

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Civil Revision No.S-17 of 2025

Applicant : Yar Muhammad son of Gul Hassan Arbani,
through M/S Sanaullah Mahar and
Shafique Ahmed Leghari, Advocates.

Respondent No.1 : Wazir son of Sardar Bux Arbani,
through Mr. Soomar Das R.Parmani,

Respondents No.2 to 9 : Mr. Ahmed Ali Shahani,
Assistant Advocate General Sindh.

Date of Hearing: 12.05.2025.

Date of Judgment. 04.8.2025.

JUDGMENT

Abdul Hamid Bhurgri, J,- The applicant, having been aggrieved and dissatisfied by the Judgment and Decree dated 24.12.2024 rendered by the learned Additional District Judge, Ghotki in Civil Appeal No.102/2024 (re: Wazir Ali versus Yar Muhammad and others), has preferred the instant revision petition challenging the said decision.

The impugned appellate judgment set aside the Order dated 08.06.2024 passed by the learned Senior Civil Judge, Ghotki in F.C. Suit No.10/2024, whereby the plaint filed by respondent No.1 was rejected under Order VII Rule 11 of the Code of Civil Procedure.

The applicant/defendant now beseeches the indulgence of this Court to examine the legality, correctness, and propriety of the impugned judgment dated 24.12.2024 and to restore the findings earlier recorded by the learned Senior Civil Judge, Ghotki through the Order dated 08.06.2024.

2. The brief facts of the case are that the plaintiff/respondent No.1 instituted Suit No.10/2024 seeking a Declaration, Cancellation, and Permanent Injunction concerning certain estate land situated in Deh Sangi Ghotki, District Ghotki, comprising Survey Nos. 691 (2-22), 692 (2-14), and 642 (01-16). The plaintiff/respondent No.1 asserted to be a permanent resident of Village Sabal Khan Arbani, claiming to have enjoyed continuous, peaceful, and uninterrupted possession of the aforesaid land for over six decades. It was alleged that the predecessor of the plaintiff/respondent No.1 had been granted a Yak-Sala lease of the said land in 1960–61 by the Assistant Colonization Officer of Gudu Barrage, and that he had regularly paid the prescribed lease charges and land

revenue to the Government, thereby entitling him to be recognized under the relevant land grant policy. The plaintiff/respondent No.1 further contended that no public schedule or notice was ever issued for disposal of the land, as required under Paragraph 7 of the Gudu Barrage Land Grant Policy of 1989. Nevertheless, the defendants, allegedly with the backing of political influence, procured the illegal issuance of Form "A" and, subsequently, a Transfer Order (T.O. Form) in favour of the applicant/defendant No.1, without any lawful basis or observance of procedural formalities. Resultantly, the plaintiff/respondent No.1 sought judicial relief by having the impugned documents declared void ab initio and prayed for a restraint against the defendants from altering the possession or status of the suit property.

Additionally, the plaintiff pleaded that a prior suit bearing No.182/2017 titled Wazir Ali v. Yar Muhammad, involving similar subject matter and seeking a Declaration, Cancellation, and Permanent Injunction, was filed, and that evidence of Mukhtiarkar Estate Ghotki was recorded against the applicant/defendant No.1. The applicant/defendant No.1, seeking to resolve the matter, approached Chief Sardar Mir Abid Khan Sundrani, who assured the plaintiff of dispute resolution and, on that assurance, the plaintiff withdrew F.C. Suit No.182/2017 through a statement dated 09.01.2021, which was accepted by the trial Court. However, according to the plaintiff/respondent No.1, the Chief Sardar did not adjudicate the dispute between the parties. Subsequently, on 15.01.2024, the defendant No.1 Yar Muhammad, accompanied by SHOs of Police Stations Ghotki and Sarhad, official defendants/respondents Nos.7 and 8, and other police personnel, allegedly attempted to dispossess the plaintiff through use of unlawful force. The said SHOs continued to harass and intimidate the plaintiff, threatening dire consequences unless possession of the land was surrendered to the applicant/defendant No.1. The plaintiff claimed that the cause of action first arose on 01.08.2017, when the defendant No.1 produced mutation entry No.81 dated 02.06.2012 relating to the land in village Form VII-B of Deh Sangi Ghotki, Tapo Bundh and again occurred on 15.01.2024 when the defendants through the intervention of official defendants/respondents Nos.7 and 8 tried to occupy the land forcibly. Consequently, the plaintiff/respondent No.1 prayed for the following reliefs:

a). Declare that the suit land bearing S.Nos.691 (2-22), 692 (2-14) and 642 (1-16) which is in peaceful cultivating possession and enjoyment of the plaintiff since more than 60 years possessing PREVIOUS KHAS MOKAL RIGHT of his ancestor, having developed the same at the dint of lot of labour and money, has not yet been granted to anybody including the defendant No.1 on permanent tenure in open katchery.

