

**IN THE HIGH COURT OF SINDH CIRCUIT COURT  
MIRPURKHAS**

Constitutional Petition No. D-560 of 2025

Present:

**Mr. Justice Amjad Ali Sahito**

**Mr. Justice Jan Ali Junejo**

1. For order on M.A.No.2108/2025.
2. For order on office objection.
3. For order on M.A.No.2109/2025.
4. For order on M.A.No.2110/2025.
5. For hearing of main case.

Petitioners/ Defendants: 1. Reva Chand s/o Saroop Chand.  
2. Dr. Manik s/o Saroop Chand.  
3. Ramesh s/o Saroop Chand.  
4. Pirkash s/o Saroop Chand.  
Through Mr. Tahseen Ahmed H. Qureshi advocate.

Respondents/ Plaintiffs: 1. Bheem Raj s/o Mansukh Das.  
2. Ashok s/o Lajput Rai.

Respondents/Defendants: 3. Mukhtiarkar (Revenue) Mithi Taluka Mithi District Tharparkar.  
4. Assistant Commissioner (Revenue) Mithi Taluka Mithi District Tharparkar.  
4. Deputy Commissioner (Revenue) District Tharparkar @ Mithi.  
5. Commissioner (Revenue) Mirpurkhas Division @ Mirpurkhas.  
6. Government of Sindh through its Secretary Revenue department, Board of Revenue Sindh Shahbaz Building Hyderabad.

Date of hearing: 18.08.2025.

Date of Order: 18.08.2025.

**ORDER.**

***Jan Ali Junejo, J.*** – Through this Constitutional Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioners/ defendants call in question concurrent orders whereby their application under Order VII Rule 11, C.P.C., for rejection of plaint in F.C. Suit No. 61 of 2024 (Re: Bheem Raj & another v. Reva Chand & others) was dismissed and such dismissal was maintained in revision:

(i) Order dated 18.12.2024 passed by the learned Senior Civil Judge-I, Tharparkar at Mithi, dismissing C.M.A. No. 263 of 2024 under Order VII Rule 11, C.P.C.; and

(ii) Order dated 24.07.2025 passed by the learned Additional District Judge-II, Tharparkar at Mithi, in Civil Revision Application No. 01 of 2025, maintaining the trial Court's order.

The petitioners seek issuance of a writ of certiorari to set aside both orders and to direct rejection of the plaint on grounds of limitation, estoppel/waiver by a family settlement dated 04.12.1990, non-compliance with Order VII Rule 3, C.P.C., and alleged statutory bars under the Specific Relief Act, 1877, Registration Act, 1908 and Transfer of Property Act, 1882.

2. Private respondents/plaintiffs instituted F.C. Suit No. 61 of 2024 for declaration, partition, possession, mandatory and permanent injunction with respect to a residential/sikni plot admeasuring 7,560 square feet, situated at Sonara Mohallah, Mithi Town, Taluka Mithi, District Tharparkar (hereinafter "the suit property"). In essence, their case is that they and the father of petitioners (late Saroopchand) had, per a 23.06.1987 Qabooliyat, joint shares of 2,520 square feet each; that all remained in joint possession; that petitioners, during/after their father's illness (2011-2013), constructed in excess of their 2,520 square feet share; that when in January 2024 the plaintiffs attempted construction on their portion they were restrained and then learned of alleged encroachment; and that their application before the Assistant Commissioner for partition was returned for want of jurisdiction, hence the civil suit.

3. The petitioners/defendants filed written statement inter alia pleading that the suit property is, in fact, Plot No. A-55, 7,560 square feet, Sonara Mohallah, purchased by their predecessor from Ahmed Khan via an un-registered Qabooliyat dated 23.06.1987; that on 04.12.1990 a family settlement/ Qabooliyat-nama for distribution was drawn whereby plaintiffs

allegedly relinquished/withdrew their shares in Plot A-55 in favour of late Saroopchand in exchange for another house at Kunbhar Colony plus cash; that ever since, plaintiffs have no subsisting right or locus; that the suit is hopelessly time-barred; and that the plaint fails Order VII Rule 3, C.P.C.

