

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.63 of 2022

[Ghulam Mustafa and others vs. Province of Sindh and others]

Applicants by : Mr. Ghulam Mustafa Burdi Advocate

L.Rs of Respondent No.2 by: Mr. Irfan Khaskheli Advocate

Respondents No.3 & 4 by : Mr. Adeel Baig Advocate

Mr.Muhammad Ismail Bhutto, Addl. A.G

Date of hearing : **27.01.2025**

Date of Decision : **14.02.2025**

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 applicants impugn the Judgment and Decree dated 15.02.2022, passed by the learned appellate Court¹, whereby the applicants' appeal was dismissed, thus affirming the Order dated 01.7.2021, rendered by trial Court², which had rejected the plaint under Order VII Rule 11 C.P.C.

2. The succinct narrative of this civil revision is that the applicants filed a suit for Declaration, Possession, Cancellation of registered Sale Deed, record of rights, and Permanent Injunction concerning an agricultural land measuring 02-23 Acres (suit land) out of a total of 15-03 Acres³. They allege that Respondent No.3 fraudulently transferred the share/suit land of Respondent No.2 through registered Sale Deed No.2190 dated 11.10.1979. It is averred that they first became aware of this fraudulent transaction in 2017. Subsequently, Respondent No.3 sold the suit land to Respondent No.4 through registered Sale Deed No.1625 dated 12.11.2008. Consequently, Applicant No.1, Ghulam Mustafa, through his attorney Applicant No.2, Muhammad Ayoob, filed F.C. Suit No.175/2019 against Respondents No.2 to 4 concerning the same suit land. However, this suit was withdrawn by the applicants on the assurance of Respondents No.3 and 4 that they would redress the applicants' grievance. On 01.03.2020, Respondents No.3 and 4 illegally and forcibly

¹ In Civil Appeal No.48/2021 (Re: Ghulam Mustafa and others vs Province of Sindh and others), Additional District Judge-IV (MCAC), Shaheed Benazirabad

² In F.C Suit No.39/2021 (Re: Ghulam Mustafa and others vs Province of Sindh and others), Senior Civil Judge-III, Shaheed Benazirabad

³ Formed out of Survey Nos.309/1 (1-08), 309/2 (01-05), 309/3 (01-14), 309/4 (01-04), 309/5 (01-22), 309(01-16), 106/1 (02-25), 106/2 (04-29) total measuring 15-03 Acres situated in Deh 7-Dari, Tapo Mari Taluka Sakrand, District Shaheed Benazirabad

dispossessed the applicants from the suit land, prompting the filing of this second suit.

3. Upon presentation of the plaint, the trial court, after hearing the learned counsel for the plaintiffs/applicants and reviewing the contents of the plaint and documents annexed with the plaint, rejected the plaint vide Order dated 01.7.2021. The applicants, aggrieved by this decision, filed an appeal with the appellate Court, which was also dismissed by the judgment and decree dated 15.02.2022. Consequently, the applicants now seek to challenge the concurrent findings of both lower courts through this instant revision application.

4. At the outset, learned counsel representing the applicants submits that the trial Court illegally and erroneously rejected the plaint in limine, which is not warranted under the law. He further contends that while rejecting the plaint, its contents are to be treated as true and correct, and the applicants have categorically pleaded fraud on the part of the respondents; therefore, the law of limitation is not applicable. He further asserts that the applicants challenged the documents on the basis of fraud, and thus, the Limitation Act shall not operate. He also submits that the plaint cannot be summarily rejected as the matter requires evidence to elucidate the question of fraud. Lastly, learned counsel for the applicants prays that the instant revision application be allowed by setting aside the impugned judgment, decree, and Order passed by both lower courts.

5. Conversely, learned advocates representing Respondents No.2 to 4 contended that the trial court had rightly rejected the plaint, a decision maintained by the appellate Court, with no material irregularity or illegality committed by either Court below. They argued that the earlier suit filed by the applicants regarding the same suit land was withdrawn by them without permission to file afresh. They further argued that under Article 91 of the Limitation Act, a suit for cancellation of an instrument must be filed within three years; however, the applicants filed the suit beyond the three-year period; therefore, the trial court rightly rejected the plaint.

6. The learned Additional Advocate General (A.A.G.) contended that the dispute is primarily between private parties, and consequently, no government interest is involved.

7. 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.

8. Upon meticulous examination of the case record, it is manifestly evident that applicant No.1 Ghulam Mustafa, through his attorney, applicant No.2 Muhammad Ayoub, instituted F.C. Suit No.175/2019 concerning the same suit land against the same defendants/respondents. This suit was subsequently withdrawn by filing a statement dated 06.9.2019, stating that the applicant was withdrawing from the suit as both parties had amicably resolved their dispute outside the Court. Consequently, vide Order dated 06.9.2019, the suit was "dismissed as withdrawn." To determine whether the subsequent suit filed by the plaintiffs/applicants is impacted by Order XXIII, Rule 3 C.P.C, I reproduce the said provision as follows: -

"1. Withdrawal of suit or abandonment of part of claim. (1) At any time after institution of a suit the plaintiff may, as against all or any of the defendants, withdraw his suit or abandon part of his claim.

(2). Where the Court is satisfied;?