b). Declare that the "A" Form in respect of the suit land prepared and issued to the defendant No.1 illegally, unlawfully, falsely and forgedly by the Mukhtiarkar (Estate) at the instance of the Revenue Minister of Sindh has no any legal effect and sanctity.

c). Declare that the T.O Form in respect of the suit land issued by the D.O (R & E) Ghotki at Mirpur Mathelo on the basis of "A" Form and the mutation entry No.81 dated 02.06.2012 posted in village Form No.VII-B of deh Sangi Ghotki Tapo Bundh is illegal and unlawful having no any legal foundation and sanctity and on the basis of "A" Form neither the T.O Form is legally to be issued nor the suit land is to be transferred in the name of fake grantee the defendant No.1.

d). Declare that the plaintiff being in peaceful possession and enjoyment of the suit land on the basis of YAKSALA lease since last 60 years paying the lease money and land Revenue to the estate has possessed the ancestor's PREVIOUS KHAS MOKAL RIGHT UPON THE SUIT LAND, having developed the same at the dint of his lot of labour and money, is legally entitled for grant of the same on permanent tenure as and when the open katchery for disposal of the same is scheduled and held by the competent authority by scrutinizing the eligibility of plaintiff in open

e). Direct the Deputy Commissioner Ghotki, who is holding the charge of the Colonization Officer Guddu Barrage Sukkur, through the permanent, mandatory injunction of this declaration of this Honourable Court that the suit land may be

put in schedule for disposal of permanent tenure and be granted scrutinizing the eligibility of eligible person including the plaintiff.

f). Restrain the defendant No.1 through the permanent injunction of this Honourable Court to dispose of the suit land by way of sell, alienation, gift, mortgage and exchange to anybody other than the plaintiff, which is otherwise illegally has been transferred in his name which is liable to be cancelled.

g). Restrain the defendant No.1 through the permanent injunction of this Honorable Court to dispose of the suit land by way of sell alienation, gift, mortgage and exchange to any body and dispossess the plaintiff from the suit land forcibly and other wise than by due process of law.

h). Restrain the SHO or In charge of Ghotki Police station "A" Section and the SHO Police Station Sarhad or any of their staff claiming through or under them through the permanent injunction of this Honourable Court to forcibly eject the plaintiff from the suit land playing at the hand of the defendant No.1 Yar Muhammad Arbani or any political personality.

i). Award cost of the suit to the plaintiff

j). Award any other relief which this Honourable Court may deem just and proper under circumstances of the case

3. The applicant/defendant No.1 filed his written statement wherein he categorically denied the plaintiff's claim. He contended that he is the lawful allottee and thus the rightful owner of the suit land, and that the plaintiff has no enforceable right or title therein. It was further asserted that the present suit is not legally maintainable, as the plaintiff had previously instituted F.C. Suit No.182/2017 before the same Court, based on identical facts and cause of action, which was subsequently withdrawn unconditionally via order dated 09.01.2021. Accordingly, the instant proceedings, being founded on the same set of facts, are barred under Order XXIII Rule 1(3) of the Code of Civil Procedure. He, therefore, prayed for the dismissal of the suit. In addition, defendant No.1 filed an application under Order VII Rule 11 CPC, seeking rejection of the plaint on the ground

that the earlier suit, involving the same parties and issues, stood withdrawn, thereby attracting the bar of res judicata and legal preclusion. He further submitted that the suit is hit by Sections 42, 39, and 34(d) of the Specific Relief Act, as the plaintiff is bereft of any legal character or proprietary right in respect of the suit property. Consequently, the relief sought by way of mandatory injunction is also not maintainable. Objections were filed by the plaintiff, asserting that the suit is maintainable in law, as the relevant entry in the record of rights is allegedly false, fictitious, and legally void. Thus, according to the plaintiff, the suit is not barred by law. He further argued that the doctrine of estoppel is inapplicable, as the present claim arises from a distinct and fresh cause of action. The plaintiff accordingly prayed for the dismissal of the application filed under Order VII Rule 11 CPC.

