IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

2nd Civil Appeal No.S-35 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No.829/24.
2. For hearing of main case.

Appellants: Waqar Ali and Amir Khan Rahujo, through Mr. Imdad Ali Unar, Advocate.

Respondents No.1 to 7: Dileep Kumar & 6 others, through Mr. Muhammad Sulleman Unar, Advocate.

Respondent No.8 : Imran Ali Junejo, through Mr. Muhammad Hashim Leghari, Advocate.

Respondents No.9 to 11 : through Mr. Allah Bachayo Soomro, Addl.A.G

Date of hearing: 28.02.2025
Date of Judgment: 07.04.2025

JUDGMENT

Abdul Hamid Bhurgri, J.- The appellants through this Second Appeal under Section 100 of the Civil Procedure Code, 1908 ("the Code"), have impugned the Order dated 20.01.2024 passed by the Court of Senior Civil Judge, Hala in F.C Suit No.50/2023, whereby their plaint was rejected Under Order VII Rule 11(a&d) CPC and the Judgment dated 07.02.2024 passed by the Additional District Judge/Model Civil Appellate Court (MCAC), Hala ("the appellate Court") in Civil Appeal No.07 of 2024, whereby their Appeal was dismissed and the order of trial Court was maintained.

2. Memo of plaint unveils that the appellants/plaintiffs filed suit for Specific Performance of Contract, Cancellation and Permanent Injunction averring that their father Haji Daim had purchased an agricultural land bearing S.No.85-1 measuring 2-29 acers situated in tapo Saeedabad, deh Manahi, taluka Saeedabad, district Matiari (hereinafter referred as suit land) along with Mehrab Rahu to the extent of 50 paisa share each through an agreement dated 09.09.2010 along with possession from Jethanand, who refused to execute sale deed and

ultimately, Daim Khan and Mehrab filed F.C suit No.260 of 2010 (New No.05/2015) against Jethanand, who after filing his written statement died during pendency of the suit, consequently his legal heirs/sons namely Kanaya Lal and Chetan were joined but they did not contest the suit, however, said suit was dismissed vide Judgment dated 15.02.2017. The appellants/plaintiffs averred in the plaint that their present suit is based upon the contract dated 9th September, 2010 and subsequent to sale agreement written in Sindhi dated 28th September, 2016, after restoration of the entry in the names of defendants/respondents No.1 to 7 with fresh terms and conditions detailed in the memo of plaint. It is also contended in the plaint that instead of executing sale deed in favour of the appellants/plaintiffs, the defendants/respondents No.1 to 7 sold out the suit land to the defendant/respondent No.8 Imran Ali Junejo without possession through registered sale deed dated 17.01.2022 and revenue entry No.163 was also kept in his name, hence cause of action accrued and the appellants/plaintiffs filed suit with following prayers:-

> (a) That this Honourable Court would graciously be pleased to pass decree for specific performance of contract directing the defendants No.1 to 9 to execute the sale deed in favour of plaintiff after receiving remaining amount of sale consideration by way of agreement dated 09.09.2010, again subsequent agreement to sale dated 28.09.2016 in favour of plaintiff and simultaneously cancel the sale deed and entry No.163 in favour of defendant No.9 or in the alternate direct the Nazir of the Court to enforce the sale deed by making the sale transaction in finality in favour of plaintiff in respect of suit land after receipt of remaining sale consideration.
>
> (b) To pass the decree for permanent injunction directing the defendants No.1 to 9 not to interfere with the peaceful possession of the plaintiff and do not make any further transaction over the suit property through himself or through his agent assignees, servants etc. till the disposal of the case.

(c) Costs of the suit may be saddled upon defendants No.1 and 2.

(d) any other relief which this Honourable Court deems fit and proper may also be awarded.

3. Record reflects that the defendants/respondents No.1 to 7 appeared in the trial Court through their counsel and subsequently vide order 07.10.2023, they were debarred by the trial Court from filing written statement and the matter was ordered to be proceeded ex-parte (order dated 07.10.2023 has been produced by counsel for respondent No.8 along with his written synopsis in present appeal). Imran Ali Junejo (respondent/defendant No.8) contested the suit by filing his written statement and sought rejection of plaint through an Application Under Order VII rule 11 CPC, appellants/plaintiffs filed objections thereto in the shape of counter-affidavit and ultimately, the learned trial Court rejected the plaint vide impugned Order dated 20.01.2024, which the appellants/ plaintiffs assailed in Civil Appeal No.07/2024 Under Section 96 of CPC but the same was dismissed by learned Appellate Court vide Judgment dated 07.02.2024, whereby order of trial Court was maintained, hence this second appeal.

