Judgment Sheet

IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Civil Revision Application No.S-48 of 2012

Applicants	:	Gahi @ Gada Hussain (deceased) through LRs and 04 others through Mr.Ghulam Dastagir A. Shahani, Advocate
Respondents No.1 to 3	:	Shaman and 02 others through Mr. Inayatullah G. Morio, Advocate
Respondents No.1 to 3 As well as L.Rs of Respondent No.2:		Shaman and others Through Mr.Inayatullah G. Morio, Advocate
Respondents No.1-A to 2-F:		Through Mr.Habibullah G. Ghouri, Advocate
		Nemo for Respondents No.4 to 6
Respondents No.7 to 9	:	Through Mr.Abdul Waris Bhutto, A.A.G
Date of hearings	:	**06.11.2024 & 14.11.2024**
Date of Decision :	:	**13.12.2024**

J U D G M E N T

ARBAB ALI HAKRO, J: Through the above captioned Revision Application under Section 115 C.P.C, the applicants have called into question the Judgment dated 14.4.2012 and Decree dated 18.4.2012, passed by the Court of II-Additional District Judge, Larkana (**"the appellate Court"**) whereby, *Civil Appeal* [1], preferred by the applicants, was dismissed; consequently, the Orders dated 30.11.2010 passed in a *Suit* [2] by II-Senior Civil Judge Larkana (" **the trial Court")** allowing the application under Section 12 (2) C.P.C and rejecting the plaint under Order VII R 11 C.P.C were maintained.

2. The essential facts leading to the captioned Civil Revision Application are that the applicants/plaintiffs filed a suit for Declaration and Permanent Injunction against the respondents concerning *agricultural land* [3], referred to as the "**suit land**", which was owned by their father, Muhammad, who passed away about 50 years ago. The plaintiffs, being his legal heirs, inherited the suit land, and the record of rights was mutated in their names,

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[1] Civil Appeal No.04/2011 (Re-Gahi @ Gada Hussain and others vs Shaman and others)

[2] F.C Suit No.60/1995 (Re-Gahi @ Gada Hussain and others vs. Shaman and others)

[3] Bearing Survey Nos.378, 274, 365, 376, 452, 231, 236, 237, 250, 276, 277, 278, 279, 280, 289, 359, 426, 396, 379, 402, 267, 269, 292/2, 299, 334/1, 342, 344, 346, 355, 361/4, 378/1 situated in Deh Langh Taluka Larkana, while two Survey Nos.303 and 964 situated in Jamrani Taluka and District Larkana

with them in exclusive possession of it. They claimed that approximately one year before filing the suit, respondents No. 1 to 3 came to the suit land, claimed ownership, and threatened to dispossess the plaintiffs. Consequently, the plaintiffs filed the suit. The respondents No. 1 to 3 contested the suit by filing a written statement. Subsequently, the suit was resolved through a compromise between the applicants and respondents No. 1 to 3, resulting in a compromise decree dated 09.12.2002, passed by the trial court. When the concerned Mukhtiarkar refused to mutate the record of rights according to the compromise decree, the applicants filed a Constitutional Petition[4] before this Court, which was disposed of by a Judgment dated 24.5.2006, with an observation that the Petitioners/ applicants could pursue a remedy through the civil Court. Therefore, the applicants filed an execution application. During the pendency of this application, Mst. Dhayani (mother of Respondents No. 1 to 3), through an attorney, filed an application under Section 12(2) C.P.C. before the trial court. However, during the pendency of this application, Mst. Dhayani passed away, leading the trial court to dismiss the application without addressing its merits through an Order dated 16.8.2010. The legal representatives of Mst. Dhayani (Respondents No. 1 to 3) subsequently filed an application under Order XLVII Rule 1 read with Sections 114 and 151 C.P.C., which the trial court allowed on 03.11.2010, thereby restoring the application under Section 12(2) C.P.C. to its original position. Thereafter, the trial court, after hearing the parties, allowed the application under Section 12(2) C.P.C. through an Order dated 30.11.2010, setting aside the compromise decree dated 09.12.2002 and observing that the suit should be decided on its merits. Simultaneously, on the same date, the trial court, suo moto, rejected the suit's plaint, deeming it barred under the principle of Res Judicata.

