

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Revision Application No.31 of 2025

Date *Order with signature of Judge*

Fresh Case

1. For orders on CMA No.1549/2025
2. For orders on CMA No.1550/2025
3. For hearing of main case.
4. For orders on CMA No.1551/2025

03.03.2024.

Mr. Arshad Jamal Siddiqui, advocate for applicant.

1. Urgency disposed of.
2. Exemption granted subject to all just exceptions.

3&4. This Civil Revision Application is directed against the judgment dated 23.12.2024 passed by VIIIth Additional District Judge (MCAC), Karachi-South in Civil Misc. Appeal No.37 of 2024 whereby the order dated 26.07.2024 passed by the XVth Senior Civil Judge, Karachi-South in Civil Suit No.1742 of 2023 on application under Order VII Rule 11 CPC filed by the respondents No.2 to 8 for rejecting the plaint was upheld and appeal was dismissed.

The necessary facts giving rise to this Revision Application are that the applicant preferred a suit before trial court being Civil Suit No.1742 of 2023 for declaration, direction, permanent Injunction & recovery against the defendants wherein the applicant claimed within own pleadings that he and the private respondents are the legal heirs of deceased Soomar who having lost his fingers was crippled and was not able to work and had become Jobless and that his father had obtained loan for securing place for kids, as such, had purchased suit property and such loan per applicant was paid-off by him. The construction was also raised at property with his funds. Father of parties was jobless/disabled since 1974 and applicant working ever since while also went abroad in year 1978. The respondents preferred a suit for partition which proceedings went exparte and application under section 12(2) CPC as well as appeal of the applicant against vires of such exparte decree of partition case were dismissed including CP before Honorable High Court of Sindh. Subsequent, the applicant preferred his own suit against the respondents wherein the application was preferred by the respondents No.02 to 08 under order VII Rule 11 CPC which application was allowed and plaint was rejected against which the Civil Misc. appeal was filed, which was also dismissed. Hence, this Revision Application.

Learned counsel for the applicant has argued that the learned Senior Civil Judge and Additional District Judge, Karachi South have passed erring and void impugned orders. He further contends that the Trial Court has committed serious

material irregularity by rejecting the plaint under Order VII Rule 11, CPC without going through material placed on record. He has also contended that both the courts below have accepted version of the respondent and have discarded the pleadings of the applicant. He has further contended that both the impugned orders passed by the courts below are not sustainable and are liable to be set aside, the case is liable to be remanded back for decisions to be made on merits.

Before entering into the merits of the case, I would like to draw a line in exercising revisional jurisdiction by this Court against concurrent findings of two courts below on 'question of fact' and that 'question of law'. There can be no denial to the legal position that criterion to decide an application under Order 7 rule 11 CPC is entirely different from the one whereby a court of law answers an 'issue' on basis of led evidences by respective parties. The evidences must always be evaluated on basis of 'balance of probabilities' while rejection of plaint could only be recorded if the plaint, prima facie, appears to be barred by some legal impediments.

There is another material difference that in consequence to evaluation of evidences, normally, the rights and liabilities of parties are determined but rejection of the plaint may not, stricto sensu, could be applied so because the objective whereof is only to put an end to a litigation at very initial stage when full-fledged trial appears to be nothing but a futile exercise.

The scope of O. VII r 11 CPC has, so, been defined in the case of Noor din & another v. ADJ, Lahore & Ors 2014 SCMR 513 as:-

"5. ...The object of the powers conferred upon the trial court under Order VII, Rule 11 CPC is that the Court must put an end to the litigation at the very initial stage when on account of some legal impediments full fledged trial will be a futile exercise.

It may be observed that concurrent findings on a question of law, the party shall have to establish a prima facie illegality in such question. One cannot deny the legal position that first and prime consideration to initiate a *lis* shall always be establishing 'legal character' and in absence thereof no *lis* could be initiated.

In the present case the courts below were justified in holding that no cause of action had accrued to the applicant as it is an undisputed fact, at this point, that the respondents preferred a suit for partition which proceedings went *exparte* and application under section 12(2) CPC as well as appeal of the applicant against vires of such *exparte* decree of partition case were dismissed including CP before Honorable High Court of Sindh. Subsequently, the applicant preferred his own suit against the respondents wherein the application was preferred by the respondents No.02 to 08 under order VII Rule 11 CPC which application was allowed and plaint was rejected against which the Civil Misc. appeal was filed,

which was also dismissed. This prima facie shows that the applicant has failed to establish any concern with the suit property regarding ownership, hence legally he cannot seek any declaration in respect thereof.

Even otherwise, no illegality or infirmity has been shown to call for interference in the impugned decisions. It is well settled that if no error of law or defect in procedure had been committed in coming to a finding of fact, the High Court cannot substitute such findings merely because a different findings could be given. It is also well settled that concurrent findings are not to be interfered in revisional jurisdiction, unless extra ordinary circumstances are demonstrated. It is also well settled that a revisional court does not sit in reappraisal of evidence and is distinguishable from the court of appellate jurisdiction¹.

The upshot of the above discussion is that there appears no illegality, irregularity or jurisdictional error in the concurrent findings of the courts below warranting interference of this Court. Hence, this Civil Revision Application is found to be meritless and is accordingly dismissed *in limine* alongwith pending applications.

JUDGE

Naveed PA

¹ *Abdul Hakeem v. Habibullah and 11 others* [1997 SCMR 1139], *Anwar Zaman and 5 others v. Bahadur Sher and others* [2000 SCMR 431] and *Abdullah and others v. Fateh Muhammad and others* [2002 CLC 1295].