

# IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
**Muhammad Junaid Ghaffar, J.**  
**Agha Faisal, J.**

CP D 1103 of 2021 : Kiran Babu & Others vs.  
Jamil Ahmed & Others

For the Petitioner : Mr. Muhammad Ayoub Chanhio  
Advocate

Date/s of hearing : 16.02.2021

Date of announcement : 16.02.2021

## JUDGMENT

**Agha Faisal, J.** This petition has been filed assailing the order dated 10.02.2020, passed by the learned Senior Civil Judge Karachi-South in Civil Suit 898 of 2015, whereby the Order VII Rule 11 CPC application filed on behalf of the defendants therein, petitioners herein, was dismissed (“Original Order”). The prayer clause further assails the judgment dated 04.12.2020 of the Additional District Judge-IX Karachi-South in Civil Revision 35 of 2020, whereby the revision against the Original Order was dismissed (“Revision Order”). It is considered illustrative to reproduce the operative constituents of the respective pronouncements herein below:

### *Original Order*

“The question that the sale agreement is false, fabricated or it bears forged signatures of the defendants cannot be decided at this stage until and unless the evidence of the parties is recorded. It appears that the plaintiffs have concluded recording their evidence and the defendants have yet to record their evidence as such I deem it appropriate that the evidence of the parties shall be recorded first before going into the factual controversy between them.

The next contention of the learned counsel for defendants was that the suit property is not yet transferred in the names of defendants because of the restriction imposed upon the suit property to be alienated without furnishing the required surety in the above stated SMA and as such the defendants were not competent to sell out the suit property and as such the agreement in question is not enforceable at law and that no decree may be passed.

In this regard, I am of the humble view that said contention can hardly be made basis for dismissal of the suit in terms of the Order VII Rule 11 CPC. For, it is settled principle of law that on the death of a person, the succession opens and all the properties left behind by the deceased stands devolved upon his legal heirs through the force of law and for that no any other formal procedure is required to acquire the right to inherit the property left behind by the deceased. Whether the property is transferred in the names of legal heirs of the deceased or not is a mere formality in order to maintain the record of rights and mere fact that the property is not transferred in the names of legal heirs of deceased by way of inheritance does not take away the right of the legal heirs to inherit the property and alienate the same. The same way, the restriction on transfer of the suit property in the above referred above SMA is existing because of failure on the part of defendants to furnish the required security and as such the defendants cannot be permitted to take its advantage in order to deprive the plaintiffs of their right to get the suit property transferred in their names by way of specific performance of part of the agreement.

Moreover, the suit discloses cause of action and the same appears to be maintainable at law.

In view of the above, I find that the application in hands is without substance and liable to be dismissed. Resultantly, the application U/O VII Rule 11 CPC stands dismissed. There is no order as to costs.

The findings hereinabove are on the basis of the tentative assessment of the record and the same shall not have bearing upon the merits of the case and the case shall be decided on its own strength and merits."

### *Revision Order*

"I have heard learned counsel for applicants, who contended that plaintiff has filed suit for specific performance against the applicants/defendants, claiming that he had purchased the suit land from defendant/respondent against a agreement. The applicants filed application under order VII Rule 11 CPC that the bone of contention, namely alleged sale agreement on the basis of which the present suit has been filed is fake, false and managed, containing forged signature of vendors, hence no decree can be passed on the basis of such sale agreement. The suit property has yet not been transferred in the name of ;private defendant, but still in the name of deceased Baboo Kishan. The defendant No.7, in his written statement has confirmed that the suit property still existed in the name of deceased and not the defendants, hence the defendants, hence the defendant had no right or authority to sale the suit property. The agreement relied upon by the plaintiffs has no legal sanctity and the same cannot be enforced under the law. Even this Hon'ble Court cannot allow judgment and decree. The alleged sale transaction between the plaintiff and any of the defendants would be presumed to be illegal defective and lacking binding force. This being the fact, the relief claimed by the plaintiffs cannot be granted; hence the suit cannot be maintained therefore the plaint merits to the rejected. The defendant entered into transaction with plaintiffs orally, none of the defendants is responsible for it nor bound to accept such transaction. The defendants/applicants had no knowledge off any transaction between the plaintiffs and any of defendant but the later were required to verify the fact title of the property from the competent authority before entering in to any transaction which an ordinary person is supposed to do. The subject matter SMA No.171/2020 was filed by the defendants as legal heirs of deceased Baboo Kishan which has been allowed on 07-07-20210 by the learned District Judge Karachi south with following observation:

"In this view of the above material, I allow the instant petition and order that the letters of administration in respect of an immovable property i.e. House No.84, admeasuring 60 square yards, situated on street No.4 Neelam colony, old Clifton, civil lines, Karachi be issued to the petitioner subject to furnishing security in the sum of Rs.27,00,000/-, the petitioner shall not mortgage, charge or transfer by sale, gift or exchange the property in question without prior permission of this court."

