

**IN THE HIGH COURT OF SINDH CIRCUITCOURT LARKANA**

Civil Revision Application No. S-39 of 2021

Applicant : Bakhat Ali s/o Zawar Ahmed Ali Abro  
Through Mr. Ajmair Ali Bhutto, Advocate

Respondents No.1 to 3 : Saleem Ahmed and 02 others  
Through Mr. Atta Hussain A. Chandio, Advocate

Respondents No.4 to 6 : Through Mr. Abdul Waris Bhutto, Asst. A.G.

Dates of hearing : **29.10.2024 and 30.10.2024**

Date of Decision : **08.11.2024**

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

**ARBAB ALI HAKRO, J.-** Through this Revision Application under Section 115 of the Civil Procedure Code, 1908 ("**C.P.C**"), the applicant impugns the Judgment 01.4.2021, passed by learned III-Additional District Judge (MCAC), Larkana ("**Appellate Court**"), whereby the applicant's appeal was dismissed, thus affirming the Order and Decree dated 07.12.2021, rendered in F.C Suit No.66/2020 by learned I-Senior Civil Judge, Larkana ("**Trial Court**"), which had rejected the plaint under Order VII, Rule 11 C.P.C.

2. Upon scrutiny of the factual matrix, it is evident that the applicant asserts his position as Mutawalli of Markazi Imam Bargah "Barhan Imam wa Chaudah Masoomeen (AS)" located on Empire Road, Larkana, covering C.S. No.12 and measuring 391-07 Sq. Yds. in Ward-A ("**suit property**"). The applicant claims that this property was initially granted to Muhammad Pariyal and Muhammad Khamiso *alias* Molana Muhammad Khamiso, both sons of Chhuto Khan, for Muharram purposes, establishing their roles as Mutawallis and ancestors of the applicant. Muhammad Pariyal died without marriage, while Muhammad Khamiso left behind a son, Muhammad Bux, who had two children: Rasool Bux and Mst. Mariyam. Rasool Bux, father of Ahmed Ali, who is the father of the applicant. The applicant stated that his father, Ahmed Ali, was appointed Mutawalli and subsequently constructed the Imam Bargah on the suit property, duly registered under the Societies Act XXI of 1860. Additionally, Ahmed Ali constructed six shops on the suit property, three of which were

rented out to Respondent No.1 and one to Respondent No.2, both of whom paid rent to Ahmed Ali. Upon Ahmed Ali's demise on 16.01.2017, the applicant was appointed Mutawalli of the Imam Bargah in a meeting of Anjuman. He now supervises and manages all religious programs, including Majlis and Azadari, obtaining the necessary permissions from the concerned authorities. The applicant further alleges that following his father's death, Respondents No.1 and 2 refused to pay the rent for the shops. Despite serving legal notices, the Respondents failed to remit the rent and instead issued threats. In their reply to the legal notice, the respondents claimed that the shops were owned by Ghulam Ali and formed part of the property of "Hussaine Wa Hussaini Workers Larkana," to whom they regularly paid rent. Subsequently, Respondent No.5 called the applicant and his brothers, with Respondents No.1 to 3 also present, during which the applicant was subjected to coercion and threats, deterring him from interfering with Respondents No.1 and 2's possession. Respondent No.3 asserted that the shops were the property of "Hussaini Wa Hussaini Workers Larkana," with himself as Mutawalli and that the property was mutated in his name. The applicant, however, maintains that the Imam Bargah and shops never belonged to the "Hussaini Wa Hussaini Workers Larkana" and that the documents were manipulated by Respondent No.3. Hence, the applicant has instituted a suit seeking the following reliefs: -

- a) *This Honourable Court be pleased to declare that the plaintiff is legal and lawful "Mutawali" of Imam Bargah Barhan Imam wa Chaudah Masoomeen (AS) and further be pleased to declare that the Hussaini Wa Hussaini Workers Larkana or the defendant No.3 has no concern with the Imam Bargah Barhan Imam wa Chaudah Masoomeen (AS) as well as shops in questions because the Imam Bargah Hussaini was Hussaini workers Larkana is situated at Jafferi Street Near Machi Market, Larkana which is also known as jafferia Imam Bargah.*
- b) *This Honourable Court be pleased to direct the defendants N: 1 and 2 to handover/restore the possession of suit shops to the plaintiff, and in case of failure, the Nazir of this Honourable Court may appointed for this purpose.*
- c) *This Honourable Court be pleased to restrain the defendant No. 1 from construction of the three shops involved in the suit and further be pleased to restrain the defendant No.2 from selling out the shop rented out him to anyone else and also restrain the defendants No.1*