4. The following points raised by learned counsel for the appellants/plaintiffs:-

i. that the learned trial court as well as appellate Courts have misread the contents of plaint, hence, the orders passed by both the Courts below are without lawful authority;

ii. that the suit is not barred by Section 11 by Resjudicata as the present suit was filed on the fresh cause of action, the trial Court as well as appellate Court had totally failed to adhere the principle of rejection of plaint;

iii. the learned trial Court as well as appellate Court have not considered the main aspect that the sale consideration has been paid to the respondents through cheques as part payment of the sale consideration and such cheques have been produced along with the plaint;

iv. that both the Courts below had even not considered the fact that the respondents from whom the appellants claimed to have purchased the land through an agreement dated 28.09.2016 have not filed written statement to deny the claim of the appellants;

v. that the orders of the trial Court as well as appellate Court are against the principles of settled provisions of law and does not come within the ambit of Order VII rule 11 CPC.

vi. in support of his contentions, he has relied upon the cases of Muhammad Saleemullah and others v. Additional District Judge, Gujranwala and others (PLD 2005 SC 511); Liaquat Daud Kukda v. Syed Hashim Raza and others (2023 CLC 237); Rehmat Begum v. Mehfooz Ahmed (PLD 2024 SC 1108); Muhammad Anwer and others v. Muhammad Ashraf (PLD 2015 SC 209 and Abdul Raziq v. Muhammad Rafique and others (2022 CLC 1048);

vii. he lastly prayed that the impugned order/judgment passed by both the Courts below be set aside and the matter may be remanded back to the trial Court for decision on merits after framing issues.

5. Conversely, counsel for respondent/defendant No.8 made following submissions:-

i. that the controversy between the parties has already been decided in F.C suit No.260/2010 (New No.05/2015) whereby the learned trial Court dismissed the suit filed by the predecessor-in-interest of the appellants;

ii. that the suit was for Specific Performance of Contract and the agreement dated 09.09.2010 also discloses the S.No.85 situated in Tapo Saeedabad, deh Manahi, Taluka Saeedabad, district Matiari, which is the subject matter of the present suit i.e. F.C suit No.50/2023;

iii. that both the Courts below have rightly come to the conclusion that matter is barred by Section 11 of CPC as

the issue involved in the present proceedings has already been decided in previous proceedings;

iv. that even from the contents of plaint which shows that the appellants had claimed that the fresh agreement is in continuation of the previous agreement;

v. that the suit is badly time barred as the agreement shown to have been executed on 28.09.2016 while the suit has been filed in the year 2023; whereas, as per section 113 of the Limitation Act, the suit is to be filed within a period of three years;

vi. that the respondent No.8 has purchased the suit land through a registered sale deed and he is in possession of the property, such report of possession obtained from the Mukhtiarkar concerned has been produced before the trial Court;

vii. that even the court fee of RS.15000/- has not been paid by the appellants before the appellate Court, as such their appeal was not maintainable;

viii. that there is no illegality in the impugned order/judgment of the Courts below, therefore, in the end he submitted that the instant second appeal is liable to be dismissed and order/judgment of both the Courts below be maintained;

ix. he in support of his contentions, has relied upon the cases of Misree Khan and others v. Abdul Ghafoor and others (PLD 2025 SC 24); Munir Hussain and others v Riffat Shamim and others (PLD 2023 SC 910); Muhammad Afzal Khan v. Muhammad Aslam (2022 SCMR 1275); Muhammad Iftikhar Abbasi v. Mst. Naheed Begum and others (2022 SCMR 1074); Muhammad Anwar and others v. Essa and others (PLD 2022 SC 716); Agha Syed Mushtaque Ali Shah v. Mst. Bibi Gul Jan and others (2016 SCMR 910); Haji Abdul Karim and others v. Messrs Florida Builders (Pvt) (PLD 2012 SC 247) and Haji Muhammad Saleem v. Khuda Bakhsh (PLD 2003 SC 315).

6. Counsel for respondents/defendants No.1 to 7 through his statement dated 03.03.2025 filed before this Court has tendered his no objection; if the instant Appeal is allowed and case is remanded back to the trial Court where they shall file their written statement.

7. Learned Additional AG states that though no government interest is involved in this matter, however, he supports the impugned order and the Judgment passed by two courts below.