5. At the very outset, learned counsel for the applicants contended that both lower courts failed to consider that Suit No. 02 of 1951, filed by the applicants' ancestors, was not adjudicated on its merits but was disposed of via compromise; thus, the principle of Res Judicata does not apply. He further contended that the trial court's observation that the applicants and Respondents No. 1 to 3 are not the owners of the suit land is contrary to the facts, given the Decree passed in 1952, which remains unchallenged and unaltered. He also contended that it is undisputed that Respondents No. 1 to 3 consented to the compromise decree passed on 09.12.2002. Following the death of Mst. Dhayani, Respondents No. 1 to 3 became her

[4] C.P No.D-140/2026 (Re- Gahi @ Gada Hussain and others vs. Shaman and others)

legal heirs; hence, the application under Section 12(2) C.P.C. was filed with mala fide intentions. He further contended that the trial court, on its own accord, suo motu, rejected the plaint of the suit without hearing the applicants on the same day it allowed the application under Section 12(2) C.P.C., which is contrary to law. Lastly, he prayed that the judgments and orders of the lower courts be set aside and the Revision Application be allowed. In support of his contentions, he relied upon case law reported as **1991 CLC 1405, 1968 SCMR 145, 1993 SCMR 618 (f), 2010 SCMR 973, 1994 SCMR 826, 2009 CLC 659 (c), 1993 CLC 2478, AIR (33) 1946 Oudh 33, AIR (34) 1947 Patna 125, 1985 CLC 671 (a+c) 2883, PLD 1987 Karachi 676 (b+d), 1987 CLC 2179, PLD 1974 Karachi 375, 2007 SCMR 945, 2003 SCMR 1284, 1987 CLC 1214, PLD 2000 Quetta 61, PLD 1964 (W.P) Lahore 15 (a), PLD 1978 SC AJ&K 135 (a+c), and PLD 2001 SC 340 (G).**

6. Conversely, learned counsel representing the respondent argued that the suit is time-barred and hits the doctrine of constructive Res Judicata. The issue in the present suit has finally been decided in previous suits. He contends that the plaintiff has no cause of action to file the present suit on the issue, which has already been finalised. He concluded that neither of the courts below had committed illegality while passing the impugned orders. Therefore, Revision Applications may be dismissed.

7. The contentions have been fastidiously scrutinised, and the accessible record has been carefully assessed.

8. To ascertain whether an adequate and comprehensive dispensation of justice was achieved, it is imperative to analyse the findings concurrently documented by the Courts below.

9. In the case under consideration, a meticulous examination of the impugned order dated 30.11.2010, passed by the trial court, reveals that the Court, upon granting an application under Section 12(2) C.P.C., concurrently on the same date, rejected the plaint, adjudicating that the plaintiffs' suit was precluded by the doctrine of Res Judicata. A thorough review of the case records discloses that prior to the rejection of the plaint, the plaintiffs were not afforded any notice by the Court to address the issues concerning the maintainability of their suit.

10. It is incontrovertible that the Court possesses the authority to reject the plaint suo motu, even without a formal application by the defendant, when it arrives at the determination that the plaint lacks a cause of action. This exercise of judicial discretion aligns with established legal principles,

mandating that untenable suits should be expunged at their inception, allowing the plaintiff to reassess their position. The Court retains the prerogative to reject the plaint at any procedural stage, whether prior to or subsequent to the issuance of summons to the defendants. Furthermore, appellate or revision courts are similarly empowered to reject the plaint during appellate or revision proceedings. Thus, the law does not prescribe any temporal or procedural constraints on the rejection of the plaint. Primarily, the onus is on the Court to scrutinise the plaint at the earliest opportunity to assess its maintainability. If the Court concludes that the suit is not maintainable, it may summarily reject the plaint without necessitating a hearing for the plaintiff. However, once the court issues summons to the defendants, indicating the initiation of trial proceedings, the plaint cannot be summarily rejected without providing the plaintiff an opportunity for a hearing. According to the legal framework, while rejecting the plaint, the Court must examine only the averments made in the plaint, the documents annexed thereto and admitted facts. It is imperative for the Court to meticulously scrutinise the plaint to ascertain its maintainability in accordance with Order VII Rule 11 C.P.C. before issuing summons to the defendants.

11. While it is not a statutory requirement for the defendant to file an application under this rule, the Court's autonomous action to reject the plaint does not imply that the plaintiff can be non-suited without due notification of the impending adverse action. In circumstances where an interlocutory application is under consideration, and the Court decides to reject the plaint in terms of Order VII, Rule 11, judicial impartiality necessitates that the plaintiff be given a fair opportunity to present their case or rectify any deficiencies in the plaint, rather than being precipitously rejected.

12. Upon a meticulous review of the record, it becomes apparent that the rejection of the plaint in conjunction with the adjudication of an application under Section 12(2) C.P.C. was neither anticipated nor communicated to the plaintiff. The plaintiff was thus deprived of the opportunity to present his submissions or remedy the defects in his suit. This act is in stark contravention to the "Audi alteram partem principle." Evidently, the Court initially examined and admitted the plaint, following which summons were issued to the defendants, who responded by filing their written statements. Furthermore, a compromise decree was subsequently passed between the parties, indicating procedural

advancements that should have precluded summary dismissal without notice to the plaintiff. Such actions by the Court suggest an unwarranted exparte decision-making process incompatible with established judicial norms.

13. The judiciary's paramount objective is the administration of substantive and equitable justice, which necessitates diligent and impartial hearings of disputes. The doctrine against "technical knock-outs" underscores the judiciary's disfavour towards precipitous dismissals that undermine the essence of justice dispensation. Courts are entrusted with the duty to balance the adages "justice hurried is justice buried" and "justice delayed is justice denied," ensuring that neither undue haste nor protracted delays compromise the fair adjudication of disputes.

