

## IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-924 of 2025

Petitioner : Syed Mohammad Sadiq In-person  
Respondents : Nemo.  
Date of Hearing : 21.04.2026  
Date of Announcement : 25.05.2026

### **JUDGMENT**

**MUHAMMAD HASAN (AKBER), J.-** Assailed in this Constitution petition are, the Order dated 27.11.2019 passed by the learned District & Sessions Judge Karachi (East) in Civil Revision Application No. 73 of 2019 and the Order dated 08.07.2019 [**impugned Orders**] passed by the learned 1<sup>st</sup> Senior Civil Judge, Karachi (East) in Civil Suit No.849 of 2018, whereby application under Order VII Rule 11 CPC., filed by Respondent No.3/Defendant was allowed and the plaint of the Petitioner's suit was rejected.

2. The pithy facts of the case, as gathered from the record, are that **Syed Muhammad Sadiq**/ the Petitioner applied to the Property & Land Department, Pakistan Railways for allotment/ purchase of Plot No. R-419/A, near Gillani Railway Station, Gulshan-e-Iqbal, Karachi, admeasuring 119 square yards [**suit property**]. The Petitioner's request was allowed, and the competent authority approved the regularisation of the occupation of the Petitioner vide Order No.469-W-L-21/LM dated 16.11.2002, and asked the Petitioner to deposit a sum of Rs.3,57,500/-. In compliance, the Petitioner made payments of Rs.1,78,000/- on 26.12.2003; Rs.50,000/- on 09.01.2004; and Rs. 29,500/- on 23.09.2005, through Bank Pay Orders in favour of the Divisional Accounts Officer, Pakistan Railways, Karachi. A Certificate issued by the Deputy Director of Property & Land Department of Pakistan Railways confirms that the Petitioner deposited Rs.1,78,000/- vide Pay Order No.0600684 dated 26.12.2003 in connection with the Notice issued vide No.469-W/L-21/M. While only a remaining balance of Rs. 1,00,000/- was left, the Petitioner offered to pay the same subject to execution of a Lease Deed in his favour, but the authorities did not comply.

3. In 2015, Mst. Aleem-un-Nisa/ Respondent No. 3 filed a Civil Suit No.1440 of 2015 [former Suit] before the learned XI<sup>th</sup> Senior Civil Judge, Karachi (East), claiming that the suit plot was the property of Pakistan Railways Employees Cooperative Housing Society [PRECHS]/ Respondent No.7 and that she had a claim of possession and damages over the suit property. That suit was contested by the Petitioner, who filed his written statement setting out his independent claim over the suit property. The suit was decided on merits and was dismissed vide Judgment dated 18.09.2017 and Decree dated 19.09.2017. No appeal was preferred by Mst. Aleem-un-Nisa against the said Judgment and Decree, and accordingly, the same attained finality as against her.

4. In 2018, Syed Muhammad Sadiq/ petitioner filed his independent Civil Suit No.849 of 2018 [subsequent Suit] before the learned 1<sup>st</sup> Senior Civil Judge, Karachi (East) seeking declaration, permanent injunction, damages and restoration of possession of the suit property. Respondent No. 3/ Mst. Aleemun Nisa filed an application under Order VII Rule 11 read with Section 151 CPC. for rejection of the plaint. The learned trial Court allowed such application vide Order dated 08.07.2019, which was upheld in Civil Revision Application by the learned Revisional Court on 27.11.2019, on the ground that the earlier suit between the same parties regarding the same subject matter had been decided on merits which has attained finality, and therefore the fresh suit was barred by the doctrine of *res judicata* under Section 11 CPC.

5. Heard Petitioner and perused the record.

6. The core question involved herein is whether dismissal of an earlier Suit filed by Mst. Aleem-un-Nisa against PRECHS for her independent claim of ownership on the subject property, would constitute *res judicata* against Syed Muhammad Sadiq for claiming his independent right of ownership on the same property against Pakistan Railways, especially at the stage of hearing of an application under Order VII Rule 11 CPC.?

7. Section 11 CPC. bars a Court from trying any Suit or Issue which has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent Suit, or the Suit in which such Issue has been subsequently raised, heard and decided by such Court. The bar of *res judicata* is a fundamental principle of justice that prevents the same parties from litigating the same dispute over and over again and ensures finality of decisions. Both the learned Courts held that the former Suit [Civil Suit No.1440 of 2015] by Mst. Aleem-un-Nisa involved the same subject matter, the same parties, and was decided on merits, wherein Syed Muhammad Sadiq was a Defendant, filed his written statement, and participated in the proceedings. The suit was dismissed on merit, and no appeal was preferred by any party; the decree therefore attained finality. It was therefore concluded that the subsequent Suit [Civil Suit No. 849 of 2018] by Syed Muhammad Sadiq was barred under section 11 CPC., by the doctrine of *res judicata*.

