

Judgment Sheet

HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

2nd Appeal No.S-20 of 2025

[Ghulam Rasool and 26 others v. Saifullah Khalid and 06 others]

Appellants by : Mr.Ghulam Rasool Samoon, Advocate

Respondents No.1 to 3 by : Mr.Jaidev Sharma, Advocate

Respondents No.4 to 7 by : Mr.Harish Chander, Assistant A.G Sindh

Date of hearing : 29.04.2026

Date of decision : 14.05.2026

J U D G M E N T

ARBAB ALI HAKRO, J.- The present Second Appeal is directed against the judgment dated 15.04.2025 and decree dated 16.04.2025, passed by the learned Additional District Judge-II, Umerkot, in Civil Appeal No.18 of 2024, whereby the appellate Court maintained the order dated 02.03.2024, passed by the learned Senior Civil Judge-I, Umerkot, in F.C. Suit No.188 of 2023, through which the plaint of the appellants was rejected under Order VII Rule 11, C.P.C.

2. The appellants, as plaintiffs, instituted F.C. Suit No.188 of 2023 before the trial Court seeking a declaration that they were the legal heirs of one Muhammad Anwar, son of Jan Muhammad Samoon, who, according to them, was the owner of several parcels of agricultural land situated in Umerkot, including City Survey Nos. 49, 53, 54, 55, 63 and 64. The plaintiffs asserted that the deceased, Muhammad Anwar, had constructed the Madina Masjid and Madersa Anwar-ul-Quran on the said land and had also erected several shops, the rental income from which was utilised for the upkeep of the Masjid and madrasa. It was their case that Muhammad Anwar died issueless about fifty to fifty-four years ago and that the plaintiffs, being descendants of his first cousins, had succeeded to his estate under the Islamic law of inheritance. They further pleaded that defendants No.1 to 4, who were office-bearers of the Madina Masjid and Madrasa Committee, had unlawfully taken over the possession of the suit land, the Masjid, the madrasa

and the shops and had even procured fabricated waqf entries in the revenue record dated 22.11.1993, long after the death of Muhammad Anwar. The plaintiffs sought a declaration of their title, cancellation of the alleged bogus waqf entries, recovery of possession, mesne profits, and a permanent injunction.

3. Upon service of summons, defendants No.1 to 4 entered an appearance and filed a joint written statement. They categorically denied that Muhammad Anwar was the owner of the suit land and asserted that he was merely the Mutawalli of an already existing waqf property dedicated for religious purposes. They pleaded that the land had been endowed as waqf by a forefather known as "Darwesh" and that Muhammad Anwar, who died on 19.02.1971, had never married and had left no heirs. It was further pleaded that the Masjid and madrasa were reconstructed through public donations after his death and that the shops forming part of the Madina Market were also constructed by the Anjuman Madrasa Anwar-ul-Quran Committee. They denied the plaintiffs' claim of relationship with Muhammad Anwar and asserted that the plaintiffs had no locus standi, no title and no cause of action. They also raised legal objections that the suit was barred by limitation, by Section 42 of the Specific Relief Act and by provisions of the Land Revenue Act.

4. Alongside their written statement, defendants No.1 to 4 filed an application under Order VII Rule 11, C.P.C, praying for rejection of the plaint on the grounds that the suit disclosed no cause of action, was barred by law and was not maintainable in its present form. They contended that the plaintiffs had failed to produce any pedigree table or documentary proof of their alleged relationship with the deceased Muhammad Anwar and that the claim was hopelessly time-barred, having been instituted more than five decades after his death.

5. The plaintiffs filed objections in the form of a counter affidavit, disputing the assertions of the defendants. They reiterated that Muhammad Anwar was the owner of the suit land and had constructed the Masjid, madrasa and shops. They denied the existence of any waqf created by him and alleged that the defendants had fabricated documents in the year 1993, long after his death. They maintained that the suit was

maintainable under Section 42 of the Specific Relief Act and that the question of limitation was a mixed question of law and fact requiring evidence. They further asserted that the defendants were influential persons who had unlawfully occupied the suit property and were collecting rent from shopkeepers without any authority.

6. After hearing the parties, the trial allowed the application under Order VII Rule 11 C.P.C and rejected the plaint. Aggrieved by the rejection of their plaint, the plaintiffs preferred Civil Appeal No. 18 of 2024 before the appellate Court, which, after hearing the parties, dismissed the appeal and affirmed the order of the trial Court.

