

IN THE HIGH COURT OF SINDH AT KARACHI

HCA No. 429 of 2022

[Muhammad Sufyanv..... Muhammad Sabreen & others]

Present: **Mr. Justice Yousuf Ali Sayeed**
Mr. Justice Arbab Ali Hakro

Appellant through : Mr. Yousuf Moulvi & Ms. Riffat Murtaza,
Advocates.

Respondents through : Mr. Muhammad Aslam, Advocate for
Respondent No.1.
Mr. Abdul Razzak and Mr. Aqib Hussain,
Advocates for the Respondent No.2.

Dates of Hearing : 09.09.2024 & 30.09.2024

Date of Decision : 11.10.2024

J U D G M E N T

ARBAB ALI HAKRO, J:- Through this High Court Appeal, the appellant has assailed the Order dated 29.11.2022 ("**impugned order**"), rendered by a learned Single Judge of this Court in Suit No. 1428 of 2011, whereby C.M.A. No. 6051/2019 (under Order VII Rule 11 C.P.C.) was dismissed.

2. Succinctly stated, the salient features of the controversy are that the appellant and respondents are the progeny of the deceased Muhammad Din, who departed this mortal coil on 12.08.1985, leaving behind properties, the particulars of which are delineated in Para-2 of the memorandum of appeal in hand. For the administration of the said properties, the appellant instituted Civil Suit No. 646/1988 ("**earlier suit**"), arraying the respondents as parties. The said *lis* was disposed of under the prescriptions of Order XXIII Rules 1 & 2 CPC, and a compromise decree was also drawn on 13.02.1989. Pursuant to the said compromise, the properties left by the deceased were to be shared equally between the appellant and the respondents, the particulars of which have been described in Para-6 of the memorandum of appeal. It is averred by the appellant that respondent No. 1, after more than two decades, instituted Civil Suit No. 1428/2011 for the administration of the property bearing No. 5-D-11-14, Nazimabad, Karachi ("**subject property**") as well as the distribution of PKR 2,19,379/-. As time elapsed, a preliminary decree was passed by the learned Single Judge in the later suit vide Order dated 06.03.2018. The appellant herein preferred CMA No. 6051/2019 under the provisions of Order VII Rule 11 CPC on the ground that the principle of resjudicata bars the later suit. The learned Single Judge dismissed this CMA through the impugned Order; hence, the impugned Order is under scrutiny in this High Court Appeal.

3. Mr. Yousuf Moulvi, Advocate, premised his case on the contention that the impugned Order is untenable on the ground that the *lis* between the same parties on the same subject matter had been adjudicated through a consent decree in an antecedent suit. The subsequent suit instituted by respondent No.1 against the appellant on the identical subject matter is precluded under the prescriptions of Order VII Rule 11 CPC, which was not duly considered by the learned Single Judge, thereby rendering the impugned Order. He further contended that respondents No. 1 and 2 have been remunerated their lawful shares and that the appellant is in actual possession of the subject property as his share in the inheritance. Moreover, the consent decree had not been impugned by respondent No.1. Yet, recourse to an independent suit on the identical subject matter and between the same parties is interdicted under the provisions of Order VII Rule 11 CPC. Nevertheless, the learned Single Judge failed to consider the legal and factual issues duly and rendered the impugned Order, which ought not to be sustained in the eyes of the law. He placed reliance on the case laws reported as **2021 CLC 877, 2018 YLR 33, 2020 PLD Peshawar 79 and 2004 YLR 1180.**

4. Learned counsel for the respondents refuted the arguments advanced on behalf of the appellant and contended that the subsequent suit was instituted as the estate of the deceased father remains in contention and all estates have not been apportioned among the parties to the *lis* as stipulated in the compromise decree. Consequently, the learned Single Judge did not err in holding that the plaint cannot be rejected and, if rejected, would cause substantial prejudice to those legal heirs who have not yet received their shares in accordance with Sharia. In concluding their submissions, learned counsel asserted that a preliminary decree had been rendered in the suit and that Nazir proceeded with the matter. Therefore, it would be judicious for the suit to reach its conclusion in accordance with the law and allow the suit to subsist; hence, the instant HCA should be dismissed. He placed reliance on the precedents reported as **2009 SCMR 1268, 2020 MLD 1328, 2015 YLR 89 and 2022 SCMR 1121.**

5. We have heard the respective learned counsel at length and have meticulously reviewed the documentation and authority to which our attention was solicited. It is deemed illustrative to commence this deliberation by referring to the crux of the impugned Order rendered in the suit, which is reproduced hereunder:

“I have perused the above Order in which all aspects were considered, inter alia, by observing that since the properties are still in the name of deceased father, therefore, it justifies passing of a preliminary decree in this suit. Secondly, this Order has not been appealed against, rather acted upon, as learned Nazir is conducting the proceeding.

