

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

II-Appeal No.33 of 2018

Azhar Ilyas, Deceased through his legal Heirs Ayaz Ilyas & others appellants through:	M/s Muhammad Humayun Khan and Mangal Menghwar, advocates
Government of Sindh & other official respondents through:	Mr. Allah Bachayo Soomro, Additional Advocate General alongwith Zohaib Fahim Mangi, Mukhtiarkar Matiari
Respondents No.8 to 11 through:	M/s Ahmed Murtuza A. Arab and Dileep J. Mulani, advocates
Date of hearing	: 07.11.2022
Date of Decision	: 28.11.2022

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**JUDGMENT**

**ADNAN-UL-KARIM MEMON, J.** The Appellants have called in question the legality of the order dated 12.5.2018 passed by learned Additional District Judge, Matiari in Civil Appeal No.53/2017, dismissing appeal of appellants and upheld the order dated 04.5.2017 passed on application under Order VII Rule 11 C.P.C by learned Senior Civil Judge, Matiari in F.C Suit No.36 of 2016.

2. At the outset, Mr. Muhammad Humayun Khan learned counsel for the appellants submitted that the appellants have been non-suited on technical grounds in terms of Order 7 Rule 11 CPC and basic dispute between the parties required to be resolved through the evidence as both the parties have disputed the titles of the subject property. On merits, he has contended that both the impugned orders of courts below are based upon misinterpretation of law, misreading and non-reading of material available on record; that the order of learned Additional District Judge is completely in violation of mandatory provisions of Order XLI Rule 31 CPC; whereas that the order of learned Senior Civil Judge is also completely in violation of mandatory provisions of Order XX Rule 4 CPC as both have not disclosed the cogent reasons to non-suit the appellants; that both the impugned orders are based upon misinterpretation of Section 3 and Articles 14, 142 and 144 of the Limitation Act and Sections 42 & 56 of

Specific Relief Act; that both the courts below have seriously erred in law in not applying their independent mind to the case law relied upon by the appellants; that both the courts below have seriously erred in ignoring the well-settled principle of law that any order, judgment, and decree which is without jurisdiction, is nullity in law and there is no limitation for setting aside the same; that once issues are framed the Court is bound to record evidence and decide the matter on merits under the law and has no jurisdiction to adopt summary procedure to reject the plaint under Order VII Rule 11 CPC, therefore, both the impugned orders are erroneous, misconceived, perverse, and unsustainable in law; that Khatooni dated 20.9.1970, which was subsequently entered in the record of rights vide entry No 84 in Dakhil Kharij register No. 19016 at page No. 86 and the same is a title document hence the Revenue Authorities have no jurisdiction to cancel the title documents under Sindh Land Revenue Act 1967, which jurisdiction only lies with Civil Court under Section 53 of Sindh Land Revenue Act 1967; that mere entries in the record of rights do not create title in favor of respondents 7 to 11, who do not have any title document in their favor, hence both the impugned orders are not sustainable in law and are liable to be reversed. He lastly prayed for allowing the instant appeal. In support of his contentions, learned counsel has relied upon the cases of *Muhammad Yaqoob v. Sardaran Babi* [PLD 2020 SC 338], *Zulaikhan Bibi v. Roshan Jan* [2011 SCMR 986], *Abdur Rehman Khan v. Muhammad Altaf* [1997 CLC 1260], 2016 YLR Note 136, 2019 SCMR 70, 1993 SCMR 618, 2013 CLC 507, PLJ 1993 SC 10, 2012 MLD 832, 1999 SCMR 2396, 2018 MLD 918, 2015 YLR 1961, PLD 2016 Sindh 26, PLD 2008 SC 650,

3. On the other hand learned Additional A.G. Sindh has argued that there exists no survey No. of serial No.17/B in the land register and dehm map of deh Palijani Jagir Tappa Sultanpur Taluka Matiari; as per Transfer Order No.DC-Reh/1030 dated 16.11.1980 issued by the office of Deputy Commissioner Hyderabad duly signed by Additional Deputy Commissioner-I Hyderabad on 08.11.1980, land bearing S. Nos.17/1, 2 measuring 8-34 acres and 25/A, B measuring 8-18 acres along with other survey numbers of Deh Palijani Rayati and Jagir Taluka Hala (now Taluka Matiari) was purchased by S. Nawab Ali son of S. Fariduddin as Claimant under the scheme "Martial Law Regulation 89/91" promulgated in the year 1961; that mutation was also effected in the record of rights, as such the rights vested to S. Nawab Ali as a purchaser is deserved to be protected. Besides no record available in respect of the claim of land

bearing S. Nos.17/B and 25/A, B measuring 16-22 acres deh Palijani Jagir Taluka Matiari in favor of Akhtar Ilyas and ten others or any claim or clearance certificate was ever issued from the office of Additional Deputy Commissioner-I Hyderabad successor of Additional Settlement Commissioner (Land) Hyderabad; that both the Courts below have rightly dismissed the suit and appeal as neither any S.No.17/B is in the field nor the appellants are in possession since alleged allotment in 1970 as mentioned in his first application moved before erstwhile EDO (Revenue) Hyderabad duly decided on 23.4.2004. Lastly, learned Additional AG prayed for dismissal of the instant appeal.

