

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-816 of 2025

[Irfan Taj & Another Versus Mst. Zareena Shabbir & Others]

Petitioners : Through M/s. Raj Ali Wahid Kunwar & Irfan Taj & Taj Muhammad Jamshed Abbasi, Advocates

Respondents No.1, 4 & 5 : Through Mr. Imran Aziz, Advocate

Respondents No.2, 3, 6 & 7 : Nemo

Date of Hearing : 30.03.2026

Date of Judgment : 20.04.2026

JUDGMENT

Muhammad Saleem Jessar, J.- By means of instant constitutional petition, the petitioners have assailed the Order dated 20.05.2025 passed by IXth Additional District and Sessions Judge, Karachi (West), whereby he dismissed Civil Revision Application No. 28 of 2025 filed by the petitioners and maintained the Order dated 06.03.2025 passed by XIth Senior Civil Judge, Karachi (West), whereby he dismissed Application under Order VII Rule 11 CPC, filed by the petitioners for rejection of plaint in Civil Suit No. 397 of 2023 filed by Respondent No.1.

2. Brief facts of the case are that Mst. Zarina Shabbir, respondent No.1 herein, filed Civil Suit No.397 of 2023 stating therein that her father namely, Ali Sher, expired on 11.10.1983 leaving behind a widow namely, Mst. Eidu, the plaintiff herself, as well as defendant Nos.2 to 6 arrayed in the suit. However, Mst. Eidu died on 27.8.2022, so also one of plaintiff's brother namely, Ali Mohammad on 16.06.2012, hence, the plaintiff and defendants No.2, 3, 5, 6 and legal heirs of defendant No.4, late Ali Mohammad, are the sole heirs of her deceased father Ali Sher. It was further stated in the plaint that deceased Ali Sher left immovable property being House No. 22, Sector

2-A, Ali Garh Colony, Orangi Town, Karachi, measuring 90 Sq. Yds, since then the said property has been in occupation of defendants No. 1 and 2 viz. petitioners No.1 and 2 herein, and the original documents of the property in question are also in their custody after the death of deceased Ali Sher. It was further stated that the market rental value of the property in question is about Rs. 1,00,000/- per month and plaintiff's share i.e. 1/11, in the said rent, if calculated in terms of money, would be approximately Rs. 42,54,545/- for 468 months being the mesne profit. It was further stated that the total market value of the suit property is Rs.6,50,00,000/- (Rupees Six Crores Fifty Lacs Only). It was further asserted that the suit property is required to be distributed amongst the legal heirs of deceased Ali Sher in the ratio i.e. Defendant No. 1 to 5 (males) @2/11 Rs. 1,18,18,181/- each. Plaintiff (female) @ 1/11 Rs. 59,09,090/- It was further stated that the land in question upon which the suit property is situated is actually owned by the Karachi Development Authority / Karachi Metropolitan Corporation.

3. The grievance of the plaintiff / respondent No.1 is that on several occasions, she requested defendants No. 2 to 6 for giving her share in the suit property and lastly on 21.05.2022 she made such request to the defendants but they have been avoiding to settle the dispute by mutual consultation. According to her, when it came to her knowledge that defendant No. 2 Taj Mohammad is negotiating to sell the suit property to some unknown persons and it was apprehended that he will sell out the suit property thereby depriving the plaintiff and other legal heirs of the deceased of their lawful shares in the suit property, she filed Civil Suit No. 1250/2022 for Partition, Mesne Profit & Injunction in the Court of VIII-Senior Civil Judge, Karachi West.

4. It was further stated in the plaint that on 24th September 2022, the plaintiff was shocked when it came to her knowledge through written statement filed by defendant No. 2 in Civil Suit No. 1250/2022 that his son Irfan Taj i.e. defendant No. 1 has illegally and unlawfully managed to obtain lease deed in respect of suit property in the year 2018 from Defendant No. 7 viz. The Project Director Orangi Township in connivance with Defendant No. 8, the Sub-Registrar, Orangi Township, Karachi, bearing Registration at No.4520, Book-I, dated 19.11.2018, having Scanning No. RD:4520/SRO:4/DocType:33 dated 25.02.2019 at DSU KHI BoR Sindh.

