

ORDER SHEET

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

C.P. No.D-1499 of 2020

Date	Order with Signature of Hon'ble Judge (s)
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Before;

Mr. Justice Arshad Hussain Khan

Mr. Justice Irshad Ali Shah

1. For orders on M.A. No.7579/2020.
2. For orders on office objections.
3. For orders on M.A. No.7580/2020.
4. For hearing of main case.

17.02.2021.

Mr. Aqeel Ahmed Siddiqui, Advocate for the petitioners.

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1. Urgency granted.

2to4. The facts in brief necessary for disposal of instant petition are that the private respondent filed a suit before learned Ist Senior Civil Judge, Tando Allahyar for declaration that the suit land was rightly granted to Jumoon Khan and she is lawful shareholder whereof. By seeking such declaration the private respondent also sought for separate possession with Mesne profit. The petitioners sought for rejection of such plaint by making an application u/o VII Rule-11 C.P.C. It was dismissed by learned trial Court vide its order dated 27.02.2020. It was impugned by the petitioners by preferring a Revision Application. It was also dismissed by learned District Judge, Tando Allahyar vide his order dated 29.10.2020, which is impugned by the petitioners before this Court by way of instant petition.

It is contended by learned counsel for the petitioners that the suit land is owned by Irrigation department; its grant was illegal therefore, the private respondent was having no cause of action or legal title to have filed the subject suit, the plaint whereof being incompetent was to have been rejected by the learned Courts below. By contending so, he sought for setting aside of the orders of learned trial and Revisional Courts with rejection of the plaint.

We have considered the above arguments and perused the record.

It is settled by now that the averments made in plaint are to be taken into consideration for its rejection. No plaint could be rejected on the basis of averment made in defence. The plaint could be rejected when it does not disclose cause of action and not for the reason that the plaintiff is having no cause of action. If, for the sake of arguments, it is believed that the suit land is owned by Irrigation department, its grant in favour of Jumoon was illegal or otherwise and the private respondent is having no right of share therein even then the plaint could not be rejected for the reason that such controversy being factual in nature could not be resolved in summary manner. Law prescribes fair trial and fair trial could only be achieved when everyone is provided proper and adequate remedy to prove his / her case. No harm would be caused to either of the party, if the suit filed by the private respondent is allowed to be decided on merits after recording evidence. Even otherwise, no illegality is found in orders passed by learned Courts below, which may justify making interference with those, by this Court in exercise of its Constitutional Jurisdiction. Consequently, the instant petition being misconceived is dismissed in limini together with listed application.

Judge

Judge

Ahmed/Pa.