8. Heard learned counsel for the appellants and respondents Nos.1 to 7 and 8, as well as the learned Additional Advocate General. The record was meticulously examined.

9. This Second Appeal has been instituted by the appellants, assailing the concurrent findings rendered by both subordinate courts, whereby the plaint in F.C. Suit No.50/2023 was rejected by the trial Court pursuant to an application filed by respondent No.8, a decision later affirmed by the Appellate Court. Both forums below have reached the conclusion that Suit No.50/2023 is barred under the principles of *res judicata* as encapsulated in Section 11 of the CPC and is further hit by the provisions of Section 113 of the Limitation Act, 1908.

10. To appreciate the controversy in the present appeal, it is imperative to traverse the antecedent history of litigation involving the parties. Prior to the institution of the instant suit, the father of the appellants namely late Daim Khan Rahujo, along with Mehrab Rahu, had filed a suit for Specific Performance of Contract bearing No.260/2010 (subsequently renumbered as 05/2015) before the Court of Senior Civil Judge, Hala, against Jethanand and others. The plaintiffs therein had asserted the execution of a sale agreement dated 09.09.2010 concerning survey numbers 637 and 85, aggregating to 33 paisa share of land measuring about 4-04 acres located in Deh Manahi, Taluka New Saeedabad, for a consideration of Rs.42,00,000/-, out of which Rs.8,00,000/- had been paid as token money. It merits mention that Jethanand, while denying the sale in his written statement, conceded that Daim Khan had forcibly dispossessed him from S.No.85. Upon the demise of Jethanand during the pendency of proceedings, his

sons, Kanaya Lal and Chetan, were arrayed as parties despite being impleaded, they did not participate in the proceedings. The suit was dismissed by a judgment and decree dated 15.02.2017, and no appeal was preferred.

11. The present suit No.50/2023, forming the subject matter of this appeal, has been instituted by Waqar Ali and Amir Khan Rahujo, the sons of the deceased Daim Khan Rahujo, against respondents Nos.1 to 7, one Imran Ali Junejo (respondent No.8), and three official defendants. The appellants contended in Para 3 of their plaint that the dispute regarding heirship had been amicably resolved between Kanahiya Lal and respondents Nos.1 to 7, and upon restoration of title entries in favour of respondents Nos.1 to 7, a fresh sale agreement was executed on 28.09.2016. The total sale consideration agreed upon was Rs.185,00,000/- under revised terms, with the agreement annexed as Exhibit B/B1. The para 3 of the plaint is reproduced as under:-

> *"That subsequently the dispute was resolved between the Kanahiya Lal and defendants No.1 to 8 with regard to the heirship and finally the entry in favour of defendants No.1 to 8 was restored, (private defendants) they entered into sale agreement with the present plaintiffs via subsequent agreement to sale dated 28.09.2016 on fresh terms and conditions, the total sale consideration amount was settled between the parties in respect of suit land Rs.185,00,000/- that was to be paid.*
> *Copy of subsequent agreement to sale dated 28.09.2016 in favour of plaintiff and entry in favour of defendants No.1 to 8 are submitted herewith as annexure B/ to B/1.*
> ***SALE CONSIDERATION AMOUNT PAID***
> *i). Rs.9,50,000/- through cheque No.1547218352 dated 13.10.2016 in favour of Dileep Kumar.*
> *ii). Rs.9,50,000/- through cheque No.1547218353 dated 13.10.2016 in favour of Dileep Kumar.*
> *iii). Rs.9,50,000/- through cheque No.1547218354 dated 15.10.2016 in favour of Parkash Kumar.*
> *iv). Rs.9,50,000/- through cheque No.1547218355 dated 10.10.2016 in favour of Parkash Kumar.*
> *v). Rs.8,00,000/- through cheque No.1560067811 dated 14.10.2016 in favour of Maya.*
> *vi). Rs.8,00,000/- through cheque No.1560067812 dated 15.10.2016 in favour of Maya.*
> *vii). Rs.6,00,000/- through cheque No.1560067813 dated 16.10.2016 in favour of Maya.*
> *Total amount paid Rs.60,00,000/- in lieu of sale consideration,*

Copies of such agreement to sale, copies of cheques and bank record, possession letter are submitted herewith -C to C/.”

12. The appellants further alleged that they persistently pursued execution of the sale deed with respondents Nos.1 to 7, but the latter evaded compliance on various pretexts.

13. It is worth noting that while the previous agreement dated 09.09.2010 encompassed two survey numbers (637 and 85), the current suit is confined solely to survey number 85/1.