5. It was further stated in the plaint that upon disclosure of such facts, she withdrew Civil Suit No. 1250/2022 with permission to file fresh suit. Accordingly, she filed Civil Suit No.397 of 2023 for cancellation of Lease Deed executed in favour of defendant No.1, Partition, Mesne Profit and Injunction.

6. Upon service, defendants / petitioners No.1 and 2 filed written statement and raised legal objections regarding the maintainability of the suit. They also filed para-wise reply to the plaint. Besides, the Petitioners filed an application under Order VII, Rule 11 CPC on 29.11.2023 for rejection of the plaint; however, the same was dismissed vide order dated 15.02.2024. Thereafter, the Petitioners filed another application under Order VII Rule 11 CPC for rejection of the plaint, stating therein that the suit was barred by law. The Respondent No.1 / plaintiff filed counter affidavit to the said application to which the Petitioners filed affidavit-in-rejoinder; however, vide order dated 06.03.2025 the said application was dismissed by the trial Court. The petitioners assailed said order by filing Civil Revision No.28 of 2025 which was also dismissed vide impugned Order dated 20.05.2025, hence this constitutional petition.

7. I have heard learned counsel for the parties and perused the material available on the record.

8. Learned counsel for the petitioners submitted that the property in dispute was owned by one Mst. Ejaz Bano (page No. 67), who sold the same to petitioner/defendant No. 2 namely, Taj Mohammad in the year 1990, after the demise of their father Ali Sher in the year 1983, hence question of co-inheritance or share of other siblings of Ali Sher, does not arise. He next submitted that the plaintiff / respondent without seeking declaration has simply maintained the suit for partition, mesne profit, cancellation of lease and injunction, which is not maintainable under the law. He added that order passed by the trial court was not a speaking one and even Revisional Court has not discussed this essential aspect of the case. He further submitted that when title of suit property is disputed, then suit for partition or mesne profit without seeking declaration, is not maintainable as per dictum laid down by the Superior Courts of Pakistan. According to him, although the plaint filed by respondent No.1 was not maintainable, but the trial Court without properly appreciating the averments made in the plaint, dismissed the application

under Order VII Rule 11 CPC and the Revisional Court also illegally maintained such order of the trial Court. He, therefore, prayed that by allowing this petition, the impugned orders passed by the Courts below may be set aside and the case may be remanded to trial Court for re-hearing the application under Order VII Rule 11 CPC. In support of his contentions, he placed reliance upon the cases of Sultan Mahmood Shah through LRs and others Vs. Muhammad Din and two others (2005 SCMR 1872), Muhammad Aslam VS. Ferozi & others (PLD 2001 SC 213), Ghulam Haider Mehar Vs. Illahi Bux Mahar (2022 CLC 1374), Mehmood Khan & others Vs. Gulzad Khan & Others (2013 MLD 1666), Tahir Bano through LHRs Vs. Muhammad Bilal & others (2019 MLD 1307), Mobeen Raza & Another Vs. M/s Alloo & Minocher Dinshawo & 10 others (PLD 2012 Sindh 92), Muhammad Mubeen Vs. Federation of Pakistan & others (PLD 2006 SC 602), Absar Ahmed Siddiqui Vs. Union Bank & others (2020 YLR 871 (Sindh), Ghulam Hussan Vs, Province of Punjab & 2 others (2024 YLR 573), Abdul Hag Vs. Mst. Surrya Begum (2002 SCMR 1330), Mst. Alim Taj Vs. Mst. Sahib Jan (2014 YLR 385) and Mst. Bushra Hamid and others Vs. Farzana Nizam & others (Judgment passed in Suit No. 878 of 2020 by this Court).

9. Conversely, learned counsel for respondent Nos. 1, 4 & 5 opposed the petition on the ground that the trial Court rightly rejected the applications filed by the petitioners, so also the Revisional Court rightly maintained such order, because the property in dispute was in possession of respondents/plaintiffs since 1975 and in support of his contentions, he relied upon manual NICs issued to deceased Ali Sher and respondent Abdul Wahid, available at page 29 of the Objections filed against the memo of petition, showing that residential address of the respondents is the same as of disputed property. He, therefore, submitted that property was owned by father of parties namely, deceased Ali Sher, hence the plaintiff / respondents are entitled to their respective shares according to Muhammadan Law. He further submitted that the trial Court has already framed the issues and the first crucial issue is "Whether the Suit property was owned by Ali Sher, father of petitioners and respondents." He further submitted that the plaintiff side has recorded evidence and defendants' / petitioners' side has subjected them to cross-examination and now the case is pending before the trial Court for their evidence which they are avoiding to adduce. He, therefore, submitted that since the evidence has been recorded, the scope of application under Order