4. The learned trial Judge, having heard the submissions of the parties, proceeded to reject the plaint by order dated 08.06.2024 on the ground that the suit was barred under Order XXIII Rule 1 of the Code of Civil Procedure. The basis of this finding was that the plaintiff had previously instituted a suit concerning the same subject matter, which was withdrawn without obtaining leave of the Court. In such circumstances, a fresh suit, whether in whole or in part, arising out of the same cause of action, is not legally maintainable unless formal permission for withdrawal had been sought and granted. Being aggrieved by the aforesaid order, the plaintiff/respondent No.1 preferred Civil Appeal No.102/2024, which was subsequently transferred to the Court of the II-Additional District Judge, Ghotki. The learned Appellate Court, vide Judgment and Decree dated 24.12.2024, allowed the appeal and set aside the order of the trial Court. Hence, the present Civil Revision has been filed to assail the said impugned Judgment and Decree.

5. Learned counsel for the applicant submits that the appellate court has passed order in mechanical manner without applying his mind to the facts of the case, the order of the trial court was well reasoned while the appellate Court had overturned the decision without any cogent reason, the suit of the plaintiff was clearly barred under order XXIII Rule 1(3) CPC as prior to present suit a F.C suit No.182/2017 has been preferred by plaintiff/respondent on same cause of action since the previous suit was withdrawn without any permission from the trial court hence the fresh suit on the same cause of action is barred by law. The

appellate Court in his decision has relied upon the case law which cannot be applied in the present matter as the facts of those cases are quite distinguishable. In the end he prayed that the judgment of the appellate Court be set aside and consequently the order of trial court be maintained.

6. Learned counsel for the plaintiff/respondent No.1 submitted that the order of appellate court is based upon sound reasoning does not suffer from any illegality or infirmity. He further stated that scope of revision under section 115 is very limited and it can only be interfered when the impugned order has been passed by the Court without jurisdiction or with material irregularity, which is not the case in present matter. He further stated that the present suit was filed on different cause of action as when the defendant/applicant prior to filing of suit tried to dispossess him through official respondents No.7 and 8, the SHOs of Police Stations Ghotki and Sarhad, the plaintiff/respondent No.1 left with no option but to approach this Court. He further submitted that the previous suit was withdrawn as their nekmard Sardar Mir Abid Khan Sundrani intervened and on his assurance the plaintiff withdrew the suit but for three years Sardar Mir Abid Khan Sundrani could not resolve the dispute between the parties and instead of that he was helping the defendant No.1 to get dispossessed the plaintiff from the suit property. He further submitted that since the basic claim of the defendant No.1 is based upon fraud as such this suit is very much maintainable and does not hit by order XXIII Rule 1 (3) CPC. He also relied upon the case law reported in 2003 SCMR 1704 and 1993 CLC 1478. He contended that it will be appropriate that the parties should lead evidence and prove their title over the suit property. In the end he prayed he prayed for dismissal of the revision.

7. Learned Assistant Advocate General submitted that, on the face of the record, the property in dispute appears to be government-owned land, which is being unlawfully claiming by both parties namely, the plaintiff and defendant No.1. He further contended that the purported allotment in favour of defendant No.1 is prima facie without lawful sanction or authority. Moreover, it was submitted that even the title asserted by the plaintiff/respondent is defective and not legally tenable. In conclusion, the learned Law Officer maintained that, as the land constitutes government property, neither party can assert any proprietary claim over it. He further emphasized that any orders passed in the current proceedings are not binding upon the government, which retains the unfettered right to resume

possession of the land in accordance with law, should it be found that either party is in unauthorized occupation thereof.

8. I have heard the parties and perused the material on record.

9. In order to resolve the controversy, this court has to revisit both the complaints i.e. F.C Suit No.182/2017 and F.C Suit No.10/2024 and to see whether the suit is barred Under Order XXIII Rule 1 (3) CPC or otherwise.