14. The appellants further contended that prior to filing the present suit, respondents Nos.1 to 7 executed a registered sale deed in favour of respondent No.8, Imran Ali Junejo, and thereafter issued threats of dispossession to the appellants. Consequently, the appellants sought Specific Performance, Cancellation of the impugned sale deed, and Permanent Injunction. They also averred that the cause of action is of a recurring nature.

15. Upon institution of the suit, notices were issued. Respondents No.1 to 7 appeared through their counsel; they could not file their written statements within stipulated period consequently they were debarred by the trial Court. However, only respondent No.8 filed his written statement, asserting that he had lawfully purchased the suit property from defendants/respondents Nos.1,2,3,6 and 7 by virtue of registered sale deed No.43 dated 17.01.2022 and was delivered possession accordingly. This stance was corroborated by the Mukhtiarkar in a written statement dated 25.09.2023.

16. It stands admitted that Daim Khan had previously instituted Suit No.260/2010 (renumbered as 05/2015) against Jethanand seeking enforcement of the sale agreement dated 09.09.2010 concerning S.Nos.637 and 85. That suit was dismissed on merits, with specific findings that the agreement could not be proved and that Daim Khan’s possession over S.No.85 was unlawful.

17. Notwithstanding their reliance on the fresh agreement dated 28.09.2016, the appellants simultaneously grounded their claim

on possession allegedly derived from the earlier 2010 transaction. The trial court and the appellate Court both summarily rejected the plaint under Order VII Rule 11 CPC on the application of respondent No.8 Imran Ali.

18. The appellants submitted copies of cheques purportedly issued by them in favour of respondents Nos.1,4 and 6 in support of the agreement dated 28.09.2016. These were annexed with the plaint and the instant appeal. During the pendency of the appeal, counsel for respondents Nos.1 to 7 submitted a statement of no objection to remand the matter for trial, indicating willingness to file a comprehensive written statement if so permitted.

19. In view of the above discussion, this Court has framed following two points, to decide this Second Appeal:--

i. Whether the suit is barred by res judicata?

ii. Whether the suit is barred by Article 113 of Limitation Act, 1908?

POINT NO.1

20. The concept of “Res Judicata” has evolved from English common law and since then it has been defined and interpreted through various judicial pronouncements. Before moving forward it is important to understand the concept of Res Judicata which is explained under Section 11 of the Code of Civil Procedure 1908. As per Section 11 of CPC no Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Recently, the Supreme Court of India in the case of ***Srihari Hanumandas Totala v. Hermant Vithal Kamat and others***(1),

interpreted the concept of Res Judicata" with respect to Order VII Rule 11 of the Code of Civil Procedure 1908.

> *"To analysis the concept of Order VII Rule 11, it is further imperative to understand prima facie that Order VII Rule 11 lays down instances wherein a "plaint" shall be rejected. Meaning thereby, the instances discussed therein should be considered prima facie at the time of presentation of plaint filed by the plaintiff and no other pleading.*
>
> *Order VII rule 11 CPC lays down instances when a plaint should be rejected. It includes rejection of plaint:-*
>
> *(i) when it does not disclose a cause of action,*
>
> *(ii) where the plaint is insufficiently stamped, or,*
>
> *(iii) the relief claimed is undervalued, and*
>
> ***(iv)** it further provides that the plaint shall be rejected **"where the suit appears from the statement in the plaint to be barred by any law".***

The Court emphasized that the averments in the plaint should be the basis upon which it should be considered whether the plaint is barred by any law or not.

It was further observed that reference to any other materials such as written statements cannot be made to decide the issue.

Further, the court elaborated the definition of res judicata given in Section 11 of the CPC. It was laid crystally by the Court that to decide an issue concerning res judicata, the same issue (that is raised in the suit) has been decided in the former suit. The court referred to the judgment in **V.Rajeshwari v. T.C Saravandabava**[(2)], and laid emphasis on the following lines:

> *"basic method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as res judicata. Not only the plea has to be taken,*

it has to be substantiated by producing the copies of the pleadings, issues and judgment in the previous case".

The Court referred to the decision in **Kamala and others v. K.T Eshawar Sa**[3] which particularly deal with the question of res judicata being used as a ground for rejection of the plaint. Justice S.B Sinha examining the ambit of Order 7 Rule 11(d) of the CPC, the Court has observed as under:-

"the Court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the Court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained".