8. However, a careful reading of the record and the pleadings in both suits reveals that both the learned Courts below did not properly appreciate the distinct nature and character of the two suits. The former Suit was filed by Mst. Aleem-un-Nisa and it was

she who was seeking restoration of possession from the Petitioner, by claiming that PRECHS had awarded her the membership of the suit property. That suit was filed against the Petitioner and others, and it was dismissed on merit in favour of the Petitioner. The Court in that Suit did not determine whether the Petitioner was a *bona fide* purchaser of the plot from Pakistan Railways or whether his allotment was valid and subsisting. The Petitioner was not Plaintiff in the Former Suit but was a Defendant in that suit, and the questions he is raising in the Subsequent Suit were not directly and substantially in issue in the Former Suit. On the other hand, the Petitioner in the Subsequent Suit claims allotment made in his favour by the Pakistan Railways authority on the basis of Award No. 469-W-L-21/LM dated 16.11.2002, that he has paid the major portion of the sale price, that the lease deed has not been executed in his favour despite his readiness, and that on 10.05.2018 the defendants through armed officials demolished his construction on the plot without any notice or hearing. These are independent and distinct causes of action that did not fall for decision in the Former Suit. The Former Suit was concerned with the independent claim of Mst.Aleem-un-Nisa to the suit property through the Housing Society/ PRECHS, and it was not concerned with the Petitioner's independent rights flowing from the allotment made directly by Pakistan Railways in his favour, his occupation of the suit property, the payments made by him, the Certificate of deposit issued by Pakistan Railways, and the illegal demolition of his construction.

9. The scope and applicability of Order VII Rule 11 CPC. as discussed at great length in many pronouncements by Courts in Pakistan, outlines the following principles:

- The Court has to presume the facts stated in the plaint as correct.
- (ii) nothing more than the averment of the plaint has to be seen for the purposes of adjudicating whether the plaint unveiled any cause of action;
- (iii) that in case of any mixed questions of law and facts, the correct methodology and approach is to allow the suit to proceed to the written statement and discovery phases and to determine the matter either by framing preliminary issues or through a regular trial;
- (iv) that the dearth or weakness of proof would not be a justification for concluding that there is no cause of action disclosed in the plaint;
- (v) that for the rejection of a plaint, the Court cannot take into consideration pleas raised by the defendants in the suit, as at that stage, the pleas raised by the defendants are only contentions in the proceedings, unsupported by any evidence on record; that only in rare and exceptional cases, the Court can consider the legal objections in the light of averments of the written statement but the pleading as a whole cannot be taken into consideration for the rejection of plaint;
- (vi) that even where there is a joinder of multiple causes of action, and at least some of these causes could potentially lead to a decree, a plea of demurrer cannot be admitted for rejection of plaint.
- (vii) that if there are several parties and the plaint discloses a cause of action against one or more of them, then too, the plaint cannot be rejected; and

- (viii) that the plaint is not to be read in fragments, but it has to be read as a whole. The above principles have been enumerated in the cases of **Rehmat Hussain** and **Media Max.**<sup>1</sup>
- (ix) That with the aim of deciding whether the plaint discloses a cause of action or not, the court has to perceive and grasp the averments made in the plaint and the accompanying documents, as held in **Jehangir Akhter case;**<sup>2</sup>
- (x) that in case of any mixed question of law and facts, the right methodology and approach is to let the suit proceed to written statement and discovery and determine the matter either on framing preliminary issues or regular trial, as held in **Kishwar Khan case;**<sup>3</sup>
- (xi) Moreover, factual inquiry regarding averments in the plaint is not permissible.<sup>4</sup>
- (xii) That where a cause of action is disclosed in the plaint, the plaintiff has a right to a fair trial and to produce evidence and a judicial decision on merits of his cause;
- (xiii) In **Dost Muhammad and other cases**<sup>5</sup> it was concluded that even in the case of vague pleadings and lack of proper particulars and details, the Court shall ask for better particulars and the proper course is to order the party to remove the vagueness and not to reject the plaint.
- (xiv) It has also been held that the Court cannot take into consideration pleas raised by the defendant in his defence, as at that stage the pleas raised by the defendant are only contentions in the proceedings unsupported by any evidence on record. However, if there is some other material before the Court apart from the plaint at that stage which is admitted by the plaintiff, the same can also be looked into and taken into consideration by the Court. Beyond that the Court would not be entitled to take into consideration any other material produced on record unless the same is brought on record in accordance with the rules of evidence, as held by the Supreme Court in the case of **Jewan and others**<sup>6</sup>. It was further held that the rejection of plaint at a preliminary stage when the plaintiff has not led any evidence in support of his case, is possible only if the Court reaches this conclusion on consideration of the statements contained in the plaint and other material available on record before the Court which the plaintiff admits as correct.
- (xv) In the case of **Saleem Malik**<sup>7</sup> Supreme Court expressed that the scope of Order VII, Rule 11, C.P.C. is confined only to the extent of averments of the plaint and in addition, at the most uncontroversial material available on record can be considered for the purpose of determination of the question whether

1. *'Rehmat Begum V. Mehfooz Ahmed and others'* (2024 CLD 1254); *'Media Max (Pvt) Ltd. through Chief Executive V. Ary Communication Pvt. Ltd. through Chief Executive and another'* (PLD 2013 Sindh 555)