10. I would first like to re-produce the prayer clause of Suit No.182/2017, which reads as follows:-

a). Declare that, the suit land bearing S.Nos. 691 (2-22), 692(2-14) and 642(1-16) which is in peaceful cultivating possession and enjoyment of the plaintiff since more than 60 years possessing PREVIOUS KHAS MOKAL RIGHT of his ancestor, having developed the same at the dint of lot of labour and money, has not yet been granted to any body including the defendant No.1 on permanent tenure in open Katchery.

b). Declare that the "A" Form in respect of the suit land prepared and issued to the defendant No. 1 illegally, unlawfully, falsely and forgedly by the Mukhtiarkar (Estate) at the instance of the Revenue Minister of Sindh has no any legal effect and sanctity.

c). Declare that, the TO Form in respect of the suit land issued by the DO(R&E) Ghotki at Mirpur Mathelo on the basis of "A" Form and the mutation entry No 81 dated 02.06.2012 posted in village Form No.VII-B of deh Sangi Ghotki Tapo Bandh is illegal and un-lawful having no any legal foundation and sanctity and on the basis of "A" Form neither the T.O Form is legally to be issued nor the suit land is to be transferred in the name of fake grantee the defendant No.1.

d). Declare that the plaintiff being in peaceful possession and enjoyment of the suit land on the basis of YAKSALA Lease since last 60 years paying the lease money and land Revenue to the estate has possessed the ancestor's PREVIOUS KHAS MOKAL RIGHT UPON THE SUIT LAND, having developed the same at the dint of his lot of labour and money, is legally entitled for grant of the same on permanent tenure as and when the open Katchery for disposal of the same is scheduled and held by the competent authority by scrutinizing the eligibility of plaintiff in open.

e). Direct the Deputy Commissioner Ghotki, who is holding the charge of the Colonization Officer Gudu Barrage Sukkur, through the permanent mandatory injunction of this declaration of this Honourable Court that: the suit land may be put in schedule for disposal on permanent tenure and be granted scrutinizing the eligibility of eligible persons including the plaintiff.

f). Restrain the Mukhtiarkar Ghotki through the permanent injunction of this Honourable Court to issue sale certificate to the defendant No.1 Yar Mohammad for its disposal by way of sell, alienation, gift, mortgage and exchange to anybody other than the plaintiff, which is otherwise illegally has been transferred in his name which is liable to be cancelled.

g). Restrain the defendant No. 1 through the permanent injunction of this Honourable court to dispose off the suit land by way of sell, alienation, gift, mortgage and exchange to anybody and dispossess the plaintiff from the suit land forcibly and other wise than by due process of law.

h). Award cost of the suit to the plaintiff

i). Award any other relief which this Honourable court may deem just and proper under circumstances of the case.

11. Now, I would like to reproduce the prayer clause of F.C Suit No.10/2024, which reads as follows:

a). Declare that the suit land bearing S.Nos.691 (2-22), 692 (2-14) and 642 (1-16) which is in peaceful cultivating possession and enjoyment of the plaintiff since more than 60 years possessing PREVIOUS KHAS MOKAL RIGHT of his ancestor, having developed the same at the dint of lot of labour and money, has not yet been granted to anybody including the defendant No.1 on permanent tenure in open katchery.

b). Declare that the "A" Form in respect of the suit land prepared and issued to the defendant No.1 illegally, unlawfully, falsely and forgedly by the Mukhtiarkar (Estate) at the instance of the Revenue Minister of Sindh has no any legal effect and sanctity.

c). Declare that the T.O Form in respect of the suit land issued by the D.O (R & E) Ghotki at Mirpur Mathelo on the basis of "A" Form and the mutation entry No.81 dated 02.06.2012 posted in village Form No.VII-B of deh Sangi Ghotki Tapo Bundh is illegal and unlawful having no any legal foundation and sanctity and on the basis of "A" Form neither the T.O Form is legally to be issued nor the suit land is to be transferred in the name of fake grantee the defendant No.1.

d). Declare that the plaintiff being in peaceful possession and enjoyment of the suit land on the basis of YAKSALA lease since last 60 years paying the lease money and land Revenue to the estate has possessed the ancestor's PREVIOUS KHAS MOKAL RIGHT UPON THE SUIT LAND, having developed the same at the dint of his lot of labour and money, is legally entitled for grant of the same on permanent tenure as and when the open katchery for disposal of the same is scheduled and held by the competent authority by scrutinizing the eligibility of plaintiff in open

e). Direct the Deputy Commissioner Ghotki, who is holding the charge of the Colonization Officer Guddu Barrage Sukkur, through the permanent, mandatory injunction of this declaration of this Honourable Court that the suit land may be put in schedule for disposal of permanent tenure and be granted scrutinizing the eligibility of eligible person including the plaintiff.

f). Restrain the defendant No.1 through the permanent injunction of this Honourable Court to dispose of the suit land by way of sell, alienation, gift, mortgage and exchange to anybody other than the plaintiff, which is otherwise illegally has been transferred in his name which is liable to be cancelled.