4. The trial Court dismissed the defendants' application under Order VII Rule 11, holding that limitation, effect of the alleged family settlement, and locus are mixed questions of law and fact to be decided upon evidence; that the plaint discloses a cause of action; and that technical objections as to property description are curable. The revisional Court found no illegality or material irregularity and maintained the trial Court's order.

5. Learned counsel for the Petitioners contended that the impugned orders are illegal, perverse, and passed without proper application of judicial mind, as the plaint in F.C. Suit No.61/2024 was liable to rejection under Order VII Rule 11, C.P.C. He argued that the suit is hopelessly barred by limitation as the plaintiffs allegedly relinquished their share through a duly executed family settlement/Qabooliyat Nama dated 04.12.1990, which stands acted upon, creating estoppel under Article 114 of the Qanun-e-Shahadat Order, 1984. It was further urged that the plaint suffers from non-compliance with Order VII Rule 3, C.P.C., as it does not contain proper description of the property, thereby rendering the suit incompetent. Counsel submitted that the trial Court and Revisional Court failed to appreciate these legal defects, misread the record, and relied upon irrelevant considerations, thereby causing miscarriage of justice; hence, the petition merits acceptance, impugned orders are liable to be set aside, and the plaint be rejected.

6. We have carefully considered the submissions advanced by the learned counsel for the Petitioner and meticulously examined the Impugned Orders along with the material available on record, exercising utmost care and

circumspection. The supervisory jurisdiction of this Court under Article 199, of the Constitution of Islamic Republic of Pakistan, 1973 is not a substitute for a regular appeal or second revision; it is exercised to correct jurisdictional errors, patent illegalities, or perversity resulting in miscarriage of justice. Concurrent and reasoned findings of courts of fact are ordinarily not disturbed unless shown to be arbitrary, capricious, or passed in excess of jurisdiction. Where two fora below have preserved the right of parties to a full trial on disputed questions, constitutional interference is exercised with circumspection.

7. It is trite that while deciding an application under Order VII Rule 11, C.P.C., the Court examines the plaint as a whole along with documents filed by the plaintiff; defence pleas or materials produced with the written statement cannot be looked into. Where even one of the reliefs is maintainable, a plaint cannot be rejected in piecemeal; and where the bar is not apparent on the face of plaint, rejection is impermissible. See, *inter alia*, ***Mst. Rehmat Begum v. Mehfooz Ahmed and others Saleem Malik v. Pakistan Cricket Board and 2 others (PLD 2024 SC 1108)*** wherein it was observed by the Honourable Supreme Court of Pakistan that: *“Nothing more than the averments of the plaint have to be seen for the purposes of adjudicating whether the plaint unveiled any cause of action. However, the dearth of proof or weakness of proof in the circumstances of the case does not furnish any justification for coming to the conclusion that there was no cause of action disclosed in the plaint, because for the rejection of plaint under Order VII, Rule 11, C.P.C., the Court cannot take into consideration pleas raised by the defendants in the suit, as at that stage, the pleas raised by the defendants are only contentions in the proceedings, unsupported by any evidence on record. However, if there is some material apart from the plaint which is admitted by the plaintiff, the same can also be looked into and taken into*

*consideration by the Court while deciding an application under Order VII, Rule 11, C.P.C. Moreover, the Court may, in exceptional cases, consider the legal objections in the light of averments of the written statement but the pleading as a whole cannot be taken into consideration for the rejection of plaint". In another case, **Ahmed Ali Talpur v. Sub-Registrar Latifabad, Hyderabad and others (PLD 2025 Supreme Court 302)**, the Apex Court held that: "However, the law does not permit piecemeal rejection. If even one prayer in the plaint is found to be maintainable, the plaint cannot be rejected in parts. What is essentially required is for the plaintiff to demonstrate not only that a right has been infringed in a manner entitling them to relief but also that, at the time of approaching the Court, the right to seek that relief was subsisting. A dearth or weakness of proof in the circumstances of the case does not justify the conclusion that no cause of action is disclosed in the plaint. For the rejection of a plaint, the Court cannot consider pleas raised by the defendants at that stage, as those are merely contentions unsupported by any evidence on record. Nonetheless, if some material apart from the plaint is available on record and admitted by the plaintiff, the Court may take it into consideration. However, in the case of mixed questions of law and fact, the correct approach is to allow the suit to proceed to the written statement and discovery phases, determining the lis either by framing preliminary issues or through a regular trial with equal opportunities for both parties".*

