

*Judgment Sheet*  
**THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANO**  
**Civil Revision No. S-46 of 2013**

*(Muhammad Sachal Mahar v/s. P.O.Sindh & Ors)*

Date	Order with signature of judge
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Before:

***Mr. Justice Nisar Ahmed Bhanbhro***

Applicant: Muhammad Sachal son of Bahadur Mahar  
Through Mr. Ghulam Dastagir A. Shahani, Advocate.

Respondents No.1-7: Through Mr. Munwar Ali Abbasi, Assistant Advocate  
General, Sindh

Respondent No.11: Through Mr. Prem Chand R. Sawlani, Advocate.

Date of Hearing: 08.09.2025

Date of Judgment: 08.09.2025

**J U D G M E N T**

**Nisar Ahmed Bhanbhro J.-** Through this Civil Revision Application, the Applicant (Plaintiff) has challenged the concurrent findings of the Courts below. The plaint in Civil Suit No.37/2010 “Re Mohammad Sachal Versus Province of Sindh and others” filed by the applicant was rejected by the Court of Learned 2<sup>nd</sup> Senior Civil Judge Shikarpur (Trial Court) vide order dated 18.11.2011 (impugned Order) by exercising powers under Rule 11 of Order VII CPC. Civil Appeal No 33 of 2011 “ Re Mohammad Sachal Versus Province of Sindh and others” filed by the Applicant was dismissed vide Judgment dated 30.09.2013 (impugned judgment) by the Court of Learned 2<sup>nd</sup> Additional District Judge Shikarpur (Appellate Court).

2. Mr Ghulam Dastagir Shahani Learned counsel for the applicant contended that the plaintiff/applicant filed suit for Declaration, Permanent Injunction. He argued that the applicant sought declaration of Ownership over suit property viz. survey number 672 and 673 of Deh Pohar Taluka Garhi Yasin. He argued that the claim of the applicant would only be adjudicated after framing of issues and recording of evidence. He contended that the applicant was non-suited on technical grounds, which was against the scheme of law. He argued that no doubt the provisions of Order VII Rule 11 C.P.C. can be invoked by the

Court for rejecting the plaint if it is borne out from the record that proceedings were initiated without any cause of action. He argued that the assertions raised by the applicant in the instant lis were accepted by the then Additional Commissioner Sukkur vide orders dated 16.11.1995, wherein it was declared that private respondents had got recorded in their names the portion of land which was not granted to them. He contended that the order passed by the Additional Commissioner was not implemented therefore applicant again approached EDO Revenue Shikarpur and Member Board of Revenue Hyderabad but he remained unheeded. He argued that the applicant preferred the suit before Learned Trial Court, which being the Civil Court was the Court of ultimate jurisdiction to decide the question of title, ownership, possession etc. He contended that plaint was rejected on the ground that applicant had no cause of action to file the Suit. He argued that applicant sought declaration for ownership of the suit property, which required evidence. He contended that the findings of both the Court below were perverse and suffered from material illegality and irregularity. He prayed for allowing of this revision application. He placed reliance upon the case law reported as 2007 MLD 1687, 2007 SCMR 945, 2006 CLC 482, 1985 CLC 2883, 1974 SCMR 356, 1970 SCMR 180, 1994 SCMR 826 and 1992 SCMR 1199.

3. Mr. Prem Chand R. Sawlani, Learned Counsel for the respondent No 11 controverting the submissions advanced by learned counsel for the applicant contended that the suit of the applicant was not maintainable under the law. He contended that the applicant had no cause of action to file the suit. He contended that it was settled principle of law that incompetent suit must be buried at its inception to save the precious time of the court and litigants. He contended that the suit was barred by the law as the earlier suit filed by the applicant was dismissed as withdrawn with permission to file a fresh one. He further contended that the order dated 28.11.1995, passed by the Additional Commissioner, Larkana decided the claim of the parties, wherein Survey Nos.672 & 673 were held to be the property of respondent No 11. He contended that no fruitful result would be achieved if the suit proceeded on merits and the parties were allowed to record evidence. He prayed for dismissal of the revision application. He placed reliance on 2002 SCMR 338 and 2014 SCMR 513.