4. M/s Ahmed Murtuza A. Arab and Dileep J. Mulani, advocates for private respondents have supported the impugned judgments and decrees of the courts below. Learned counsel refuted the assertion of the appellants and submitted that the whole purpose of conferment of such powers under Order 7 Rule 11 CPC is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court. Learned counsel disputed that Khatooni is a title document hence the Revenue Authorities have jurisdiction to see the legality of the purported document under the Sindh Land Revenue Act 1967. He further submitted that there was/is no cause of action even from the plain allegations, against the respondents, therefore the plaint was rightly rejected under Order 7 Rule 11 CPC and prayed for the dismissal of the appeal.

5. I have heard learned counsel for the parties and perused the record and the case law cited at the bar.

6. It appears from the record so made available, that the suit land i.e. 16-22 acres in S. Nos.25/A, 25/B and 17/B Deh Palijani was alleged to have been originally allotted to predecessor in interest of appellant Azhar Ilyas and his sibling i.e. private respondents 12 to 20, said allotment was confirmed by Assistant Rehabilitation Mukhtiarkar on 30.9.1970 through confirmation certificate and the then Assistant Settlement Commissioner, Hala Sub-Division passed order dated 30.9.1970 for making necessary entries in the record of rights, subsequently Mukhtiarkar Hala entered the names of appellants and defendants/respondents No.12 to 20 in Dakhil Kharij Register No. 19016 at page No.86 vide entry No.84, which was confirmed by the then Mukhtiarkar on 20.2.1975 and since the date of Khatooni i.e. 26.9.1970 predecessor in interest of appellants and his sibling i.e. respondents 12 to 20 were in physical possession and they cultivated

the suit land through their Haries up till 1981; however, in the year 1982, defendant/respondent No.7 in collusion with Haries of plaintiffs/appellants and of defendants/respondents 12 to 20, took over possession of suit land simultaneously manipulated the record by showing that the suit land was allotted to him in the year 1982, later on defendant/respondent No.7 passed away and his legal heirs were brought on record on 29.6.1994 who thereafter sold out the suit land to defendants/respondents 8 to 11 as such mutation entry to that effect was taken into effect; that plaintiffs/appellants were approaching the concerned department of defendants/respondents 1 to 6 since 1982, but response was given in 2001 when defendant / respondent No.3 Assistant Commissioner Matiari called report from defendant / respondent No.2 Mukhtiarkar Matiari which was submitted on 23.10.2001 indicating therein that fraud was committed by removing the original leaves from the register of record of rights and inserting other page but the Revenue forums dismissed the appeals and again on 23.6.2004 Commissioner Hyderabad Division dismissed the appeal, which was challenged by filing appeal before Board of Revenue Sindh who too dismissed the same vide order dated 07.4.2010, thereafter the appellants/plaintiffs filed F.C. Suit No.36/2016 for declaration, possession, mesne profit and injunction, plaint of which was rejected vide order dated 04.5.2017, thereafter the appellants filed Civil Appeal No.53 of 2017 against the order dated 04.5.2017, which too was dismissed vide order dated 12.5.2018. Now the Appellants have assailed the orders of the two Courts below through the present second appeal.

7. Learned counsel for the appellants inter alia submitted that the judgment and decree of both the courts below are entirely based upon misreading and non-reading of material available on record as there was sufficient material to hold that the revenue record tampered, as admitted by Mukhtiarkar before this court by producing the original record, to dislodge the appellant from the suit land, which required evidence; that the suit filed by appellants was not time-barred.

8. Perusal of the record shows that entry No.84 dated 22.02.1975 of DK Book No.19016 in favor of Akhtar Ilyas and others was pasted with gum in the original book of record of rights viz. DK Book No.19016 in favor of appellants in place of original entry which could not be ascertained that in whose names the mutation was maintained, being misplaced whereas all the mutation entries of VF-VII (old) and Dakhil

Kharij Book are required to be produced in rewriting register viz. VF-VII(A) prepared in the year 1985-86 duly scanned in the year 1993 but such mutation in favor of appellants has not been rewritten in rewriting register VF-VII(A) (1985-86). The Mukhtiarkar has submitted a report dated 26.09.2022 with a reason due to the non-availability of the original entry of which the source is unknown.