In view of above restrictions by the learned District Judge, none of the defendants was authorized to sale the property without permission of the court. Apparently no permission was sought from the Hon'ble District Judge before entering into transaction; hence the alleged sale agreement is a nullity. No relief can be granted on the basis of such vague agreement particularly when the property is still not mutated in the names of heirs of the deceased against whom the instant suit is filed.

I have considered arguments of learned counsel for applicant and perused the record as well as order passed by learned trial court and it is rightly held by learned trial court that contention raised by learned counsel for applicant regarding forged sale agreement required evidence even, it is observed that all contention raised by learned counsel for applicant required evidence and suit cannot be rejected U/O VII Rule 11 is not maintainable.

In view above facts and circumstances of the case, the trial court rightly dismissed the application and the order of the trial court does not suffer any legal infirmity and irregularity therefore, revision application in hand is dismissed, with no order as to cost, finds no merits."

2. At the very onset petitioners' counsel was required to identify any infirmity in respect of the impugned orders under consideration. Per learned counsel, the adjudication of the underlying suit was going to take substantial time, hence, it would have been just and proper for the courts to abridge the adjudication process and allow the rejection of the plaint.

3. In so far as the consideration merited to an Order VII rule 11 CPC application is concerned, it is settled law that the question of whether a suit was likely to succeed or not was irrespective of whether or not the plaint ought

to have been rejected<sup>1</sup>. It is often seen that while a plaint could not have been rejected, however, a suit was dismissed eventually for a variety of reasons. The evolution of law with respect to rejection of plaints was chronologically catalogued in the *Florida Builders case*<sup>2</sup> wherein *Saqib Nisar J.* illumined as follows:

“11. We now need to examine the grounds on the basis of which a plaint is to be rejected. There is a considerable amount of case-law on the point. This covers a wide spectrum with, on the one hand, emphasis being placed on the primacy of the statements in the plaint to the exclusion of everything else and, on the other hand, to include a perusal not merely of the plaint but also the documents attached therewith and, stretching the point even further, the other clear and obvious material on the record. The following are some of the important judgments on the point:

- (i) In the case of *Jewan and 7 others v. Federation of Pakistan* (1994 SCMR 826), it was held that the law permits consideration only of the contents of the plaint and the defence raised in the written statement is to be disregarded. However, it was also observed that in addition to the plaint if there is some other material also available before the court which is admitted by the plaintiff the same can also be looked at. It was further observed that the court would not be entitled to examine any other material unless it was brought on record in accordance with the rules of evidence.
- (ii) In the case of *Haji Allah Bakhsh v. Abdul Rehman and others* (1995 SCMR 459) it was observed that the averments contained in the plaint are presumed to be correct.
- (iii) In the case of *Anees Haider others v. Amir Haider and others* (2008 SCMR 236) the court reiterated the principle that no reliance could be placed on the written statement.
- (iv) The case of *Saleem Malik v. Pakistan Cricket Board* (PLD 2008 SC 650) is a little different to reconcile with the overwhelming weight of authority since that observation in this case was “that the court, may in exceptional circumstances, consider the legal objection in the light of averment of the written statement but the pleading as a whole cannot be taken into consideration for rejection of plaint under Order VII, Rule 11, C.P.C.”. It is a little difficult to construe what the above observation means and perhaps the dictum contained herein should be confined and limited to the facts of this case alone.
- (v) In the case, of *Siddique Khan and 2 others v. Abdul Shakoore Khan and another* (PLD 1984 SC 289) it was observed that Order VII, Rule 11 in a way is a penal provision to be strictly construed. However, this finding pertains to clause (c) of Order VII, Rule 11 alone which provides that a plaint is to be rejected only after the grant of the requisite time if the plaintiff has failed to pay the court fee. This case is thus not relevant or material for our purposes.
- (vi) In the case of *Muhammad Saleem and others v. Additional District Judge, Gujranwala* (PLD 2006 SC 511) it was observed that Order VII, Rule 11 contemplates the rejection of a plaint only on the basis of averments made in the plaint and the pleas raised in the written statement are not to be considered. It was also observed that the court was entitled to rely on the documents annexed to the plaint.
- (vii) In the case of *S.M. Shafi Ahmed Zaidi v. Malik Hasan Ali Khan* (2002 SCMR 338) the following finding was rendered:

“Besides, averments made in the plaint other material available on record which on its own strength is legally sufficient to completely refute the claim of the plaintiff, can also be looked into for the purpose of

<sup>1</sup> *Al Meezan Investment Management Company Limited & Others vs. WAPDA First Sukuk Company Limited & Others* reported as *PLD 2017 Supreme Court 1*.