8. The plaint asserts joint ownership/ co-sharership and pleads that in January 2024 the plaintiffs were restrained from constructing on their portion and discovered alleged excess construction/encroachment by defendants. On its plain reading, the plaint discloses a live dispute requiring adjudication. The trial Court therefore correctly found the plaint to disclose a cause of action, and the revisional Court rightly declined to interfere. This

Court sees no perversity in such appreciation. The plea that the suit is “hopelessly time-barred” hinges on competing factual narratives—*inter alia*, when the plaintiffs first had notice of hostile assertion/denial, the effect (if any) of alleged family settlement, and continuous possession/ conduct of parties. These are quintessential mixed questions of law and fact. The bar of limitation is to be seen *ex-facie* from the plaint; if not evident, Order VII Rule 11(d) cannot be invoked to non-suit summarily. Both fora below found that limitation could not be decided without evidence; this approach is legally sound. In similar circumstances, the Honourable Supreme Court of Pakistan, in *Tariq Mahmood Chaudhry Kamboh v. Najam-Un-Din* (1999 SCMR 2396), held that: “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, C.P.C. and the High Court also correctly upheld the said order”. In another case, *Haji Abdul Sattar and others v. Farooq Inayat and others* (2013 SCMR 1493), the Honourable Supreme Court of Pakistan held that: “Consequently we are of the opinion that the issue of limitation in the matter is a mixed question of law and fact and, without evidence being recorded the same cannot be determined”. A similar view was taken by a Division Bench of this Court in *Muhammad Ashraf Raja v. Noureen Naz and others* (2025 CLC 567).

9. The Petitioners/defendants’ principal defence is the alleged “family settlement/Qabooliyat-nama” dated 04.12.1990 said to have permanently

extinguished plaintiffs' shares in Plot A-55. The plaintiffs, on the other hand, dispute its binding effect and assert continued co-sharership. Whether the document exists in original, its execution, authority of signatories (especially vis-à-vis any minor at the time), consideration, voluntariness, subsequent conduct, and implementation are all matters of evidence. Defences based on waiver/estoppel cannot be used to short-circuit a civil trial through Order VII Rule 11 when the plaint, on its face, sets out a triable claim. The trial Court rightly refused to decide these merits issues at the threshold, and the revisional Court correctly affirmed.

10. The criticism that the plaint did not specify Plot No. A-55 is, at best, a curable technical omission. The total area (7,560 square feet), location (Sonara Mohallah, Mithi Town), and parties' own pleadings make the identity of the suit property ascertainable; the defendants themselves describe the very property as "Plot No. A-55" and anchor their defence to it. Where identity is not genuinely in dispute and can be clarified by amendment/evidence, rejection of plaint on a hyper-technical construction of Order VII Rule 3 is unwarranted. The trial Court's view that such deficiency does not strike at maintainability, and is rectifiable in trial, is unexceptionable. Order VII, Rule 3, of the Code of Civil Procedure, 1908, stipulates that: *"Where the subject matter of the suit is immoveable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement of survey, the plaint shall specify such boundaries or numbers"*. However, as per provisions Order VI Rule 5, of the Code of Civil Procedure, 1908, *"A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just"*. If the plaint lacks sufficient particulars regarding the description and identification

