of persons or tribe, with whom they were engaged in the alleged enmity but during cross examination they also failed to disclose their names.

As for as the imposition and payment of fine of Rs-200000/- is concerned, plaintiffs also failed to produce any proof in this regard.


 SYED FARAZ HUSSAIN
 Civil Judge (J-1)
 Tehsil Courts Kalaya

As for as names of Jirga members are concerned, same were also not disclosed by plaintiffs in their plaint and subsequently in examination in chief and cross examination of PWs. Furthermore, plaintiffs also failed to produce a single Jirga member as witness before this court.


 SYED SAAD FARUK
 CIVIL JUDGE, III-II
 Tehsil Courts Kataya

Furthermore, as for as sale of suit property during the life time of Mastan Shah without his permission and knowledge is concerned, it is pertinent to mention here that PW-03, PW-05 and PW-06 have admitted this fact in their respective cross examinations that suit property was sold without knowledge and prior permission of Mastan Shah and he was deliberately not informed of this fact that his property has been sold during his life time. In this regard it is pertinent to mention here that, if in case, stance of plaintiffs is admitted to true, then in circumstances the manner of sale of suit property is not warranted under the law and thus is void ab initio. Furthermore, no one can sell the property of other person during his life time without obtaining his consent and permission irrespective of the fact that owner of said land is issueless or otherwise. Furthermore, during his life time Mastan Shah was a person of sound mind and was cultivating suit

property till his death, hence till his death suit property was at his sole disposal. It is also pertinent to mention here that not a single elder has been produced by the plaintiffs as witness in support of their stance.

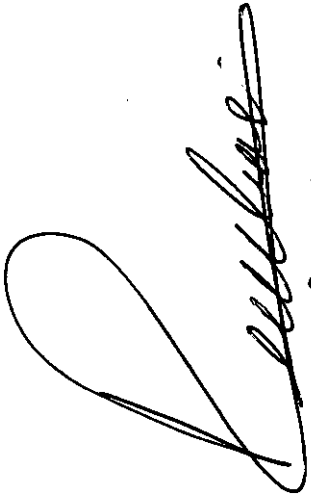
On the other hand during cross examination of DWs it has been brought on the record by plaintiffs that neither Mastan Gul had got any enmity in the year 2001 nor they had paid any amount in shape of fine to anyone else. It was also brought on the record during the evidence of both the parties that Mastan Gul used to reside with defendants no.01 and no.02 till his death.

In light of the above discussion as plaintiffs miserably failed to prove the issue in hand through their cogent, convincing and reliable evidence and furthermore a series of admissions has been brought on the record during cross examination of all the PWs, hence accordingly issue in hand is hereby decided in negative against plaintiffs and in favour of defendants.

ISSUE NO. 01

Whether the plaintiffs have got a cause of action? OPP

In wake of issue wise findings above, the plaintiffs have got no cause of action, hence issue in hand is hereby decided in negative against plaintiffs and in favour of defendants.


S. D. SABARAJ
 Civil Judge/JM-II
 Tehsil Courts Kalaya

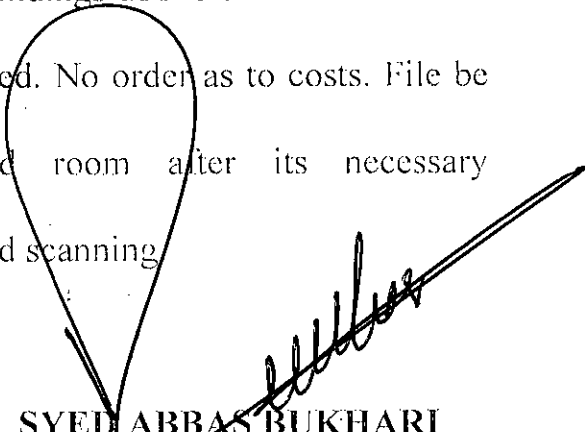
ISSUE NO.04:**Whether plaintiffs are entitled to the decree as prayed for?
OPP**

In wake of my issue wise findings above, plaintiffs are not entitled to the decree as prayed for, hence issue in hand is hereby decided in negative against plaintiffs and in favour of defendants.

Relief:

As per issued wise findings above the instant suit of plaintiffs is hereby dismissed. No order as to costs. File be consigned to the record room after its necessary completion, compilation and scanning.

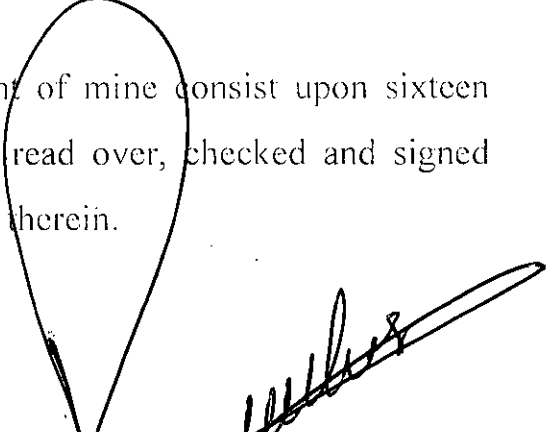
Announced
05.09.2024


SYED ABBAS BUKHARI
Civil Judge-II,
Tehsil Courts, Kalaya Orakzai

C E R T I F I C A T E

Certified that this judgment of mine consist upon sixteen (16) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 05.09.2024


SYED ABBAS BUKHARI
Civil Judge-II,
Tehsil Courts, Kalaya Orakzai