In view of the above, since this fact is un-rebutted that all the properties have not been transferred as agreed in the earlier compromise decree and the learned Nazir has initiated proceedings, therefore, at this stage plaint cannot be rejected

because it will seriously prejudice the inheritance of those legal heirs, who have still not got their shares in accordance with the Sharia. Consequently, this application is dismissed.”

6. At the very outset, the suit remains sub judice as of date. Therefore, we shall circumscribe our deliberations to the specific issue before us, which is the findings concerning the Order VII Rule 11 CPC application, and we proffer no observations upon the merits that may impinge upon the proceedings in the suit.

7. The pleadings of the present appeal circumscribe the ambit of this determination as to whether the findings rendered in the impugned Order concerning the Order VII Rule 11 CPC application are tenable. All the learned counsel sought to argue the present appeal at this stage with the assistance of the record and proceedings of the suit. Consequently, the appeal was heard at length to adjudicate the following point for determination, framed in pursuance of Order XLI Rule 31 CPC: -

Whether the determinations of the learned Single Judge in the impugned Order, pertaining to the Order VII Rule 11 C.P.C. application, are tenable?

8. It is a matter of record that Suit No. 646/1988, pertaining to the same suit/subject property, was instituted, culminating in a compromise, and a compromise decree dated 13.02.1989 was promulgated. However, the terms of the said decree have not yet been adhered to. It is well established that a compromise decree constitutes a contractual agreement between the parties, and its breach engenders a cause of action for the aggrieved party to seek judicial redress. In instances where a consent compromise decree is promulgated, the recourse available to the aggrieved party is to institute a fresh suit. Jurisprudential guidance can be derived from the precedents set in the cases of Ramchandra Dec Garu¹ and Chandoo², wherein it was adjudicated that the sole recourse for an aggrieved party is either to file a review or to initiate a fresh suit. In the present matter, the antecedent suit was resolved through a compromise, and a compromise decree was issued on 13.02.1989. However, the decree remains unexecuted, and the appellant has contravened its terms. Consequently, the non-compliance with the decree provides a novel cause of action, warranting the institution of a fresh suit, as has been effectuated in the instant case. Moreover, in the instant suit, an application under Order XX Rule 13 C.P.C. was moved by Respondent No.2 Muhammad Irfan, which was allowed vide an order dated 06.03.2018. Consequently, a preliminary decree was passed, and the Nazir complied with the matter. The appellant has not impugned the aforementioned Order and the preliminary decree; hence, it has attained finality.

¹ Ramchandra Dec Garu v. Chaitana Sahu and others (AIR 1920 PC 139)

² Chandoo v. Murlidhar and others (AIR 1926 Oudh 311)

9. Section 11 C.P.C is not stringently applicable to a compromise decree, as its purview is confined to matters that have been conclusively adjudicated by the Court. The doctrine of resjudicata, enshrined in Section 11, predicates that no court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties and has been heard and finally decided by such Court. However, a compromise decree, being passed on the basis of mutual consent of the parties, does not entail a judicial determination on merits. It is essentially a contract with the imprimatur of the Court and, thus, lacks the element of judicial adjudication that is quintessential for the invocation of Section 11. Consequently, the principles of resjudicata encapsulated in Section 11 C.P.C do not extend to compromise decrees, as they do not embody a final adjudication by the Court on the substantive issues in dispute.

10. The arguments propounded before us by the learned counsel for the appellant have been ineffectual in dislodging the cogent and well-reasoned conclusion reached by the learned Single Judge in the impugned Order. The meticulous analysis and judicious application of legal principles by the learned Single Judge in adjudicating the matter have withstood the scrutiny of this appellate forum. The appellant's contentions, bereft of substantive merit, failed to demonstrate any palpable error or misapprehension in the impugned Order that would warrant its reversal.

11. For the foregoing reasons, prima facie, we do not discern any error or illegality in the impugned Order. Therefore, the instant appeal is **dismissed** along with pending miscellaneous applications.

JUDGE

JUDGE