The Court from the above analysis and judgment laid down 4 guiding principles for deciding an application under Order 7 Rule 11(d). These principles are:-

"(i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that

a. the 'previous suit' is decided,

b. the issues in the subsequent suit were directly and substantially in issue in the former suit;

c. the former suit was between the same parties or parties through whom they claim, litigating under the same title; and

d. that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

e. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused."

This Court also fortified with the Order passed by the Supreme Court of India in Civil Appeal No.5841 of 2023 in the case of Keshav Sood v. Kirti Pardeep Sood and others, the order is reproduced as under:-

> ***"ORDER***
>
> *Leave granted*
>
> *2. Heard the learned counsel appearing for the appellant.*
>
> *3. The appellant is the original defendant. He applied in the suit filed by the respondents for rejection of the plaint under Rule 11 of Order VII of the Code of Civil Procedure, 1908 (For short, "CPC"). Written statement was filed by the appellant raising a contention of bar of res judicata. In the application filed by the appellant under Rule 11 of Order VII of CPC, reliance was placed on several documents/orders of various Courts. The learned Single Judge rejected the plaint under Order VII Rule 11 of the CPC. In the appeal preferred by the respondents/plaintiffs, a Division Bench of the High Court has interfered on merits by holding that the finding on the plea of res judicata recorded by the learned Single Judge was not correct.*
>
> *4. After having heard the learned counsel appearing for the parties, we find that the plea of res judicata could not have been gone into on an application made by the appellant under Rule 11 of Order VII of CPC. Apart from pleadings in the earlier suit, several other documents which were relied upon by the appellant in his application under Rule 11 of Order VII of CPC were required to be gone into for deciding the issue of res judicata.*
>
> *5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.*
>
> *6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the trial Court and the judgment of the appellate Court. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits.*

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1 ***Civil Appeal No.4665/2021 Srihari Hanumandas Totala v. Hermant Vithal Kamat and others,***
2 ***(2004) 1 SCC 551, V.Rajeshwari v. T.C Saravandabava,***
3 ***(2008) 12 SCC 661, Kamala and others v. K.T Eshawar Sa.***

7. Therefore, we agree with the final conclusion of the Division Bench of the High Court that the suit needs to be decided on merits with a modification that the issue of res judicata will remain open and the learned Single Judge will frame an issue on res judicata along with the other issue.

8. by keeping open the issue of res judicata, the appeal is disposed of.

9. there shall be no order as to costs".

21. From the legal and factual position discussed above, both the Courts below have erred in law and wrongly rejected the plaint on the point of ***res judicata*** as they go beyond the scope of Order VII Rule 11(d) CPC. However, this court leave the point of ***res judicata*** open, the trial court may frame the issue of ***res judicata*** and decide on the basis of pleadings and evidence of the parties, this point is replied in above terms.

POINT NO.2.

22. The Courts below have also rejected the plaint on the point of limitation holding therein the suit is barred by ***Article 113 of Limitation Act, 1908***, which is totally misconceived. For the sake of convenience ***Article 113*** is reproduced hereinunder:-

Description of suit	***Period of Limitation***	***Time from which period begins to run***
1	***2***	***3***
113. For specific performance of a contract.	***Three years***	***The date fixed for the performance, or, if no such date is fixed when the plaintiff has notice that performance is refused.***

23. The relevant provision indicates that where a specific date for performance is stipulated, the limitation period shall commence from such date. Conversely, if no date is fixed, it shall begin when the plaintiff becomes aware that performance has been refused. In the instant case, examination of the agreement dated 28.09.2016 reveals that no fixed date was prescribed for the performance of the agreement executed between the parties, namely the appellants and respondents Nos.1 to 7. However, the determination of whether time was of the essence to the contract is a matter that can only be adjudicated once respondents

Nos.1 to 7 file their respective written statements, as they were privy to the agreement. The findings of both courts below, which summarily concluded that the suit was barred by limitation and consequently rejected the plaint, appear to be fanciful and disconnected from the record. The rejection was based solely on an application filed by respondent No.8 Imran Ali, who had raised the plea of limitation. Such a plea could only be raised by the actual contracting parties, i.e. respondents Nos.1 to 7, upon submission of their written statements. The issue of limitation is prima facie appears to be mixed question of law and fact, which requires evidentiary adjudication.