14. Turning to the rationale upon which the trial court based its rejection of the plaint, it is pertinent to note that the trial court observed that the plaintiffs in the current suit were also parties to an earlier Suit No.02 of 1951, which concluded with a compromise decree. Consequently, the Court held that the principle of Res Judicata barred the plaintiffs from pursuing the present suit. Section 11 C.P.C enunciates that once a court has conclusively adjudicated an issue, it cannot be re-litigated in a subsequent suit. This provision precludes courts from entertaining suits wherein the matters directly and substantially in issue have already been definitively settled in a previous suit. However, merely because an issue was litigated in a former suit does not suffice to invoke the doctrine of Res Judicata; the issue must have been directly and substantially in question in the prior litigation. Res Judicata doctrine applies when the issues in both suits are identical. Hence, even if the cause of action, objectives, and reliefs sought in the two suits are distinct, Res Judicata can still be invoked if the issues are substantially identical. Moreover, a court's decision will operate as Res Judicata only if it addresses the merits of the case. Therefore, if a suit is dismissed for lack of jurisdiction or concludes with a compromise decree, such dismissal or Decree does not invoke Res Judicata.

15. An examination of the previous suit reveals that it sought partition and separate possession of joint property. In contrast, the present suit is for a Declaration and Permanent Injunction, filed by the plaintiffs in response to respondents No. 1 to 3 claiming ownership of the suit land and threatening to dispossess the plaintiffs. Thus, the issues in the two suits, while potentially related, are not identical, which challenges the application of Res Judicata as determined by the trial court. In the case of *Sunderabai*

[5], the Supreme Court addressed whether a decree obtained via compromise in a prior suit could serve as Res Judicata in a subsequent suit. Quoting Sir Dinshaw Mulla's commentary on Section 11 C.P.C, the Supreme Court elucidated in Paragraph No. 12 that:

> *"12. The bar of res judicata however, may not in terms be applicable in the present case, as the Decree passed in Suit No. 291 of 1937 was a decree in terms of the compromise. The terms of Section 11 of the Civil Procedure Code would not be strictly applicable to the same, but the underlying principle of estoppel would still apply. Vide: the commentary of Sir Dinshaw Mulla on Section 11 of the Civil Procedure Code at page 84 of the 11th Edition under the caption 'Consent decree and estoppel':*
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> > *"The present section does not apply in terms to consent decrees; for it cannot be said in the cases of such decrees that the matters in issue between the parties 'have been heard and finally decided' within the meaning of this section. A consent decree, however, has to all intents and purposes the same effect as 'res judicata' as a decree passed 'in invitum'. It raises an estoppel as much as a decree passed 'in invitum."*

15. The trial court's decision certainly appears paradoxical. On the one hand, the Court, through the application of Section 12(2) C.P.C., set aside the compromise decree dated 09.12.2022 and ruled that the suit be adjudicated on its merits, thereby granting the legal heirs of Mst. Dhayani (respondents No.1 to 3) had the opportunity to submit their written statements. On the other hand, the Court rejected the plaintiffs' plaint, which directly contradicts the directive to decide the suit on its merits. This duality in the Court's ruling raises questions about procedural consistency and undermines the principle of judicial clarity. By rejecting the plaint while simultaneously stating that the suit should be decided on merits, the Court has effectively taken conflicting stances, which can be deemed improper and unjust.

16. while upholding the trial court's order, the appellate Court failed to reappraise the above-discussed facts, circumstances, and legal expositions. With the utmost deference, it becomes imperative to elucidate that the impugned orders passed by both the Courts below in this matter exhibit a level of judicial perversity necessitating intervention at this revisional forum. This assertion is not proffered frivolously but compelled by the gravity of the circumstances. The concurrent adjudications that are adverse to the

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[5] Sunderabai w/o Devrao Deshpande and another, Appellants v. Devaji Shankar Deshpande, Respondent (A.I.R 1954 S.C 82 (Vol. 41, C.N. 23)

applicants are not predicated on factual dissonances but on juridical interpretations. This distinction is paramount, emphasising that the crux of the matter does not pertain to disparate factual assessments but rather to a profound divergence in the application and interpretation of legal precepts. This divergence is not inconsequential; it is of such a magnitude that it mandates scrutiny and rectification by the revisional jurisdiction. Thus, notwithstanding the current findings against the applicants, it is incumbent upon this Court to intervene and correct the situation, ensuring the correct application of the law and the dispensation of justice.

23. For the foregoing reasons, the instant Revision Application is **allowed**, the impugned Order and Judgment of the Courts below are hereby set aside, and the case is remanded to the trial Court, with the direction that suits of the applicants/plaintiffs be decided on merits in accordance with law as early as possible, but not later than four months as the parties are in litigation since 1995. No orders as to costs.

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