7. The appellants have now approached this Court through the present 2nd Appeal, challenging the concurrent findings of the Courts below.

8. Learned counsel for the appellants contended that the impugned judgment and order suffer from grave legal infirmities, as both Courts below misapplied the application of Order VII Rule 11 C.P.C, by summarily rejecting the plaint despite the presence of substantial and triable questions of fact regarding title, inheritance, alleged waqf and the authenticity of the revenue entries. He submitted that the plaintiffs had pleaded a complete cause of action and that the question of their relationship with the deceased Muhammad Anwar, the validity of the alleged waqf entries of 1993 and the defendants' alleged fabrication of documents could only be adjudicated after recording evidence. He argued that the Courts below erred in treating disputed factual controversies as conclusive at the preliminary stage by relying on case law reported as 2015 YLR 550, 2011 CLC 88, PLD 2025 SC 302, and 2014 SCMR 801, wherein it has been held that where the plaint raises mixed questions of law and fact, the suit cannot be rejected under Order VII Rule 11 C.P.C and that even one maintainable relief is sufficient to sustain the plaint. Learned counsel further submitted that the plea of limitation was also a mixed question requiring evidence, relying upon 2013 SCMR 1493 and that the Courts below failed to appreciate that the plaintiffs challenged the alleged bogus waqf entries immediately upon acquiring knowledge. He maintained that the defendants' reliance on the alleged oral waqf is legally untenable, as oral dedications must be

proved through strict evidence, citing 2020 SCMR 276 and 2020 SCMR 1021, which hold that oral dispositions of property must be proved through cogent evidence and that revenue entries prepared after the donor's death are inherently suspicious. He therefore prayed that the concurrent judgment and order be set aside and the suit restored for trial on the merits.

9. Conversely, learned counsel for respondents No.1 to 3 supported the concurrent findings and submitted that the suit was hopelessly barred by limitation, devoid of cause of action and incompetent under Section 42 of the Specific Relief Act, as the plaintiffs failed to produce even a rudimentary pedigree table to establish their alleged relationship with Muhammad Anwar, who died in 1971. He argued that for more than five decades neither the plaintiffs nor their alleged predecessors asserted any claim, which itself extinguishes any purported right, relying upon 2013 SCMR 299, PLD 2008 SC 371, PLD 1985 SC 153 and 2014 SCMR 513, which hold that where the predecessor-in-interest never challenged the mutation or revenue entries during their lifetime, the successors cannot revive a stale claim after decades. Learned counsel further submitted that the property in question is waqf property, dedicated for religious and charitable purposes long before the plaintiffs' claim and that once a waqf is created, ownership vests in Almighty Allah, rendering any claim of inheritance legally misconceived. He argued that the plaintiffs' own pleadings show that they were never in possession and that the Masjid, Madrasa and Market were constructed and maintained through public donations and managed by a duly elected committee. He maintained that the plaint itself disclosed that the plaintiffs had no title documents, no possession and no relationship with the deceased and therefore the plaint was rightly rejected under Order VII Rule 11, C.P.C. He relied upon 2002 SCMR 338 and PLD 2003 Karachi 466, in which it was held that suits lacking foundational entitlement were stillborn. He therefore prayed for the appeal to be dismissed.

10. Learned Assistant A.G. Sindh adopted the submissions of respondents No.1 to 3 and supported the impugned judgment and order, submitting that the

plaintiffs' claim was legally untenable, factually unsubstantiated and barred by limitation and prayed that the Second Appeal be dismissed as devoid of merit.

11. Heard and perused the record.

12. The first and foundational question is whether the plaint, when read as a whole and treated as correct for the limited purpose of Order VII Rule 11 C.P.C, discloses a cause of action. The plaintiffs have pleaded that Muhammad Anwar was the recorded owner of the suit land, that he constructed the Masjid, Madarsa and shops, that he died issueless, that they are his nearest heirs, that the alleged Waqf entries of 1993 were procured long after his death and that they came to know of such entries only in 2022. These averments, taken at their face value, do constitute a cause of action for declaratory, cancellation and consequential reliefs. Whether the plaintiffs can ultimately prove ownership, relationship, absence of Wakaf, and the timeliness of the challenge is a matter of evidence, not of pleadings.

