

Judgment sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 794 of 2019

Present

**Mr. Justice Muhammad Jaffer Raza**

Moin Ali Khan

Versus

Farid Ali Khan

For hearing of CMAs

1. 6017/2019 (U/O XXXIX Rule 1 & 2 CPC).
2. 6018/2019 (U/O XL Rule 1 CPC).
3. 11557/2019 (u/o VII Rule 11 CPC).
4. For final disposal.

Plaintiff : Moin Ali Khan  
through Mr. Moin Ahmed in Suit  
No.794 and defendant in Suit  
No.989/2019 Advocate

Defendant : Farid Ali Khan  
through Mr. Abdul Ghaffar Khan,  
Advocate

Date of Hearing: 24.02.2025

Date of Order: 24.02.2025

ORDER

CMA No.11557/2019

**MUHAMMAD JAFFER RAZA - J** : Listed application being CMA No.11557/2019 has been filed by the learned counsel for the defendant under Order VII Rule 11 CPC for rejection of the plaint. In the said application, learned counsel for the defendant has specifically relied upon paragraph No.6 and 9 of the plaint, which very categorically, according to learned counsel for the defendant, states that the dispute arise in the year 2008 and the suit has been filed, according to learned counsel, on 19.04.2019. Learned counsel has stated that the suit has been filed after 11 years after the cause of action accrued and in this regard has relied upon Section 120 of the Limitation Act, which stipulates of the limitation period as six years. In the light of above Section 120, the suit ought to have been filed not later than the year 2014, and

the same is hopelessly time barred. Further learned counsel for the defendant states that according to learned counsel for the defendant, parties have an oral partnership and Section 69 of the Partnership Act is applicable thereto. Learned counsel has taken me to Section 69 of the Act, which states for period of limitation is three years. Further learned counsel has relied upon the PLD\_\_\_\_SC 2014, in which principle of this Section has been dilated upon in the light of above judgment. Learned counsel for the defendant states that the plaint is liable to be rejected.

2. In response learned counsel for the plaintiff has stated that this is not a matter of partnership business, it is a dispute between two brothers. He further states that for rejection of the plaint is one of the prayer in the suit should not be maintainable and/or barred by law. He has further very categorically stated that even one prayer of the plaintiff is maintainable then the plaint cannot be rejected under Order VII Rule 11 CPC. Further learned counsel for the plaintiff has relied upon Section 142 of the Limitation Act, which provides period of limitation of 12 years. Learned counsel further states that it is settled principle of law that even if a single prayer of plaintiff is maintainable then the suit is not liable to be rejected.

3. I have examined the prayer clauses of the suit and more specifically I would refer to prayer clause 8, which reads as follow:-

*“Partition the suit property i.e. Plot No.PP-9, measuring 1522 sq. yards, Block-6, KDA Scheme No.24, Gulshan-e-Iqbal, Karachi, equally between the Parties or in the alternative to dispose of the suit property and equally distribute the sale consideration between the Parties.”*

The above prayer clause is of partition of the property in which plaintiff and defendant are admittedly co-owner. The said property was gifted to them by their mother and in that respect the suit in terms of the partition is maintainable. I also put specific question regarding the mentioned prayer clause to the learned counsel for the defendant and he is equally, rightly and fairly candidly stated that the suit may be maintainable atleast in respect of that prayer. It is also settled law that a plaint cannot be rejected in piecemeal and it is reiterated that even a single prayer is maintainable.

4. Without adjudicated on the specific submissions made by the parties in the instant matter, which may be considered at the time of final arguments. Instant application of the defendant is dismissed with no order as to cost.

CMA No.6017/2019

After hearing the listed application being CMA No.6017/2019 at some length, learned counsel for the defendant has equally, fairly proposed that he shall not create any 3<sup>rd</sup> party interest in the land of business till pendency of the Suit Nos.794 & 989 of 2019.

CMA No.6018/2019

Listed application has been filed under Order XL Rule 1 CPC for appointment of receiver to take over the business and the land, fixtures affixed on the same. By consent, it is ordered that the Nazir of this Court will carry out inspection of the subject property and will take necessary pictures. Moreover, the Nazir will make an inventory of all the fixtures affixed and assets on the subject property and submit report thereafter within a period of three weeks from today. The fee of the Nazir is fixed @ Rs.50,000/- to be paid by the plaintiff in advance.

To come up after two weeks for examination of the parties.

JUDGE