

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

**Ind. Civil Appeal No. S – 02 of 2023**

*(Wafa Ali vs. Ali Sher and others)*

Date of hearing : **16.09.2024**

Date of decision : **16.09.2024**

Mr. Tarique Hussain Rajper, Advocate for the Appellant  
Mr. Ghulam Abbas Kuber, Assistant Advocate General Sindh

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

**Zulfiqar Ahmad Khan, J.** – Despite publication none has effected appearance on behalf of the private respondents. Counsel for the appellant submits that the Appellant filed a Suit for declaration, cancellation, possession and permanent injunction (F.C Suit No.98/2019), plaint whereof was rejected on an application moved by the respondents/defendants under Order VII Rule 11 CPC, stating that the plaintiff has come with unclean hands and he has no cause of action as well as on the point of limitation. Against which order, he preferred an Appeal which also met the same fate vide judgment dated 08.11.2021.

2. Learned counsel for the appellant/plaintiff submits that no plausible explanations is made and whatsoever evidence was available had to be seen by the Court after framing of issues, and to let the parties lead their evidence, therefore, mere rejection of plaint under Order VII Rule 11 CPC was not warranted by law nor the appellant was fairly treated.

3. Learned AAG Sindh submits that the Honourable Supreme Court has desired that matters to be decided on merits rather than on technicalities and Order VII Rule 11 CPC to be sparingly used in Civil Suits having contentious matters.

4. In the circumstances at hand, when none has appeared on behalf of the private respondents, this Appeal is allowed and the impugned order/judgment passed by trial Court as well as appellate court are set-aside and matter is sent forth to the trial Court to de novo hear the parties, frame the issues, if so as to the maintainability of the Suit even, and after having parties to adduce their evidence pass speaking judgment preferably within four months. Let a copy of this judgment be sent to the trial Court for compliance.

Judge

ARBROHI