VII Rule 11 CPC has become narrow, therefore, by maintaining the orders of the Courts below, the petition may be dismissed. In support of his contentions, he placed reliance upon the cases of Muhammad Hashim & another Vs. Ghulam Mujtaba Shah alias Gulzar Shah & 12 others (2016 CLC 721(Sindh), Abdul Khaliq Shaikh Vs. Seema Masood & 5 others (2009 CLC 131), Sheikh Ishtiaq Ahmed & 7 others Vs. Muhammad Usman Ali Sheikh (2021 YLR 315 Lahore) and Fazal Kareem Vs. Muhammad Saeed & others (1994 CLC 1339 (Lahore)).

10. Per learned counsel for both the parties, respondent Nos. 2 and 3 have been debarred from defence before the trial Court, hence, there is no need to repeat the process against them. No one is in attendance on behalf of official respondents Nos. 6 and 7.

11. In the first instance, I would like to deal with the contention of petitioners' counsel that the order passed by the trial Court dated 06.03.2025, whereby application under Order VII Rule 11 CPC was dismissed, is a non-speaking order. In this context, it may be observed that prior to this, the petitioner had moved similar application under Order VII Rule 11 CPC for rejection of plaint which was dismissed vide an elaborated order passed on 15.02.2024, thereafter, the petitioner had moved second application under Order VII Rule 11 CPC. As the trial Court had already dealt with similar application and had dismissed the same by a detailed order touching and discussing all the points taken in the application, therefore, while dismissing the second application, the trial Court observed that the grounds taken for rejection of the plaint in the second application had already been dealt with and the said application was dismissed by a detailed order, therefore, the second application was dismissed by a short order as the grounds taken in both applications were almost same. In this view of the matter, the aforesaid contention of petitioners' counsel is devoid of force.

12. The main ground taken by the petitioners for rejection of plaint was that the plaintiff has not established title / ownership of the suit property by deceased Ali Sher, who was father of the plaintiff as well as defendants No.2 to 6, as such she had no legal status and character to maintain the civil suit. It may be observed that it is a well settled principle of law that for rejection of the plaint, only the contents of the plaint are to be examined by the trial Court.

In the plaint the plaintiff / respondent No.1 had clearly stated that the property in question was owned by their deceased father Ali Sher and that by means of fraud, the petitioners / defendants No.1 and 2 had managed to obtain lease in favour of petitioner No.1 namely, Irfan Taj. The plaintiff / respondent No.1 has also produced copies of National Identity Cards issued in the year 1975 to deceased Ali Sher and defendant Abdul Wahid wherein their residential address has been shown to be the same i.e. that of suit property viz. House No.22, Ali Garh Colony, Orangi, Karachi. It is a settled law that for deciding an application under Order VII Rule 11 CPC, the contents of the plaint are to be deemed as true and correct. In such circumstances, unless and until proper evidence is recorded, it cannot be ascertained and adjudicated upon as to whether deceased Ali Sher had owned the suit property or not? and as to whether cause of action to file the suit had accrued to the plaintiff or not?

13. The factual and legal controversies including disputed facts relating to cancellation of lease deed, partition and injunction can be properly adjudicated upon only after recording of evidence of both parties and without undertaking such exercise, it cannot be finally determined as to whether deceased Ali Sher at the time of his death was lawful owner of the suit property or not?

14. In the instant case, issues have been framed and evidence has already been recorded to some extent. Pursuant to directions, the trial Court has submitted report which reveals that evidence of plaintiff's side has been recorded and now defendants have to record their evidence. In such an eventuality, at this stage, rejection of the plaint by allowing application under Order VII Rule 11 CPC does not seem to be in consonance with the settled law.