*and 2 from handing over the possession of the said shops to anyone else till final disposal of instant suit.*

*d) This Honourable Court be pleased to award mesne profits to the plaintiff for the illegal and unlawful use of suit shops by defendant No.1 since the year of 2017, at the rate of Rs.43,200/- per annum and by the defendant No.2, since the year of 2017, at the rate of Rs.60000/- per annum.*

*e) This Honourable Court be pleased to cancel the city survey record in the name of defendant No.3, Mst.Kaneez Kalsoom or her ancestors as the same is false, fabricated and managed by the defendant No.3, in collaboration with officials and carried no weight in the eyes of law.*

*f) Relief.*

*g) Costs.*

3. Upon receipt of the summons, Respondents No.1 to 3 filed an application under Order VII Rule 11 C.P.C, seeking the rejection of the plaint. They contended that the applicant lacked a cause of action and that the suit was barred by Sections 194 and 212 of Muhammadan Law. They argued that the suit filed for the appointment of a Mutawalli of Waqf property could not be maintained under Section 42 of the Specific Relief Act. The applicant contested this application by filing objections.

4. After hearing both learned counsels, the trial Court rejected the plaint vide Order and Decree dated 07.12.2021. Aggrieved by this Order and Decree, the applicant filed an appeal to the appellate Court. However, this was also dismissed vide impugned Judgment dated 01.04.2021. The applicant is now challenging the concurrent findings of the two lower courts through instant revision application.

5. At the outset, the learned counsel for the applicant submits that the certified copy of the Waqf Application was orchestrated by Respondents No.1 to 3, and both lower courts have erroneously relied upon these Orders in rejecting the plaint. He further contends that District Judge Larkana conducted an inquiry regarding the Order on the Waqf Application and subsequently ordered the registration of an FIR. Additionally, he argues that the issue of jurisdiction should have been formally framed and not summarily dismissed. Learned counsel maintains that the trial court improperly adjudicated the factual

controversy while rejecting the plaint and unlawfully relied on the reports of the Revenue authorities. He argues that upon the demise of the applicant's father, the cause of action arose, enabling the applicant to file the suit, which is maintainable. He further asserts that Section 92 of the Code of Civil Procedure is inapplicable as the suit property/Imam Bargah was encompassed within the Waqf Application. Lastly, the learned counsel for the applicant prays that the instant revision application be allowed and the impugned Judgment, Order, and Decree passed by both lower courts be set aside. In support of his contentions, he relies on the case laws reported as **2024 YLR 2366, 2024 YLR 2342, 2020 CLC 454, 2020 MLD 1741, 2020 PLD Sindh 507, 2021 CLC 1102, 2016 CLC 1858, 2021 YLR 315, 2016 CLC Note 29, and 2015 CLC 1423.**

6. Conversely, the learned counsel for Respondents No.1 to 3 contended that the trial court had rightly rejected the plaint. This decision was duly upheld by the learned appellate Court, with no material irregularity or illegality committed by either of the courts below. He further argued that Molana Muhammad Khamiso was not the brother of Muhammad Pariyal, as alleged by the applicant, and that the applicant is not a sibling of Muhammad Pariyal and Muhammad Bux. He also asserted that the applicant managed and forged the City Survey Extract, as the original record does not reflect the name of Ahmed Ali. Learned counsel placed reliance on the cases reported as **1998 SCMR 824, 2000 CLC 1633, 2015 CLC 34, 2022 CLC 830, 2018 CLC 849, 2019 CLC 1291, 2020 CLC 1021, and 2015 CLC 530.**

7. The learned Assistant Advocate General (A.A.G.), in advocating for the impugned Judgment, Order, and decree rendered by both lower courts, has fully adopted and endorsed the arguments presented by learned counsel for Respondents No.1 to 3.

8. The contentions have been meticulously scrutinized, and the accessible records have been assiduously evaluated. To ascertain whether an adequate and exhaustive dispensation of justice was accomplished, it is imperative to scrutinize the concurrent findings articulated by both the courts below.