24. There is no cavil with the proposition that under Section 3 of the Limitation Act, the Court can dismiss any suit, appeal or application filed after the prescribed period of the limitation even if party did not raise point of limitation as defence. In the present case, the question of limitation comes into sight as a mixed question of law and facts which brings together a number of factual controversies vis-a-vis the question of limitation. Therefore, it requires both legal and factual evaluation for the appropriate verdict. As a whole, mixed questions of law and fact necessitate a combination of scrutiny of questions of law and fact, which cannot be decided hypothetically, cursorily, or without appreciating the starting point of limitation in case before nonsuiting any person on the ground of limitation. The Honourable Supreme Court in the case of ***Muhammad Rashid and others v. The Province of Sindh through Chief Secretary, reported in 2024 SCMR 1864*** had held as under:-

> "*10. No doubt, keeping in mind the dictum laid down by this Court, the learned Tribunal dismissed, all the appeals on the notion that departmental appeals were barred by time and we have no cavil, obviously, to such proposition of law set down by this Court but coherently, in our conscience, the question of Limitation apparently in this case does not seem to be in the plainest or purest form but on the face of it, emerges as a mixed question of law and fact which has congregated certain factual controversies that are neither based on facts virtuously nor unreservedly grounded in the law, thus require both legal and factual appraisal and exploration for the proper determination of the appeal.*"

In the case of **Tariq Mahmood Chaudhry, Kamboh v. Najam-un-Din, 1999 SCMR 2396**, the Honourable Court held as under:-

> *"3. After hearing the learned counsel for the petitioner and the respondent who appeared in person, we are of the view that the learned Civil Judge had already framed issue No.2 to the effect that the suit was within time and besides that the learned Civil Judge also gave finding that the question of limitation in the case was a mixed question of law and fact and thus the issue can only be resolved after recording of evidence touching the controversy. In our view, no error had been committed either by the learned Civil Judge or the High Court while arriving at the aforesaid finding and, thus, the learned Civil Judge had rightly rejected the application under Order VII, rule, 11 CPC and the High Court also correctly upheld the said order."*

In the case of **Abdul Murad Khan v. Mst. Noshaba and 9 others, 1992 SCMR 1828,** the Honourable Court has observed as follows:

> *"It is by now a well-established principle that the question of limitation is a mixed question of law and fact and recording of evidence thereon sometimes is essential for the proper adjudication thereof".*

In the present matter, the question of Limitation is also a mix question of law and facts as there is no date fixed for performance of contract dated 28.09.2016.

25. It is a settled legal principle that rejection of a plaint under Order VII Rule 11 CPC is warranted only when the suit is demonstrably barred on the face of the pleadings. Where contentious issues of fact and rival claims over title and possession arise, the matter must proceed to trial. In the present case, both appellants and respondent No.8 trace their respective claims to the same source i.e. respondents Nos.1 to 7. Issues of possession, validity of the second agreement, and the implications of the earlier adjudication are inherently factual and demand resolution through evidentiary scrutiny. In such instances, the court's primary concern should be the adjudication of substantive rights rather than disposal on mere technicalities.

26. Possession over S.No.85, the fulcrum of this dispute, was previously acknowledged by late Jethanand in litigation, albeit with a caveat that it had been forcibly taken. The court had declared the possession unlawful, and at this stage there is no record indicating repossession by Jethanand, his legal heirs or respondents No.1 to 7. Respondent No.8's claim of current possession therefore necessitates judicial determination. Respondents Nos.1 to 7 never filed their written statement, and in the interest of justice, it is imperative they be permitted to present their defence to fully adjudicate the matter.

27. In view of above this point is decided by holding that both the courts have erred in holding that the suit is barred by law of limitation and thereby rejected the plaint. The point of limitation is also left open, the trial Court may frame the issue on the basis of pleadings of the parties and decide accordingly. This point, is decided accordingly.

28. The case law cited by the parties is found to be inapplicable to the present factual matrix.

CONCLUSION

29. Consequently, the **second appeal is allowed**. The impugned Order dated 20.01.2024 and the Judgment dated 07.02.2024 passed by both the courts below are hereby set aside. The matter is remanded to the learned trial court with directions to restore the suit to its original status. The trial court shall afford respondents Nos.1 to 7 an opportunity to file their written statements within stipulated period as provided under the law. No extension shall be granted beyond this period. This Court has left open the points of ***res judicata and limitation*** for the trial court to decide the same after framing of the issues from the pleadings of the parties. The trial court shall thereafter proceed expeditiously and decide the matter strictly in accordance with law.

30. The appeal stands allowed in above terms with no order as to costs.

SD/- ABDUL HAMID BHURGRI
JUDGE 07-04-2025

ANNOUNCED BY ME
SD/- MIRAN MUHAMMAD SHAH
JUDGE 10-04-2025