15. In this connection, reference may be made to the case of **AJMAL KHAN Vs. Mst. GUL ZAHIRA BIBI through Legal heirs and 4 others**, reported in **2016 MLD 1394 [Peshawar (Bannu Bench)]**, wherein a Division Bench of Peshawar High Court held as under:

"In the instant case, the written statement was filed, the issues generated by the divergent pleadings have been framed, in such circumstances the rejection of plaint under Order VII, Rule 11, C.P.C. is totally uncalled for. In a case of "Haji Allah Bakhsh v. Abdul Rehman and others" (1995 SCMR 459), the Hon'ble Supreme Court of Pakistan rendered the following observation:--

"In order to press into service the provisions of Order VII, Rule 11, C.P.C, the averments contained in the plaint are to be presumed to be correct."

The dictums/principle of law was followed by this court in a case titled "Muhammad Zaman v. Shah Wazir Khan" reported in (PLD 2002 Peshawar 45) wherein it has been held:--

"In order to invoke the applicability of this clause the court shall look into the contents of the plaint only and shall examine the plaint on its face value"

The above principle of law was also supplemented by the Hon'ble Supreme Court of Pakistan in a case titled "Muhammad Altaf and others v. Abdur Rehman Khan and others" reported in (2001 SCMR 953), wherein it has been observed:--

"For the purpose of an application under Order VII Rule 11, C.P.C, the averments contained in a plaint are to be presumed to be correct."

16. In the case reported as **MUHAMMAD ALTAF and others Vs. ABDUR REHMAN KHAN and others (2001 SCMR 953)**, Honourable Supreme Court held as under:

"4. We would not like to express our views on the merits of the respective case of parties. However, it will suffice to observe that for the purpose of an application under Order VII, Rule 11, C.P.C., the averments contained in a plaint are to be presumed to be correct. In the case in hand, learned Judges of the Division Bench have rightly pointed out that the allegation of fraud which was also averred in the plaint could not have been resolved without recording evidence."

17. In the instant case too, the plaintiff / respondent No.1 had alleged that the petitioners / defendants No.1 and 2 had managed to obtain the lease in respect of the suit property by playing **fraud and misrepresentation**.

18. In the case of **AZIZ-UR-REHMAN Vs. Maulana MUHAMMAD ZAHIR SHAH and 11 others**, reported in 2008 CLC 1411 [Peshawar], the plaint in the suit was rejected under Order VII Rule 11 CPC by the trial Court and on assailing the said order, it was held by Peshawar High Court as under:

"...but the question here is that when the plaint was filed and written statement was submitted by the defendant-respondents, it was the bounden duty of the learned trial Court to have framed proper issues and afforded opportunity to the parties to lead pro and contra evidence;"

19. In the case of **MUHAMMAD SADIQ through power of attorney Vs. MUHAMMAD HASSAN and another**, reported in 2025 CLD 1796 [Sindh],

this Court held as under :

"9. I have examined the Impugned Order and it is held that the Impugned Order is beyond the permissible scope of Order VII, Rule 11, C.P.C. as set out in the case of Florida Builders (supra). It is evident that the learned Tribunal has not given any consideration to the scope of Order VII, Rule 11, C.P.C. and embarked on adjudicating disputed questions in a summary manner, without recording evidence."

20. In the case reported as **AKHTAR NAWAZ and others Vs. AZRA BEGUM and others (2025 YLR 544) [Peshawar (Abbottabad Bench)]**, it was held:

"...in the given facts and circumstances whether the disputed gift mutation(s) were validly made or the same is the result of any fraud, are the questions which would be determined by the learned trial Court after recording of pro and contra evidence and thus, rejecting such a plaint at the initial stage would not meet the ends of justice specially on the ground of limitation..... 5. It is relevant to mention here that while deciding the application filed under Order VII Rule 11, C.P.C., the Court has just to see that as to whether the plaintiff has disclosed a cause of action or not and as such at this initial stage it should not be the concern of the Court to record any finding that the plaintiff is not having a cause of action or that he would not be able to prove the cause of action, as such aspect of the case is to be determined after recording of pro and contra evidence. ...6. It is relevant to mention here that while deciding the application under Order VII rule 11, C.P.C., it is only the contents of the plaint which are to be considered and even the plea taken in the written statement or any document appended with the written statement cannot be considered at such initial stage. In the case this court has already observed that at the time of deciding an application filed under Order VII rule 11, C.P.C., for the rejection of a plaint, the Court has just to consider the "contents" of the plaint and every fact mentioned in the plaint has to be considered as true and correct and even the written statement or a plea taken in the written statement could not be taken into consideration. Even the fact/ apprehension that the plaintiff may not ultimately succeed in establishing the averments made in the plaint, cannot be a ground for rejecting the plaint under Order VII rule 11, C.P.C. In this regard wisdom can be drawn from the judgment rendered by the Apex Court in the case wherein it is held that;