4. Learned Assistant Advocate General, Sindh submits that the courts below have decided the fate of the suit under the premise of provisions of order VII Rule C.P.C. on the ground that the applicant had no cause of action to challenge the grant in favour of the applicant. He argued that from bare reading of the plaint it appeared that the applicant had the cause of action to file the suit. He, therefore, submits that the claim of the applicant required evidence. He supported the stance of Learned Counsel for applicant and prayed to set aside the impugned order and impugned judgment and the matter may be remanded back to the Learned Trial Court or its decision afresh on merits.

5. Heard arguments of the learned counsel for the parties and have perused the material available on record. From the pleadings of the parties, it appeared that since year 1995 applicant disputed the claim of ownership of private respondents over the suit property. Applicant filed representation before Additional Commissioner Sukkur Division for correction in the record of rights. The said application was disposed of vide order dated 28.11.1995 with following observations:

*“Under these circumstances, I am of the opinion that the respondent has no concern with S.No.165 area 1-24 acres as the same was not granted to him and he is only entitled for the area 8-26 acres as confirmed in L Form dated 8.04.69. Thus the order of Colonization Officer, dated 11.7.95 for including the S.No.165 area 1-24 acres in favour of respondent is illegal. I, accordingly exclude the same from the grant of respondent and allow to remain in the name of applicant. The Colonization Officer is directed to take action accordingly.*

6. Perusal of the order dated 28.11.1995 revealed that Learned Additional Commissioner Sukkur observed that Survey No.165 was not granted to the private respondents. It further reflected from the order dated 28.11.1995 that survey No.672 and 673 were carved out from the Survey No.165. Learned Additional Commissioner ordered to exclude an area of 1-24 acres of survey number 165 from the grant issued in favor of Respondent No 11. The decision of the Additional Commissioner Revenue was never acted upon, therefore, the applicant filed an application in the year 2003 before EDO Revenue Shikarpur, being successor in office, for implementation of the order, the said application was disposed of vide order dated 08.09.2003 with observation that there appeared to be no justification to entertain the appeal at the stage when the matter was already decided by the Additional Commissioner, Sukkur, as Board of Revenue was competent to take the cognizance; the application filed by the applicant was, therefore, dismissed.

7. The applicant filed revision application under section 164(1) of the Sindh Land Revenue Act, 1967 before the Board of Revenue. The Member Board of Revenue dismissed the revision application vide order dated 29.08.2009 by observing that the revision application was barred 54 days. Since Member Board of Revenue was seized with the matter under revision jurisdiction under section 164 of the Sindh Land Revenue Act 1967, which provided a time of 30 days to assail any order passed by lower forum. If an aggrieved party approached Board of Revenue beyond the period of 30 days, the revisions could still be entertained by converting the same into an information or by condoning the delay could decide it on merits. The bare reading of section 164 of the Sindh Land Revenue Act 1967 revealed that no period of limitation was prescribed if the revision was result of the suo moto proceedings or the reference sent by the lower hierarchy. In case the revision application was filed against the orders passed by lower forum by an aggrieved person than the period of limitation was 30 days. Section 164 reads as under:

**164. Revision.**

- (1). *The Board of Revenue, may, at any time, on its own motion, or on an application made to it within thirty days of the passing of any order, call for the record of any case pending before, or disposed of by, any Revenue Officer subordinate to it.*
- (2). *A Commissioner or Collector may, at, any time, of his own motion or on an application made to him within thirty days of the passing of any order, call for the record of any case pending before, or disposed of by, any Revenue Officer under his control.*
- (3). *If in any case in which a Collector has called for a record he is of opinion that proceedings taken or order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Commissioner.*
- (4). *The Board of Revenue may, in any case called for under section (1) and a Commissioner may, in any case called for under sub-section (2) or reported to him under subsection (3), pass such orders as it or he thinks fit:*

8. The Member Board of Revenue in the order dated 29.08.2009 observed that revision application was barred by time, however an application under section 5 of the Limitation Act seeking condonation in delay was preferred but the same was held to be without sufficient cause, thus not tenable. The Member Board of Revenue failed to comprehend that the applicant was seeking implementation of the order passed by the Revenue Hierarchy for correction of an entry to the extent of area of declared in excess by Additional Commissioner Sukkur. The Revenue authority was competent to entertain an application seeking correction of record under its powers conferred under section 161 of Sindh Land Revenue Act 1967 read with section 41. Section 172 of the Land Revenue Act 1967 conferred an exclusive jurisdiction to Revenue Court to entertain matters pertaining to correction. Section 53 of the Sindh Land Revenue Act 1967 attaches the presumption of correction to the revenue record unless the contrary is proved.