(a) That a suit must fail by reason of some formal defect or

(b) that there are other sufficient grounds for allowing the plaintiff to institute fresh suit for the subject matter of a suit or part of claim.

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or abandon such part of a claim with liberty to institute a fresh suit in respect of the subject matter of such suit or such part of claim.

(3) Where the plaintiff withdraws from a suit, or abandons part of a claim, without the permission referred to in sub-rule 2, he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject matter or such part of the claim."

9. The plain reading of the above Order elucidates that Order XXIII Rule 1 C.P.C. prescribes the procedural framework for the withdrawal of suits and the abandonment of claims. Sub-rule (1) authorizes the plaintiff to withdraw the suit at any stage without prior judicial consent, thereby conferring significant autonomy in litigation upon the plaintiff. Conversely, sub-rule (2) mandates that the plaintiff must secure the Court's permission to withdraw the suit with the liberty to file a fresh suit on the identical subject matter. The Court accords such permission upon satisfying itself that the suit must fail due to a formal defect or that other sufficient grounds exist justifying such withdrawal. This mechanism ensures that plaintiffs meticulously prosecute their suits and deter misuse of the judicial process. Sub-rule (3) delineates the repercussions of withdrawing without court permission, rendering the plaintiff liable for costs and precluding them

from instituting a fresh suit on the same subject matter. The Supreme Court of Pakistan, in the case of **Muhammad Yar**⁴, reaffirmed these principles, establishing that:

"From the clear language of the above, it is vivid and manifest that the noted rule mainly comprises of two parts; sub-rule (1) entitles the plaintiff of a case to withdraw his suit and/or abandon his claim or a part thereof, against all or any one of the defendants, at any stage of the proceeding and this is his absolute privilege and prerogative Note: except-in certain cases where a decree has been passed by the Court such as in the cases pertaining to the partition of the immovable property etc.). And where the plaintiff has exercised his noted privilege he shall be precluded from instituting a fresh suit on the basis of the same cause of action qua the same subject matter and against the same defendant (s) and this bar is absolute and conclusive, which is so visible from the mandate of sub-rule (3) However, sub-rule 2 (a) (b) is/are a kind of an exception to the sub-rules (1) and (3), in that, where a plaintiff wants to file a fresh suit after the withdrawal of his pending suit on the basis of the same cause of action about the same subject matter and the same defendant (s), he shall then be obliged to seek the permission of the Court in that regard; however such permission shall not be granted as a matter of right or as a matter of course/routine, rather the judicial conscious of the Court should be satisfied that, if the permission is not given the said suit shall fail on account of any formal defect, (Note: for the present what is a formal defect is not a moot point therefore, this aspect is not being touched herein) or that there are other sufficient grounds for allowing the plaintiff to withdraw the suit with a permission to institute a fresh suit ; in respect of "sufficient grounds" no hard and fast criteria can be laid down and it depends upon the facts of each case, whether a case in that regard is made out or not. However, it is the legal requirement that where the plaintiff is asking for the permission of the Court to file a fresh suit, in his request in that behalf, he must elucidate and explain to the Court the reason(s) for the withdrawal, justifying for the permission of the Court."

10. Upon an assiduous examination of the aforementioned legal principles, it is patently evident that the present withdrawal was not effectuated by the applicants in accordance with the provisions delineated in sub-rule (2)(a)(b) of Order XXIII. The suit was summarily dismissed under the pretext of withdrawal simpliciter. Consequently, in consonance with the unequivocal mandates of Order XXIII, Rule 3 C.P.C, it is categorically established that, in the absence of the requisite judicial

⁴ Muhammad Yar vs. Muhammad Amin (2013 SCMR 464)

sanction to institute a subsequent suit, the plaintiff is irremediably precluded from initiating any fresh litigation pertaining to the same subject matter or any portion of the claim. This interdiction is imperative to uphold the procedural sanctity and ensure the finality of adjudicative determinations.

11. Before advancing to conclude the discourse, it is imperative to assert that it is the solemn obligation of the Court to reject the plaint if it is liable to be rejected, particularly when it is barred by law. This obligation emanates from the unequivocal mandate of the law as articulated in Order VII Rule 11 C.P.C. This rule empowers the Court to meticulously scrutinize the plaint at its inception, regardless of the stage of the proceedings, to ascertain whether it meets the fundamental legal prerequisites for maintainability. The language of Order VII Rule 11 C.P.C is categorical, and its application is obligatory. The Court does not possess the discretion to overlook the grounds for rejection if they are apparent from the plaint. Consequently, the rejection of the plaint under this rule is a judicial function that safeguards the legal process from misuse and ensures that only those suits possessing the requisite legal foundation are entertained. This provision is an indispensable tool in the judiciary's arsenal to prevent the abuse of legal proceedings and uphold the judicial process's sanctity.

12. In light of the aforementioned discourse, upon meticulous evaluation of the record, it is incontrovertibly concluded that the applicants are barred from instituting a second fresh suit concerning the same subject matter. Consequently, both lower courts' impugned judgment, decree, and Order have been judiciously and rightly passed. The trial court has correctly exercised its jurisdiction as vested under the law. No illegality or irregularity has been identified. Therefore, this revision lacks merit and stands **dismissed** accordingly.

JUDGE