9. Coming to the core issue of rejection of the plaint under Order 7 Rule 11 CPC, clause A deals with the disclosure of the cause of action. The idea undermined in the said provision is that when no cause of action is disclosed in the plaint, the Court will not unnecessarily protract and the party should not be unnecessarily harassed in the suit. To invoke the power, the Court has to read the plaint whether it discloses the cause of action and if it does, then the plaint cannot be rejected by the Court by exercising power under Order 7 Rule 11 CPC.

10. It is a trite law that the cause of action is a bundle of facts and whether the plaint discloses a cause of action is a question of fact that has to be gathered based on the averments made in the plaint in its entirety by taking those averments to be correct. So long as the plaint discloses some cause of action that requires a determination by the Court, the mere opinion that possession was not with the appellants and they failed to approach in time or the appellant /plaintiff may not succeed, cannot be a ground for rejection of the plaint.

11. Primarily a Plaint should not be rejected under Order 7 Rule 11 of the Civil Procedure Code at the initial stage without proper inquiry. At the same time, a Court of Law has enough powers to see that vexatious litigation are not allowed to consume the time of the Court. However, a Plaint should be rejected as per Order 7 Rule 11 of the Civil Procedure Code where it does not disclose a cause of action and not where there is a cause of action.

12. A cause of action means every fact, which if traversed, would be necessary for the plaintiff to prove to support his right to a judgment of the court. In other words, it is a bundle of facts that are taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to

enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defense which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff, thus a Plaint would be read as a whole and the merits of the case are not to be considered at this stage.

13. From the submissions made by both sides, this Court is of the considered opinion that the allegations made in the plaint cannot be gone into at the threshold as it is a matter to be tried in the suit. Even if the cause of action pleaded is a false or deliberate falsehood, the same cannot be gone into an application under Order 7 Rule 11 CPC.

14. In view of the above, all this further leads me to draw the inference that the page number was not part of the same register but has been subsequently inserted and the reasons could only be ascertained after recording the evidence of Mukhtiarkar Matiarl though there is no cavil with the proposition that a mutation is always sanctioned through summary proceedings and to keep the record updated and for collection of revenue, such entries are made in the relevant Register under Section 42 of Land Revenue Act, 1967. It has no presumption of correctness before its incorporation in the record of rights. It is also settled law that entries in mutation are admissible in evidence but the same is required to be proved independently by the persons relying upon it through affirmative evidence. An oral transaction reflected therein does not necessarily establish title in favor of the beneficiary. A mutation cannot by itself be considered a document of title and may have been attested as an acknowledgment of past transactions. As far as the question of limitation is concerned, learned counsel for the respondent contends that the suit was barred by time having been filed 20 years after the mutation was sanctioned.

15. I find this argument to be devoid of substance. Since the Appellant has to substantiate his case through evidence thus the courts below drew the wrong conclusions by non-suiting the appellants on the purported pleas for the simple reason that the appellants prayed for a declaration that the mutation in question was illegal and had fraudulently been entered in the revenue record. Each entry in the revenue record gives a fresh cause of action to an aggrieved person and adverse entries in the revenue record even if allowed to remain unchallenged do not have the effect of extinguishing the rights of a

party against whom such entries had been made. Even otherwise, cancellation of disputed mutation is not a title document. In addition, any transaction/ document which is the result of fraud or misrepresentation can neither be perpetuated nor can it be protected on the ground of expiry of the period of limitation, whenever such transaction is assailed in a Court of law.

16. Furthermore, there are more than one prayer as mentioned in the plaint, it is settled now that partial rejection is not permissible under the law. Further, if with regard to any one prayer the jurisdiction of the civil court is barred and with regard to other prayers it is not, the plaint cannot be rejected. In the instant matter when there are other prayers also the rejection of plaint was not justified by the civil court, therefore, all two fora below fell in error while rejecting the plaint.

17. Further, fraud and misrepresentation were specifically alleged, accepting the arguments of learned counsel for the appellant would be unjust and constitute a gross miscarriage of justice. Therefore, this matter is remitted to the trial court to examine Mukhtiarkar concerned and any other witness and after recording evidence the decision shall be made under the law, within one month.

18. This appeal is allowed in the above terms by setting aside both the orders of the courts below.

JUDGE