2. *'Jehangir Akhter V. Inayat Ahmed'* (1990 CLC 1053)

3. *'President, ZTBL, Islamabad V. Kishwar Khan and others'* (2022 SCMR 1598)

4. *'Mst. Shabeona Perveen V. M/S. Defence Officers, Housing Society Authority, Karachi'* (1993 CLC 2523) *'Messrs Bengal Corporation V. D.D.G. Hansa and 3 others'* (PLD 1992 Karachi 75), *'Hyderabad Municipal Corporation V. Messrs Fateh Jeans Ltd.'* (1991 MLD 284), *'Dost Muhammad V. Ghulam Nabi'* (1990 MLD 164) and *'Karachi Development Authority V. Evacuee Trust Board through Administrator'*.

5. *'Dost Muhammad V. Ghulam Nabi'* (1990 MLD 164), *'N. A. Shah Riyar V. Messrs Conforce Ltd., Lahore and another'* (1981 CLC 1009), *'Seven Stars Goods Transport Co. (Regd.), Karachi V. The Administrator, Karachi Municipal Corporation, Karachi'* (PLD 1976 Karachi 21).

6. *'Jewan and 7 others V. Federation of Pakistan through Secretary, Revenue, Islamabad and 2 others'* (1994 SCMR 826)

plaint is liable to be rejected or not, but the scope of Order VII, Rule 11, C.P.C. cannot be enlarged to consider the pleading of the other side in the written statement or defence plea raised therein for rejection of the plaint;

- (xvi) In *Mushtaq Ahmad Khan case*<sup>8</sup> it was held that in order to enable a Court to reject a plaint on the ground that it does not disclose a cause of action under Order VII rule 11(a) CPC, it should travel within the four corners of the plaint and nothing else. Neither the defence set up nor the documents annexed thereto could legitimately be looked into. For failing to disclose the cause of action, the plaint can be rejected only if the allegations given in the plaint, even if it is taken to be true in the manner and form, the plaintiff is not entitled to any relief whatsoever. If the contents of the plaint read as a whole disclosed triable issues, then the dispute between the parties should not be resolved without a proper trial i.e. settlement of proper issues and recording of evidence and opportunity of cross-examination.

10. Perusal of the plaint in the present case shows that it is specifically claimed therein that the plaint of the Subsequent Suit No.849 of 2018 contains clear and specific averments about his allotment, his payments, the Certificate of deposit issued by Pakistan Railways, the illegal demolition of his structure, and the unlawful conduct of the Respondents, which are yet to be proved by the Petitioner, which plainly disclose a cause of action and cannot be said to be barred by the decision in the Former Suit. The doctrine of *res judicata* must be applied with precision, which requires that the matter directly and substantially in issue in the Subsequent Suit must have been heard and finally decided in the Former Suit. The question of whether the Petitioner's allotment from Pakistan Railways is valid and binding, whether the lease ought to have been executed in his favour, and whether his demolition without notice violates his legal and Constitutional rights, was not the subject matter of decision in the Former Suit. That Former Suit was brought by Mst. Aleemun Nisa on a different cause of action, and its dismissal, while beneficial to the Petitioner, did not resolve or extinguish the Petitioner's own independent rights flowing from his independent allotment and other rights. A party's right to pursue its own affirmative claims cannot be extinguished by the dismissal of a Former Suit filed by another party. The petitioner further claims that KBCA issued a letter dated KBCA/DCB-II/Gulshan Town-II/2007, which claims that Respondent No.7, the Pakistan Railways Employees Cooperative Housing Society [PRECHS] has no legal existence at all, and the SBCA similarly issued a letter confirming that the suit property falls under *katchi abadi*. The Courts below, by rejecting the plaint at the threshold, foreclosed the Petitioner from proving these documents and establishing his independent rights and claims. The distinct nature of the two Suits and the independent cause of action raised by the Petitioner were not analysed. The impugned Judgment and Order are therefore in illegal exercise of jurisdiction and in error of the provisions of section 11 and Order VII Rule 11 CPC., hence unsustainable.

7. *'Saleem Malik V. Pakistan Cricket Board (PCB) and 2 others'* (PLD 2008 SC 650).

8. *'Mushtaq Ahmad Khan and another V. Mercantile Cooperative Finance Corporation Ltd. and another'* (PLD 1989 Lahore 320)

11. For these reasons, this petition is allowed; the impugned Orders dated 27.11.2019 and 08.07.2019 are hereby set aside; the plaint of the Petitioner/ Plaintiff in Civil Suit No.849 of 2018 is restored to its original position; and the learned trial Court is directed to decide the same on merits, in accordance with the law, based upon evidence produced by the parties. Since a substantial period of eight (08) years has already passed from the date of filing of the Suit, the learned trial Court is directed to conclude the proceedings and pass the Judgment on merits, preferably within a period of 90 days from the date of receipt of this Order, and a copy of such Judgment be filed with the MIT of the Court in compliance.

This petition, therefore, stands allowed in the above terms with no order as to costs.

**J U D G E**