9. No doubt the application filed by the applicant was delayed by 54 days, the contention of learned counsel for the Respondent No 11 in that regard carried weight as admittedly the provisions of section 5 of the Limitation Act shall not apply to the proceedings to condone delay in filing of an appeal or revision before Revenue Court as the statute itself prescribed a time limit for filing any appeal or revision. But in the case in hand applicant sought implementation of the earlier order for correction in revenue record as to the extent of area, which Member Board of Revenue was competent to entertain at

any time as observed by the EDO Revenue Shikarpur. In such a situation knock out of the applicant on the ground of limitation was not warranted under the law.

10. Instead of implementing the order dated 28.11.1995 passed by the then Additional Commissioner Sukkur, wherein request for the correction in the record of rights with regard to the area of the Survey No.165, Revenue Authorities entered into a factual check forgetting the legal aspect that the correction in the record of rights fell under the exclusive domain of the revenue authorities in terms of Section 172 of the Sindh Land Revenue Act. For correction in record of rights law has not prescribed any limitation. The revenue authorities were competent under the law to rectify any error in the record of rights, when noticed. The entry in the revenue record is never the proof of title, it is always subject to correction and rectification in terms of section 53 of the Sindh Land Revenue Act.

11. The Applicant failed to obtain any relief from the revenue hierarchy, therefore, filed suit for Declaration, and Permanent Injunction before Learned Trial Court. The private respondents did not file written statement, they straight away opted to file application under order VII rule 11 C.P.C. Learned Trial Court allowed the application and rejected the plaint on the ground that no cause of action accrued in favour of the plaintiff and he was not entitled to claim declaration of ownership in the Suit Property.

12. No doubt it is a settled proposition of law, that incompetent litigation must be buried at its inception. The purpose of nipping incompetent litigation in bud was to save the court's time and to avoid undue process of law which may occur due to lengthy process of litigation. To save the litigant parties from the abuse of process of law had never meant to condemn any person unheard on the grounds, which were *prima facie* not attracted. In the present case, the applicant had attacked the grant in favour of private respondents on the ground that they were not entitled for grant from Survey No.165, which is the mother Survey number of the subsequent carved out survey No. 672 and 673. This aspect of the assertion of the applicant was accepted by the revenue authorities and it was ordered that private respondents were entitled only to the extent of 8.26 acres of the land and claim to the extent of additional 1-24 acres from the survey No.165 was not justified. The respondents did not challenge the order dated 28.11.1995 and the said order by operation of law was still in field having attained finality. The parties were litigating their rights in immoveable property since last more than five decades but issue has yet to settle.

13. Since the applicant claims a right of ownership over survey Nos. 672 & 673, which required evidence of parties as to whether an area 1-24 acres was in excess possession of the Respondents. Thus, applicant has a cause of action to bring suit against the Respondents which needs adjudication on merits.

14. No doubt, the spirit of Order VII, Rule 11, C.P.C., was that an incompetent litigation should be laid to rest at the earliest moment so that no further time is wasted over

an issue which was surely to collapse. The intention of the legislature was evident that unproductive lawsuits should be buried at the beginning to save the precious time of the court, which can be better utilized in addressing genuine litigation. However, this principle does not grant a license to non-suit the parties over nitty gritty assertion of the other side to avoid the due process of law and cause delay or prolong the proceedings. While deciding an application under this provision of law, a meaningful reading of the plaint was the staunch duty of the Court in order to reach a just conclusion about whether rejection is warranted within the preconditions codified in the Rule 11 of Order VII C.P.C. If the plaint, on its face, appeared to be incompetent, not due to any formal, technical, or curable defect but because of an express or implied embargo imposed by law, it should not be allowed to live further, it should be throttled and buried without further proceedings.