g). Restrain the defendant No.1 through the permanent injunction of this Honorable Court to dispose of the suit land by way of sell alienation, gift, mortgage and exchange to any body and dispossess the plaintiff from the suit land forcibly and other wise than by due process of law.

h). Restrain the SHO or In charge of Ghotki Police station "A" Section and the SHO Police Station Sarhad or any of their staff claiming through or under them through the permanent injunction of this Honourable Court to forcibly eject the plaintiff from the suit land playing at the hand of the defendant No.1 Yar Muhammad Arbani or any political personality.

i). Award cost of the suit to the plaintiff

j). Award any other relief which this Honourable Court may deem just and proper under circumstances of the case

12. In F.C suit No.182/2017, the paragraph 26 of the plaint, relating to the cause of action, is reproduced below:-

"26 That cause of action accrued to the plaintiff to bring this suit or on 01.08.2017 when the defendant No.1 equipped with Mutation entry No.81 dated 02.06.2012 in village Form No.VII-B of deh Sangi Ghotki Tapo Bundh appeared at the suit land in the early with Tractor Trolly and five six un-known persons duly muffled faces armed with deadly weapons and tried to encroach upon the suit land disposing the plaintiff forcibly at the points of the weapons which caused the plaintiff to raise hue attracting the neighbourers and passersby who intervened and beseechingly saved the plaintiff from the clutches of the defendant No.1 and his associates and his possession upon the suit land suggesting the plaintiff to knock at the door of the law".

13. Now reverting to the cause of action shown in F.C Suit No.10/2024, I would like to reproduce the para 35 of the plaint as follows:-

"35. That cause of action accrued to the plaintiff to bring this suit on 01.08.2017 when the defendant No.1 equipped with Mutation entry No.81 dated 02.06.2012 in village Form No.VII-B of deh Sangi Ghotki Tapo Bundh appeared the suit land in

the early with Tractor Trolley and five six un-known persons duly muffled faces armed with deadly weapons and tried to encroach upon the suit land dispossessing the plaintiff forcibly at the points of the weapons which caused the plaintiff to raise hue and cry attracting the neighbours and passersby who intervened and beseechingly saved plaintiff from the clutches of the defendant No.1 and his associates and his possession upon the suit land suggesting the plaintiff to knock at the door of the law and lastly on 15.01.2024 when the defendant Yar Mohammad, violating he directions of the SARDAR Abid Khan Sundrani brought the S.ILO Ghotki and S.H.O Sarhad with police force in Mobile and Tractor with plough and tried to plough the suit land which unlawful act of the defendant No.1 Yar Mohammad under the umbrella shelter of the police caused the plaintiff to hue and cry which attracted many persons who beseeched the police and defendant No.1 Yar Mohammad not to take law in their hands and seek the legal course and remedy and the SHO Ghotki and Sarhad considering beseeching of the plaintiff and mob of peoples, which includes the witness Ibrahim s/o Mohammad Ismail Arbani, Niamatullah s/o Mohammad Yousif Arbani and Gul Mohammad s/o Ali Murad Armani, left the plaintiff to live in the suit land with red and alarming warning to deliver the possession of the suit land to the defendant No.1 Yar Mohammad or get star from the competent court of law and otherwise be ready for dire consequences, continues to arise within the local limits of this Honourable Court.”

14. Upon perusal of the plaints filed in both suits and careful examination of the relevant paragraphs, it is manifest that the two suits pertain to the same subject property and arise out of an identical cause of action. The mere addition of an allegation that the defendant subsequently entered the suit property through official respondents and attempted to dispossess the plaintiff/respondent No.1 appears to be an attempt to artificially generate a new cause of action so as to sustain the maintainability of the present suit. However, such an addition is of no legal assistance to the plaintiff/respondent, inasmuch as the primary relief sought in both suits remains essentially the same. At best, the present suit seeks consequential relief based on a previously asserted claim. The record reflects that the earlier F.C Suit No.182/2017 was withdrawn unconditionally on 09.01.2021, without obtaining the leave of the Court as required under the law. In this context, it becomes imperative to revisit the statement of withdrawal made by the plaintiff/respondent, as well as the order passed thereon. The relevant statement and the corresponding judicial order are reproduced as under:-

“STATEMENT

I. Wazir s/o Sardar Bux Arbani R/O Village Sabal Khan Arbani R/O Deh Sangi Ghotki Tapo Bundh Taluka and District Ghotki Sindh/ the plaintiff in this suit, do hereby submit that we the parties in this suit have amicably submitted our dispute/matter in suit to our CHIEF SARDAR Mir Abid Khan Sundrani for settlement who has directed us to withdraw our suit from this Honourable court and under his respectable directions, withdraw this suit.

