

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR  
Civil Rev. Application No.S-241 of 2023

Applicants: Khalid Muhammad, Muhammad Rafique, Mst. Siddiqa Mai, Akbar Ali, Bashiran Bibi through her legal heirs Muhammad Asghar, they all through their Special Power of Attorney Muhammad Ajmal, *through* Mr. Shoaib Niaz Khaskheli, Advocate

Respondents No.1 & 2: Naseem Ahmed and Muhammad Mehtab *through* Mr. Liaqat Ali Jatoi, Advocate

Respondents No.3 to 6: Assistant Commissioner Kotdiji and others *through* Mr. Zulfiqar Ali Naich, Assistant Advocate General

Date of hearing: 14.7.2025  
Date of decision: 14.7.2025

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

**Muhammad Jaffer Raza, J.-** Instant civil revision application, has been preferred by the Applicants, impugning judgment dated 24.10.2023 and decree dated 25.10.2023, passed in Civil Appeal No.69/2023. The said Civil Appeal emanated from the order dated 02.6.2023, passed in Civil Suit No.56/2022, wherein the application filed under Order VII Rule 11 CPC, by Respondents No.1 & 2 was allowed and consequently the above noted suit preferred by the Applicants was rejected.

2. Brief facts of the case are that suit No.56/2022 was filed by the Applicants with the following prayers:-

“i. That this Honourable Court may be pleased to declare that the plaintiffs are legal and lawful owner of S.No.646, 647, 776, 777, 778,779,780,781, 782, 783, 784, 901, 902, 903, 904, 905, 906, 907, 908, 909, situated in Deh Fatehpur Taluka Kotdiji district Khairpur. The defendant No.1 may be directed for return back the possession of suit property to the plaintiffs and also be declared that the defendant No.7 is not owner of the suit land and his register sale deed R. No.206 dated: 19.4.2019 and mutation entry No.73 dated 06.01.2020 may also be declared null, void and nullity in the eye of law.

ii. This Honourable court may be pleased to direct the official defendant No.4 & 5 to cancel the registered sale deed R No.206 dated 19.04.2019 and mutation entry No:73 dated 06.01.2020 and entry No.205 and entry No.94 dated: 26.10.1989 and also cancel the sale deed No: 414 dated 17.09.1999 which are fake and manipulated and also the defendant No.2 & 3 for cancellation of entries if any which were kept on the basis of said registered sale deed or on oral statement by way of fraud also directed to defendant No.1 for payment of mesne profit.

iii. To grant permanent injunction in favour of plaintiff thereby restraining the defendants for creating 3<sup>rd</sup> party interest.

iv. To award costs of the suit.”

3. Thereafter, an application was preferred by the Respondents No.1 & 2 under Order VII Rule 11 CPC for rejection of plaint and it was contended in the application noted above, that the suit is hopelessly time barred and the plaint is liable to be rejected. The said application was allowed vide order dated 02.06.2023. Thereafter, the above noted Civil Appeal was preferred by the Applicants and same was also dismissed vide Impugned judgment dated 24.10.2023. The Applicants have therefore impugned the concurrent findings of the courts below.

4. It is contended by the learned counsel for the Applicants that the cause of action in this case arose in the year 2020 and the suit was filed within time. He has further contended that bare perusal of the plaint will reflect that the same is not barred by limitation and the learned Trial court as well as the Appellate court have gone into examining disputed questions of fact, which cannot be done within the scope of Order VII Rule 11 CPC. He has further contended that a fraud has been perpetrated upon him for which evidence ought to be recorded. He has lastly prayed that the matter may be remanded back to the Trial court with a direction to dispose of the matter after recording of evidence within the time frame defined by this court. He has placed on reliance on the following judgments:-

- *Ms. Qaiser Jehan Begum versus Sindh Building Control Authority (SBCA) through Director General and 6 others<sup>1</sup>.*
- *President Zarai Taraqiati Bank Limited, Head Office, Islamabad versus Kishwar Khan<sup>2</sup>.*

5. Conversely, learned counsel for the Respondents No.1 & 2 has contended that both the orders below do not require interference of this court and the plaint was rightfully rejected by the learned Trial court. He has further stated that the grandfather of the Applicants died in the year 2006 and he did not challenge any of the land entries made in the present suit. Moreover, he has contended that the father of the Applicants has also not challenged the entries noted above and the above noted suit is only a reflection of the greed of the present Applicants. He has further contended that the above noted suit has been filed by concealing facts as another suit bearing No.34/2020 was filed earlier, which was subsequently withdrawn. Further, he has placed on record through statement, suit No.79/2023 filed by Muhammad Asghar, who is impleaded as Applicant No.5 (a) in the present revision application. He has lastly argued that the instant revision application may be dismissed as no case of interference is made out.

6. Learned AAG has contended that the Mukhtiarkar's entry is dated in the year 2020 and he supports the contentions of learned counsel for Applicants with regard to the matter being remanded to the learned trial court for judgement on merits after recording of evidence.

7. I have heard all the learned counsels and perused the record. More specifically, I have examined the concurrent findings of the courts below. It is a settled principle of law that while rejecting a plaint primarily contents of the plaint

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<sup>1</sup> 2022 MLD 308

<sup>2</sup> 2022 SCMR 1598

are to be examined and disputed questions of facts cannot be adjudicated without recording of evidence. The parameters of Order 7 Rule 11 were definitively elaborated in the celebrated judgement of **Haji Abdul Karim & Others vs. Florida Builders (Private) Limited**<sup>3</sup>, in which the Hon'ble Supreme Court held as under:-

*12. After considering the ratio decidendi in the above cases, and bearing in mind the importance of Order VII, Rule 11, we think it may be helpful to formulate the guidelines for the interpretation thereof so as to facilitate the task of courts in construing the same.*

*Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision.*

*Secondly, it is also equally clear, by necessary inference, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.*

*Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in*

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<sup>3</sup> PLD 2012 Supreme Court 247

*the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint.”*

8. Further, it is also held the strengths and weakness of a case cannot be adjudicated upon during adjudication of an application under order VII Rule 11 CPC. The said exercise was carried out by the learned Trial court and the same was impermissible, unwarranted and beyond the scope of Order VII Rule 11 CPC. It is evident from the bare perusal of the plaint that the certain entries has been challenged which pertain to the year 2020 and therefore is it held that the plaint was incorrectly rejected by the learned Trial court and the Applicants ought to have been given opportunity to lead evidence. It is also trite law that a plaint cannot be rejected in piecemeal and even if a single prayer is maintainable the application preferred under Order 7 Rule 11 ought to be dismissed.

9. It is specified that no adjudication on merit has been made in the instant judgment and it is left to the learned trial court to record the evidence of the parties and decide the case on merits within four months from the receipt of this order.

10. In light of what has been held above, instant revision application is allowed. Both the impugned judgments are set-aside and the matter is remanded back to the learned Trial court for decision of merits after framing of issues, recording of evidence of the respective parties within the time stipulated in paragraph No.9, above. Instant revision application stands disposed of accordingly.

**JUDGE**