of the Suit Property, the Court, in exercise of its powers under Order VI Rule 5 of the Code of Civil Procedure, 1908, may direct the Plaintiff to furnish a further and more specific statement to ensure accurate identification of the Suit Property. Reliance may be placed on the legal principle established by the Honourable Supreme Court of Pakistan in its authoritative decision in *Government of N.-W.F.P. and another v. Gul Muhammad Khan and 5 others* (1996 SCMR 1858), wherein it was held that: *“In our view, it will be just and proper to remand the case to the learned trial Court. We, therefore, allow the above appeal, but set aside both the judgments of the two Courts below and remand the case to the learned trial Court with the direction to allow respondent No. 1 to file an amended plaint as to include full description of the suit land in terms of Rule 3, Order VII, C.P.C. referred to hereinabove and to allow the appellants to file an amended written statement”*. Reliance may also be placed on the Case of *Kamaruddin Valika v. Government Of Sindh and others* (2004 YLR 373), it was held by this Court that: *“Reverting to the question of maintainability of the suit with reference to the provisions of Order VII, rule 3, C.P.C. it may be observed that if upon perusal of plaint the Court finds its contents insufficient to identify the suit property then for that purpose recourse could be had to the provisions of Order VI, rule 5, C.P.C. by calling upon the Plaintiff to provide such better particulars which may enable the Court to identify the suit property or even the provisions of Order VI, rule 17, C.P.C. could be followed in appropriate cases for this purpose. In the case of United Bank of India Ltd. v. Azirannessa. Bewa PLD 1965 SC 274 the Honourable Apex Court, examining the alleged ambiguity in the plaint in the description of the land observed that it was the duty of the Court to determine such property with exactness from the evidence on record. The natural corollary of such observation is that a party could meet such deficiency of the plaint even at the stage of evidence. Thus, in the instant case*



*the Plaintiff can avail benefit of above-referred provisions of Order VI, C. P. C. or can also provide better particulars of suit property in his evidence. In such circumstances the plaint in the present suit cannot be rejected due to the alleged non-compliance of the provisions of Order VII, rule 3, C.P.C.”*

11. The suit, as framed, seeks declarations of status/rights, partition among alleged co-sharers, possession following partition, and injunctive relief. These are recognized civil remedies. Whether the plaintiffs ultimately succeed is a matter for trial; however, at the Order VII Rule 11 stage, a sweeping assertion that the suit is barred by these statutes, absent a clear textual bar apparent from the plaint, does not furnish a ground to reject the plaint. Even assuming (*arguendo*) that any one of the reliefs encounters a bar, the remaining prayers, for partition, possession, or injunction inter se co-sharers, would still necessitate adjudication. A plaint cannot be rejected in piecemeal; if any one relief is maintainable, the plaint survives for trial.

12. The trial Court passed a reasoned order addressing the precise objections raised. The revisional Court exercised the limited revisional jurisdiction to examine material irregularity/illegality and, finding none, maintained the trial Court’s order. The petition does not demonstrate that either Court acted without jurisdiction, failed to exercise jurisdiction vested, or committed patent illegality or perversity causing miscarriage of justice. What is attempted before this Court is an appellate re-appraisal of the same defence pleas, impermissible in constitutional review at this stage. The civil suit is pending; issues will be framed and evidence recorded, including on limitation, estoppel, identity and extent of shares, and possession. The petitioners have an adequate and efficacious remedy to press their defences before the trial Court and, if aggrieved, to pursue statutory remedies.

Exercising writ jurisdiction to pre-empt a civil trial on disputed facts would be contrary to settled prudence.

13. For the reasons recorded above, the following findings stand established from the record:

- (a) Both Impugned Orders are intra-jurisdictional, well-reasoned, and free from perversity; hence, no ground is made out for constitutional interference.
- (b) From a plain reading of the plaint, no ex-facie statutory bar is discernible; issues of limitation and related objections are triable and cannot be summarily adjudicated.
- (c) The alleged family settlement, waiver, or estoppel are matters requiring evidence and do not provide a basis for rejection under Order VII Rule 11, C.P.C.
- (d) Any deficiency under Order VII Rule 3, C.P.C., is curable; the identity of the suit property is ascertainable and not subject to any bona fide dispute.

14. Resultantly, the Constitutional Petition is dismissed in limini. The impugned orders dated 18.12.2024 (Senior Civil Judge-I, Tharparkar at Mithi) and 24.07.2025 (Additional District Judge-II, Tharparkar at Mithi) are maintained. The learned trial Court is, however, directed to expedite proceedings and endeavour to conclude the trial preferably within four (04) months from receipt of this judgment, subject to its docket, and to decide the suit strictly on the basis of evidence and law, uninfluenced by any observations herein touching the merits. All pending miscellaneous applications are hereby disposed of. The parties shall bear their own costs.

**JUDGE**

**JUDGE**

*\*Saleem\**