ORDER

Matter called. Advocate for plaintiff is present. Defendant No.1 is present, but his counsel called absent. The matter was fixed for plaintiff's evidence. The learned counsel for plaintiff submitted statement in hand, wherein he submitted that he wanted to withdraw from the suit. Defendant No.1 waived the notice.

Heard and perused.

From the perusal of statement, it appears that the plaintiff does not want to proceed with the matter further, and he cannot be precluded from withdrawing the suit in hand, hence the suit of the plaintiff is hereby dismissed as withdrawn. The interlocutory applications pending in the file are also dismissed being infructuous. Order accordingly.”

15. Upon reviewing the above endorsement order, it is evident that no request or permission for filing a fresh suit was made. In the plaint, the respondent did not assert that he sought permission for fresh suit, which was denied. The respondent No.1/plaintiff merely mentioned in the contents of present plaint that he retracted the suit based on the assurance of Sardar Abid Khan Sundrani, their nekmard to settle their dispute. The record indicates that the respondent No.1/plaintiff did not withdraw the previous suit due to a formal defect or the potential for the suit to fail. It is also evident from the statement of withdrawal that the first suit was withdrawn as the parties reached at compromise but the statement was only signed by plaintiff. The dispute centres on order XXIII rule 1 CPC which is replicated as follows:

“1. Withdrawal of suit or abandonment of part of claim.-(1) At any time after the institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2) Where the Court is satisfied_

*(a) that a suit must fail by reason of some formal defect, or
(b) that there are other sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in*

respect of the subject-matter of such suit or such part of a claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule(2), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.”

16. A considered interpretation of Order XXIII Rule 1(3) of the Code reveals that where a plaintiff elects to withdraw a suit or abandon any portion of a claim, whether in respect of all or any of the defendants, without securing the permission of the Court as contemplated under sub-rule (2), such plaintiff becomes liable to bear any costs the Court may deem just to impose. More significantly, this provision operates as a substantive bar, precluding the institution of any fresh proceedings on the same subject matter or in respect of the same part of the claim that has previously been withdrawn or relinquished. The underlying rationale is to prevent abuse of the judicial process by ensuring that a litigant does not repeatedly vex the Court and the adversary by reasserting the same cause of action under the guise of fresh litigation. This procedural safeguard not only upholds the sanctity and finality of judicial determinations but also protects defendants from being subjected to duplicative and harassing litigation. Consequently, this rule serves as a vital bulwark in preserving the integrity, orderliness, and efficiency of the legal system. In the case of **Muhammad Yar (Deceased), through L.Rs. and others v. Muhammad Amin (Deceased) through L.Rs. and others(2013 SCMR 464)**, the Supreme Court of Pakistan, after examining Order XXIII Rule 1(3) of the Code, made the following observations:-

“From the clear language of the above, it is vivid and manifest that the noted rule mainly comprises of two parts; sub-rule (1) entitles the plaintiff of a case to withdraw his suit and/or abandon his claim or a part thereof, against all or any one of the defendants, at any stage of the proceeding and this is his absolute privilege and prerogative (Note: except in certain cases where a decree has been passed by the Court such as in the cases pertaining to the partition of the immovable property etc.). And where the plaintiff has exercised his noted privilege he shall be precluded from instituting a fresh suit on the basis of the same cause of action qua the same subject matter and against the same defendant (s) and this bar is absolute and conclusive, which is so visible from the mandate of sub-rule (3).”

The same rule has been restated in the case of **Azhar Hayat v. Karachi Port Trust through Chairman and others (2016 SCMR 1916)**

in these words:-

“6. We shall first deal with the legal objections taken by the learned counsel for the respondents. The petitioner had filed C.P. No.D-2602/2014 which was "not pressed" on 19th August, 2014 and then filed the suit on 26th August 2014 (which was converted into a petition wherein the earlier petition filed by the petitioner was mentioned in paragraph 13 by stating that, "the same has been withdrawn by the Plaintiff as fresh cause of action has accrued to the Plaintiff." The respondents had objected to the subsequent filing of the suit-petition as the requisite permission had not been obtained from the Court when it was not pressed and dismissed. The impugned Order took notice of this fact, but the learned judges did not non-suit the petitioner on this ground evident through he could have been because sub-rule (3) of Rule 1 of Order XXIII of the Code stipulates that where the plaintiff withdraws from a suit without being given permission to institute a fresh suit in respect of the same subject-matter or such part of claim he would be precluded from doing so.”