9. Upon scrupulous examination of the case record, it is manifestly apparent that the applicant has filed the suit in his personal capacity for his individual right and a declaration, Possession and Permanent injunction being "Mutawalli". There isn't any mention of an existing trust for public purposes of a charitable or religious nature. Nor is there any indication of a breach of trust or

any request for the Court to provide direction for its administration. The pre-condition for filing the suit under Section 92 C.P.C is that it must be in a representative capacity on behalf of the public and not for the interest of the person of any individual; as such, it is not barred under Section 92 C.P.C.<sup>1</sup>

10. The primary controversies between the applicant and Respondents No.1 to 3 revolve around the true status of the Mutawalli and the ownership and control of the suit property/shops. The applicant claims that his father, Ahmed Ali, was the Mutawalli of the Markazi Imam Bargah and that he was appointed as the new Mutawalli upon his father's death. He asserts that the property has been in his family for generations and that the respondents refuse to pay rent for the shops built on the property, instead threatening him and claiming the property belongs to "Hussaini Wa Hussaini Workers Larkana." Respondents No.1 to 3, on the other hand, claim that they have always paid rent to Ghulam Ali, who they recognize as the Mutawalli, and present different documents to support their claim. They also assert that the applicant manipulated the property's records to assert ownership and control falsely. These controversies require a thorough examination of evidence to determine the documents' authenticity and actual historical usage and management of the property. In this context, it is imperative to provide both parties the opportunity to produce evidence in support of their respective claims. In the case of *Mir Sahib Jan*<sup>2</sup>, the Supreme Court of Pakistan emphasized that factual disputes should be resolved by adequately examining evidence after framing the necessary issues. This is particularly relevant when considering applications under Order VII Rule 11 C.P.C, where the Court must treat the allegations in the plaint as true and assess the documents appended to it. By thoroughly considering these elements, the Court can judiciously determine whether the plaint discloses a cause of action or if it is liable to be rejected. Thus, allowing the parties to present their evidence not only upholds the principles of natural justice but also aligns with the judicial duty to fairly adjudicate matters based on a comprehensive evaluation of facts and evidence.

11. The trial Court has observed that the City Survey Record produced by the applicant showed Ahmed Ali as the Mutawalli; however, Respondent No.4 (City Surveyor), in his written statement, submitted the original Ruled Card of the suit property, revealing that Ahmed Ali was never recorded as the Mutawalli. The trial Court concluded that the applicant had filed a forged City

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<sup>1</sup>Miskin vs Additional District Judge, Mansehra (2003 S C M R 121)

<sup>2</sup>Mir Sahib Jan vs. Janan (2011 SCMR 27)

Survey record, fabricating Ahmed Ali's name as Mutawalli. Relying solely on these findings to determine the genuineness of the document would be hazardous within the Court's limited jurisdiction. It is essential to note that the provisions of Order VII Rule 11 C.P.C are not applicable in cases involving contentious questions of law or fact. The apex Court upheld this principle in the case of *Saleem Malik*<sup>3</sup>. The Supreme Court of Pakistan has observed that in scenarios with controversial factual or legal questions, the appropriate course is to frame issues and decide them on their merits based on evidence presented in accordance with the law. Rejection of a plaint on technical grounds would unjustly deprive an individual of the opportunity to seek legal remedies for wrongs against their legitimate rights. Consequently, while legal objections may be considered in light of the written statement, the entire pleadings cannot be the basis for rejecting a plaint under Order VII Rule 11 C.P.C.

12. There is no contention with the principle that, when adjudicating an application under Order VII Rule 11 C.P.C., the Court is obligated to scrutinize the contents of the plaint and its accompanying documents. Subsequent to this examination, the Court must exercise its judicial prudence to determine the disposition of the application. Under no condition can the Court extend beyond the parameters of the pertinent provision and its stipulated prerequisites, as doing so would culminate in a miscarriage of justice, which contravenes the fundamental intent and purpose of the law. In this specific case, both the lower Courts exceeded their jurisdiction in an unprecedented and impermissible manner. Given that the matter before the Court encompassed a purely factual controversy that did not align with the criteria for rejection of the plaint, it is unequivocally evident that both the Courts below erred and misdirected themselves both legally and factually. The impugned Judgment, Order and decree lack the requisite robustness to be sustained and warrant intervention.

13. In light of the foregoing reasons, the impugned Judgment, Order, and decree passed by both lower courts are hereby set aside. The matter is remanded to the trial court to adjudicate the dispute on its merits, ensuring that the parties can present their evidence and contest their claims comprehensively. Accordingly, the revision application is **allowed** as per the above terms.

JUDGE

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<sup>3</sup>Saleem Malik v. Pakistan Cricket Board and others" (PLD 2008 Supreme Court 650)