13. The trial Court rejected the plaint primarily on the grounds that the plaintiffs had not produced a pedigree table, that their own pleadings showed absence of possession and that the suit was barred by Section 42 of the Specific Relief Act and by limitation. The appellate Court went further and held that the property was conclusively Wakaf, relying on City Survey extracts and Rule Cards, and that inheritance could not be claimed in Wakaf property. With respect, both Courts exceeded the narrow jurisdiction conferred by Order VII Rule 11 C.P.C and effectively decided the *lis* without trial.

14. The Supreme Court in the case of Ahmed Ali Talpur¹ has emphatically held that where triable issues are discernible, a plaint cannot be rejected under Order VII Rule 11, C.P.C., and that summary rejection would unjustly render a party remediless. The Supreme Court further observed that the controversy in that case "did not support conclusion that petitioner/plaintiff approached Court without cause of action or that the plaint was barred by any law under Order VII, Rule 11

¹ PLD 2025 Supreme Court 302 (Ahmed Ali Talpur v. Sub-Registrar Latifabad)

C.P.C.” and set aside concurrent orders rejecting the plaint. The ratio decidendi of that judgment applies with full force here, where the very existence, validity and timing of the alleged Wakaf entries are disputed and where the plaintiffs assert late discovery of alleged fraudulent entries.

15. The law is equally settled that limitation, where dependent upon knowledge, fraud or concealment, is a mixed question of law and fact which cannot be determined without evidence. The plaintiffs’ plea that the alleged Waqf entries were procured in the year 1993, after the death of Muhammad Anwar and that they came to know of them only in the year 2022, cannot be brushed aside at the threshold. Whether this plea is true or false is a matter for evidence, not for summary rejection.

16. The respondents’ reliance on 2013 SCMR 299 and 2014 SCMR 513 is distinguishable. In those cases, the predecessor-in-interest lived for decades after the impugned mutation and never challenged it, and there was no plea of fraud or late discovery. Here, the plaintiffs allege that the very entries relied upon by the respondents were fabricated after the death of the alleged Wakif. Such allegations cannot be adjudicated without trial.

17. The appellate Court’s finding that the property is conclusively Wakaf is also premature. The plaintiffs deny any Wakaf by Muhammad Anwar, assert that he remained owner of the land and allege that the Waqf entries of 1993 are bogus. The defendants, conversely, assert that the property was originally endowed by a forefather known as “Darwesh” and that Muhammad Anwar was only Mutawalli. These are deeply contested factual issues requiring examination of revenue records, contemporaneous documents, oral evidence and the circumstances of the 1993 entries.

18. The bar under Section 42 of the Specific Relief Act is also misconceived at this stage. The plaintiffs assert a personal proprietary right as alleged heirs of Muhammad Anwar. Whether they can prove that right is a matter for evidence. Section 42 does not require proof at the threshold; it requires only that the plaint

disclose a legal character or right and its denial. The lack of proof or weakness of proof is not a ground for rejection of plaint².

19. The plea of bar under the Land Revenue Act and the Sindh Revenue Jurisdiction Act is equally untenable at this stage. The suit is not confined to the correction of entries; it seeks a declaration of title, cancellation of alleged Waqf entries, possession and mesne prooyfits. These are matters squarely within civil jurisdiction. Even if some relief is ultimately barred, the plaint cannot be rejected partly.

20. The cumulative effect of the above discussion is that the Courts below misapplied Order VII Rule 11, C.P.C., and prematurely adjudicated disputed factual and legal issues. The plaint does disclose a cause of action. The pleas of limitation, Wakaf, relationship, and jurisdiction raise substantial triable issues which must be adjudicated on the evidence.

21. For the reasons recorded above, this Second Appeal is allowed. The judgment dated 15.04.2025 and decree dated 16.04.2025, passed by the appellate Court and the order dated 02.03.2024 passed by the trial Court are hereby set aside. Consequently, the matter is remanded to the trial Court, which shall frame proper issues on all contentious points, including title, relationship, Wakaf, limitation, jurisdiction, and entitlement to relief, and shall decide the suit strictly in accordance with law after recording the evidence of the parties.

It is clarified that nothing in this judgment shall be construed as expressing an opinion on the merits of the parties' respective claims. All observations are confined to the limited question of the applicability of Order VII Rule 11 C.P.C.

JUDGE

Adnan Ashraf Nizamani

² 2015 YLR 550 (Naseem-ul-Haq v. Raes Aftab Ali Lashari)