<sup>2</sup> *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as *PLD 2012 Supreme Court 247*.

rejection of plaint. It does not necessarily mean that the other material shall be taken as conclusive proof of the facts stated therein, but it actually moderates that other material on its own intrinsic value be considered along with the averments made in the plaint. "It was further observed that "It is the requirement of law that incompetent suit shall be buried at its inception. It is in the interest of the litigation party and judicial system itself. The parties are saved their time and unnecessary expenses and the courts gets more time to devote it for the genuine causes."

- (viii) In the case of Pakistan Agricultural Storage and Services Corporation Limited v. Mian Abdul Lateef and others PLD 2008 SC 371 it was held that the object of Order VII, Rule 11, C.P.C. was primarily to save the parties from the rigours of frivolous litigation at the very inception of the proceedings.
- (ix) In the case of Salamat Ali v. Khairuddin 2007 YLR 2453 it was observed that although the proposition that a court while rejecting the claim under Order VII, Rule 11, C.P.C. could only examine the contents of the plaint, was correct nevertheless, this rule should not be applied mechanically.
- (x) In the case of Arif Majeed Malik and others v. Board of Governors Karachi Grammar School (2004 CLC 1029) it was noted that the traditional view was that in order to reject a plaint under Order VII Rule 11 only the contents of the plaint were to be looked into. It was added, however, that this view had since been modified to the extent that an undisputed document placed on record could also be looked into for the aforesaid purposed.
- (xi) In the case of Halima Tahir and 5 others v. Naheed and others (2004 MLD 227) it was held that in deciding a case under Order VII, Rule 11 only the averments in the plaint are to be considered.
- (xii) In the case of Ghulam Dastagir and others v. Mariyum and others (1993 MLD 1005) the point was reiterated and it was added that the allegations in the plaint have to be accepted as correct.
- (xiii) Additional High Court judgments which do not add anything further to what has been contained hereinabove are contained in the cases reported in 1981 CLC 1009, 2006 CLC 919, 2006 CLC 303, 1981 CLC 533, PLD 1981 Karachi 604, PLD 1978 Karachi 267 and therefore need not be examined any further.

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

4. It merits mention at this juncture that the aforesaid observations are required to be paramount considerations before a learned Judge, seized of an application seeking rejection of a plaint. It is demonstrated from the Original Order that learned Judge has adequately addressed each of the averments of the petitioners, applicants / defendants there before, and concluded that the suit was not barred, hence, the plaint could not be rejected. The arguments advanced before us, by the learned counsel for the petitioners, have been unable to dispel the reasoned conclusions arrived at by the learned Judge, while determining the O.VII r.11 CPC application.

5. The Original Order was assailed in revision and a reasoned order was passed upholding the conclusion arrived at by the learned Trial Court. The ambit of a revisionary court is circumscribed to the mandate of Section 115 CPC and a bare perusal of the Revision Order demonstrates that the same has been rendered within the four corners of the provision enabling such jurisdiction.

6. It is trite law<sup>3</sup> that exercise of constitutional jurisdiction in such matters was only warranted in rare circumstances; if the findings recorded in the orders under scrutiny were without jurisdiction, arbitrary and / or were predicated upon misreading / non-reading of evidence. In this matter the findings placed before us suffer from no such infirmity and the petitioner has failed to plead any rare circumstance, which would attract the exercise of writ jurisdiction by this Court.

7. In view of the reasoning and rationale herein contained, we are of the considered view that the petitioners’ counsel has failed to set forth a case for the exercise of extra ordinary Constitutional jurisdiction by this Court, hence, this petition, along with listed applications, is hereby dismissed *in limine*.

JUDGE

JUDGE

Khuhro/PA

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<sup>3</sup> *Asif Rafique vs. Mst. Quratullain & Others*, reported as 2016 MLD 425.