

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.**

C.P No.D-3705 of 2017

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<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE(s)</b>
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1. For orders on M.A No.16172/17
2. For orders on office objection.
3. For orders on M.A No.16173/17
4. For katcha peshi
5. For orders on M.A No.16174/17

12-12-2017.

Mr. Luqman-ul-Haque Farooqui, Advocate for petitioners.

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1. Urgency granted.

2to5. Respondents No.1 to 5 have filed a First Class Suit No.40 of 2017 before learned Senior Civil Judge, Tando Adam for Declaration, Cancellation, Mutation, Partition, Separate Possession and Permanent Injunction in respect of a house bearing C.S No.902/1, Ward "D" situated in Makrani Para, Sikandarabad Road, Tando Adam, claiming to be the legal heirs of one Zahoor Ahmed son of Noor Muhammad, who was son of Nabi Bux, and had died in life time of his father, against the petitioners whom they claim to be legal heirs of said Nabi Bux and his other children. In the said suit the petitioners in addition to filing written statement filed an application under Order VII Rule 11 CPC praying for rejection of the plaint on the grounds, among others, that the plaintiffs have no locus standi to file the suit; that the suit is barred by law; that the suit is undervalued; that the court has no jurisdiction to entertain the suit; that the suit is time barred; and that the plaintiffs have not come to the court with clean hands.

This application was dismissed vide order dated 24.05.2017, and against said order the petitioners filed a civil revision bearing No.21 of 2017, but that too was rejected vide impugned order dated 14.11.2017. By this petition, the petitioners have challenged both the orders.

Learned Counsel for the petitioners has iterated that the suit is barred by law and, that the plaintiffs / respondents have not come with clean hands, per him, the contents of the plaint are vague as the respondents have not revealed the facts properly and specifically, therefore, the suit is bound to be dismissed ultimately. In support of his contentions, he has relied upon the case law reported in PLD 1993 Supreme Court 88.

We have heard the learned Counsel and perused the relevant material including the case law cited at bar. During the course of arguments, we asked the learned counsel that the plaint is hit by which clause of Order VII Rule 11 CPC, he replied that the suit is barred by law, and submitted that no other ground except that is attracted in the present case. And when we asked him as to by what law the suit is barred, he has replied that it is barred under the provisions of Order VII Rule 11 CPC without either referring to or quoting to the relevant law by which, according to him, the plaint is

barred. It is an admitted position that under Order VII Rule 11 CPC a plaint shall be rejected where it does not disclose a cause of action; where the relief claimed is undervalued, and the plaintiff, even required by the Court to correct the valuation within a stipulated period, fails to do so; where the relief claimed is properly valued, but the plaint is written upon the paper insufficiently stamped, and the plaintiff even required by the Court to supply the requisite stamp-paper within a stipulated time, fails to do so; or where the suit appears from the statement in the plaint to be barred by any law. The last clause (d) of Rule 11 C.P.C. stipulates that plaint shall be rejected if barred by any law. This would not mean that this clause / condition by itself would put bar on a person or a party to file a suit in the court, as this is not a provision of substantive law determining the right of the plaintiff to file the suit in the face of a cause of action, but this is an enabling provision of law, which empowers the court to reject the plaint when it is barred by any substantive law abridging the rights of the plaintiff to file a suit in a particular situation on a given cause of action. In the present suit the respondents have claimed their right of inheritance against the petitioners on certain facts, which have been disputed by the petitioners in their written statement and such divergent pleadings of the parties have given rise to various issues to be framed and decided after the evidence is led. Patently, the claim of the petitioners amounts to merits of the case which can only be decided after recording of the evidence of both the parties. Learned Counsel has tried to argue the merits of the case, but suffice it to say that the merits of the case cannot be considered while deciding the application U/O VII Rule 11 CPC. We have seen both the impugned orders. Both the courts below have properly dealt with the controversy in hand and have dismissed the application by giving cogent reasons for the purpose of deciding application under Order VII Rule 11 CP.

We do not see any illegality or jurisdictional defect in the impugned orders, passed by both the learned courts below attracting exercise of jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, and this Petition being devoid of merits, is dismissed in limine alongwith listed applications at serial No.3 and 5.

JUDGE

JUDGE