17. The Supreme Court of Pakistan examined the issue of withdrawing a suit based on an oral compromise in the case known as **Ghulam Abbas and others v. Mohammad Shafi through L.Rs. and others (2016 SCMR 1403)**. In this case, the Supreme Court of Pakistan determined that if a suit is withdrawn due to an oral compromise, it either signifies that the plaintiff's claim has been satisfied or that the plaintiff has chosen to abandon their grievance or cause of action. These rulings underscore the legal implications of an oral compromise and its potential to resolve disputes without further litigation, thereby contributing to the efficiency of the judicial process. Plaintiff cannot be allowed to file his suit and then, at his sweet will and pleasure, exit the litigation only to enter the arena again as and when he pleases. If this is permissible under Rule 2(b) then that effectively puts paid to the consequences envisaged by Rule 3. And, it must be remembered, there would be nothing, in principle, preventing a plaintiff from doing this ad nauseam. This cannot be the true meaning and scope of Rule 2(b). It is only when the facts disclose what can, in law, be regarded as a "ground" that it becomes necessary for the court to consider the sufficiency (or lack) thereof. Here, there was no such thing. The application itself, on the face of it, purported to have been moved under Rule 1. Nothing was said before the learned trial Court as would have required it to conclude otherwise, nor was any attempt made

then or later to withdraw the same. Reference may be made to the dictum laid down by the Supreme Court of Pakistan in case of ***Khawaja Bashir Ahmed and Sons Pvt. Ltd. v. Messrs Martrade Shipping and Transport and others (PLD 2021 Supreme Court 373)***.

18. In accordance with the principles established by the Supreme Court of Pakistan in the aforementioned judgments, it is my opinion that the respondent No.1/plaintiff, having unconditionally withdrawn the previous suit based on mere verbal assurances from nekmard Sardar Abid Khan Sundrani, which are unproven, is now barred from re-litigating the same cause of action in Court based on the same cause of action. The subsequent suit filed by the respondent No.1/plaintiff is prohibited under Order XXIII Rule 1(3) of the Code. This rule prevents a party from re-initiating a suit on the same grounds once they have voluntarily withdrawn their claim without obtaining the permission of the Court. Therefore, the respondent No.1/plaintiff's action is legally untenable. It is matter of record that the fresh Suit of the respondent No.1/Plaintiff was based on the same cause of action and he has not shown fresh cause; therefore, he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim. Thus, the Suit of the respondent No.1/plaintiff was barred under Order XXIII Rule 1(3), of the Code.

19. Now I would revert into the case law relied upon by the counsel for respondent No.1 as well as appellate Court.

i. The plaintiff relied upon the case of Muhammad Anwar v. Mst. Surraya Begum reported in 2003 SCMR 1704, where the apex court has held as under:-

"It is important to note that perusal of the plain, dated 27th August 1995 indicates that the petitioner/defendant after having paid total price of sale consideration have taken over the possession of the property. In other words, he was enjoying full rights in the subject property. The petitioner/defendant however, filed written statement wherein the categorically stated that the suit in incompetent became sale deed has not been executed Admittedly, after filing written statement sale deed was also executed by the vendee and vendor on 12th November, 1996 Perhaps with a view to frustrate the suit, which was filed by the respondent earlier on 21st August, 1995. Thereafter in order to overcome this difficulty, the respondent/pre-emptor instituted fresh suit on 14th September, 1998 being his right of preemption on sale deed date 12th November, 1996. Undoubtedly, there was no permission to file fresh suit but in such view of the matter, we are of the opinion that the petitioner is estopped by his own conduct to agitate the maintainability of the suit or otherwise,

because he attempted to frustrate the first suit filed by respondent on the ground that it is incompetent because sale had not taken place and thereafter he also got executed a sale-deed, dated 12th November, 1996 As such under these circumstances filing of fresh suit by respondent had not caused any, injustice to petitioner/defendant."

20. Upon perusal of the judgment rendered by the Honourable Supreme Court, it emerges that in the case under consideration therein, a preemption suit was instituted. The defendant, in that matter, submitted a written statement asserting that the suit was incompetent on the ground that the sale deed had not yet been executed. The Hon'ble Supreme Court noted that a suit for preemption is only maintainable once the sale deed has been executed or possession of the property has been obtained. Acting upon that objection, the plaintiff in that suit withdrew her claim. Subsequently, she instituted a fresh suit, asserting her right of preemption. The apex Court held that the defendant, having objected to the maintainability of the first suit on the basis that no sale had occurred, was estopped by his own conduct from challenging the maintainability of the second suit on different grounds. The Supreme Court ruled that the subsequent suit was indeed maintainable in law.