15. It is incumbent upon the party bringing an application under Order VII, Rule 11, C.P.C., to distinctly elucidate that on what grounds the plaint was liable to be rejected, rather than making sweeping or trivial allegations. It is well-established principle that for substantial questions of facts or law, the provisions of Order VII, Rule 11, C.P.C., cannot be invoked. For the purpose of deciding application under Order VII Rule 11 C.P.C. the contents of the plaint are taken to be true. Even if one prayer in the plaint is found to be maintainable, the plaint cannot be rejected in parts. What is essentially required, is for the plaintiff to demonstrate not only that a right has been infringed in a manner entitling him to relief but also that, at the time of approaching the Court, the right to seek that relief was subsisting. The weakness of proof did not justify the conclusion that no cause of action is disclosed in the plaint. For the rejection of a plaint, the Court cannot consider pleas raised by the defendants at that stage, as those are merely contentions unsupported by any evidence on record. Nonetheless, if some material apart from the plaint is available on record and admitted by the plaintiff, the Court may take it into consideration. However, in the case of mixed questions of law and fact, the correct approach is to allow the suit to proceed to the written statement and discovery phases, determining the lis by framing issues, through a regular trial with equal opportunities for both parties. The proper course is to frame issues and decide them on merits in light of the evidence. The court is duty-bound to ensure substantial justice between the parties and not render them remediless. In the present case the perusal of application under order VII Rule 11 C.P.C. revealed that did not contain any specific plea as under what law the embargo to bring the suit could be placed or for what reasons the applicant had no cause of action to file the suit.

16. As far as the withdrawal of earlier suits was concerned, they were filed much prior to the order dated 29.08.2009 passed by the Member Board of Revenue. In the present suit the applicant had raised a legal question that the order passed by the Revenue Courts were illegal and applicant was entitled for ownership of the Suit Property. Such assertion required a full-fledged trial by framing the issues. Reasons assigned by both the Courts

below for non-suiting the applicant thus did not fall within the spirit of Rule 11 of Order VII C.P.C. warranting rejection of plaint.

17. Strength in this regard can be derived from the dicta laid down by Honorable Supreme Court in the case of Misree Khan and others Versus Abdul Ghafoor and other reported as P L D 2025 Supreme Court 24, wherein it has been held that:

*Before proceeding further, we take a pause to say that rejecting the plaint under Order VII, Rule 11, C.P.C. is a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to exercising power under Order VII, Rule 11, C.P.C. are stringent. This Court has consistently held that the averments in the plaint must be read as a whole to determine whether it discloses a cause of action or whether the suit is barred under any law. This includes a bar created due to the lapse of the limitation period. At the stage of exercise of power under Order VII, Rule 11, C.P.C., if the averments in the plaint ex-facie do not disclose a cause of action or on a reading thereof, the suit appears to be barred under any law; the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.*

18. With propound respect and humbleness, the case laws relied upon by the parties enunciated the same principle of law as has been held in the case of Misree Khan (Supra), thus need not to be discussed.

19. For what has been discussed hereinabove, I am of the considered view that the Courts below have failed to appreciate the pleadings of the Applicant in its true perspective and non-suited the applicant by exercising the powers which were not required to be exercised. The findings rendered by both the Courts below were perverse, illegal and beyond the scope and intent of the Rule 11 of Order VII C.P.C., thus required interference by this Court under its supervisory and corrective jurisdiction conferred under section 115 C.P.C. Consequently, this civil revision application is allowed, the impugned order dated 18.11.2022, passed by Learned Trial Court in F. C. Suit No.37 of 2010 and the Judgment dated 30.09.2013, passed by Learned Appellate Court in Civil Appeal No.33 of 2011 stand set aside. The matter is remanded back to the Learned Trial Court to decide it afresh after framing of issues and allowing the parties an opportunity to lead evidence.

20. Since it has been pointed out that the respondents/ defendants in the suit did not file written statement, therefore, they will be given an ample opportunity to file written statement, thereafter the learned trial Court shall frame the issues based upon the pleadings of the parties and will conclude the matter within a period of six months from the date of

receipt of this order. It is expected that the parties shall cooperate with the learned trial court in proceedings and no unnecessary adjournment shall be sought.

This revision Application stands disposed of in the above terms. Office to send copy of this judgment to Learned Trial Court for compliance.

**Judge**

*Manzoor*

*Approved for reporting*

*08.09.2025*

*Larkana*