21. However, the facts of the present case are materially distinguishable from those in the cited judgment. Accordingly, the said precedent is of no assistance to Respondent No.1/Plaintiff in the matter presently before this Court.

22. The other case law that was relied upon by the counsel for the respondent No.1/plaintiff and the appellate Court was the case of Feroze Khan and 4 others v. Zaman Ali and another, reported in 1993 CLC 1478, wherein it was held as follows:-

"In the case in hand a perusal of the prayer as well as the basis of both the suits clearly demonstrates that the present suit against respondent No.1 is the same as was the previous one. Merely because mutation has been sanctioned on the basis of the will does not give rise to fresh cause of action inasmuch as the basic dispute which was raised in the previous suit and the present suit is the validity or otherwise of the will executed by Ghulam S Muhammad deceased in favour of respondent No.1. The previous suit having been withdrawn without getting permission to file a fresh suit by the predecessor???in???interest of the petitioner the present suit is liable to be dismissed as per provisions of Order 23, rule 1 (3), C.P.C. as against him, therefore, the impugned judgment and decree as against the respondent No.1 is unexceptionable and the suit has rightly been dismissed as against Muhammad

Zaman, respondent No. 1. So far as the dispute between the petitioners and respondent No.2 is concerned, the same was not a subject matter of the previous suit. In the present suit the cause of action is the grant of share out of the inheritance of the deceased Ghulam Muhammad to the respondent No.2 which entitlement is being denied by the petitioners on the ground that she being a divorcee shall not inherit the deceased. This cause of action was not even available at the time when the earlier suit was filed and was dismissed as withdrawn. Consequently judgment and decree rendered by the two Courts below to the extent of the suit against respondent, No.2 is not maintainable and is liable to be set aside.”

23. In the aforementioned matter, the initial suit was instituted against Respondent No.1; however, the subsequent suit filed against the same respondent was dismissed by the Court on the ground that it was filed without obtaining prior leave of the Court. Conversely, the suit as against Respondent No.2 was held to be maintainable, as Respondent No.2 had not been arrayed as a party in the earlier proceedings, and further, the cause of action against him had not arisen at the time the prior suit was instituted and subsequently withdrawn. It is thus manifest that the rationale in that decision turned upon the distinct legal position of Respondent No.2, whose non-involvement in the earlier suit and the subsequent accrual of a separate cause of action justified the maintainability of a fresh suit against him. Accordingly, the cited authority offers no support to the case advanced by Respondent No.1/Plaintiff in the present proceedings, and it is evident that the learned Appellate Court has misdirected itself by erroneously applying the principle laid down therein.

24. In response to the plea raised by the learned Assistant Advocate General Sindh that the land in question is government-owned and both parties have derived their claims through alleged allotments or grants, it may be observed that the authority to determine the legality or validity of such allotments squarely vests with the competent government functionaries. Accordingly, if the Government of Sindh, through its authorized officers, is of the view that any such allotment-whether in favour of the plaintiffs or the defendants was obtained unlawfully or in contravention of the governing laws and rules, it is open to the government to initiate appropriate proceedings. Nonetheless, such action must be taken strictly in accordance with law, following due process, and after providing an opportunity of hearing to all affected persons, so as to meet the requirements of fairness and natural justice.

25. This Court is of the considered view that the Appellate Court erred in setting aside the well-reasoned order of the Trial Court, which had rightly rejected the plaint under Order VII Rule 11(d) CPC. The record clearly discloses that the plaintiff had previously instituted a suit on the same cause of action and had voluntarily withdrawn the same without seeking leave of the Court under Order XXIII Rule 1(3) CPC. Consequently, the subsequent suit is hit by the express bar contained in Order XXIII Rule 1(3), which prohibits the institution of a fresh suit on the same subject matter without the prior permission of the Court. The Trial Court, having correctly appreciated the legal bar, had justifiably rejected the plaint. The Appellate Court, however, failed to consider the mandatory nature of this provision and allowed the appeal without adequate justification. Accordingly, the impugned judgment of the Appellate Court is set aside, and the order of the Trial Court rejecting the plaint is restored. The Civil Revision stands **allowed** with no order as to costs. Decree to follow.

Judge

A.R Brohi/PS