"The rejection of plaint under Order VII, Rule-II, C.P.C. is contemplated at a stage when the Court has not recorded any evidence in suit. It is for this reason precisely, that the law permits consideration of only averments made in the plaint for the purpose of deciding whether the plaint should be rejected or not for failure to disclose cause of action or the suit being barred under some provision of law. The Court while taking action for

rejection of plaint under Order VII, Rule 11, C.P.C. cannot take into consideration pleas raised by the defendant in the suit in his defence as at that stage the pleas raised by the defendants are only contentions in the proceedings, unsupported by any evidence on record.."

21. In the case of **FAZAL KAREEM Vs. MUHAMMAD SAEED and others**, reported in 1994 CLC 1339 [Lahore], it was held:"

"From the bare reading of the plaint it is clear that if the assertions made therein are accepted correct respondent No. I would be entitled to the decree prayed for. He thus has a cause of action. It is totally a different thing as to whether or not he succeeds in proving his case. The question as to whether Mehr Shammoo or Mst. Mehr-un-Nisa was the owner of the house in dispute could only be decided after recording evidence. Without any such evidence the learned Courts below could not decide as to who was the original owner of the said house. They, therefore, were quite justified in not rejecting 'the plaint under Order VII, rule 11, C.P.C."

22. In the case of **Sheikh ISHTIAQ AHMAD and 7 others Vs. Mohammad Usman Alil Shaikh**, reported in 2021 Y L R 315[Lahore (Multan Bench)], it was held:

"14. In the circumstances noted supra the order of rejection of plaint by the learned trial court outright, without recording evidence was not sustainable nor findings of the learned Addl. District Judge as to the character and nature of the transaction as also maintainability of suit without allowing evidence, could be affirmed. Proper course in this case was to remand the case for decision afresh on the question of maintainability of the suit after opportunity of evidence to the parties and by attending to the questions as observed hereinabove."

23. In the case of **MUHAMMAD HASHIM and another Vs. GHULAM MUJTABA SHAH alias Gulzar Shah and 12 others**, reported in 2016 C L C 721 [Sindh], it was held by this Court as under:

"8. From perusal of the aforesaid order and the record placed before this Court, it appears that the application under Order VII, Rule 11, C.P.C. was allowed by the Senior Civil Judge, Sukkur, without taking into consideration the fact that the claim of the respondents was that the property in dispute was a Qabuli land, which could not have been abruptly declared to be a Na-Qabuli land by the Revenue Authorities. The order dated 4.9.1998 appears to have been passed in haste by the Colonization Officer, Sukkur Barrage, and without affording any opportunity of hearing to the respondents. It is further observed that the Learned trial Court also failed to take into notice that the judgment and decree dated 27.10.1951 passed by the Civil Court, Rohri, in Suit No 42 of 1948 in respect of the Suit property was already available on record and the dispute with regard to ownership of the

said property could only have been adjudicated upon after recording of evidence in respect of the said land by both the claimants. Further the Suit filed by the respondents is not merely against the Revenue Authorities, as the land in question was not resumed in favor of the Government by order dated 04.09.1998 passed by the Colonization Officer, Sukkur Barrage, but was allotted to the applicants who now claim ownership of the said property on the basis of the said order as against the respondents. Therefore, on this fact of the matter, the plaint could not have been rejected by the Trial Court on the premise that the same was hit by the provisions of Section 11 of the Sindh Revenue Jurisdiction Act, 1876. The learned trial Court appears to have fallen in error by rejecting the plaint in haste and in a slipshod manner without taking into account the averments made by the respondents in the plaint. The trial Court while hearing the application under Order VII, Rule 11, C.P.C. was not required to deeply appreciate the material available/placed on record by the applicants through written statement and only the averments made by the respondents were required to be examined for deciding such application. Reliance in this regard may be placed on the case of Mst. Bano alias Gul Bano and others v. Begum Dilshad Alam and 4 others (2011 CLC 88)."

(Emphasis has been supplied for the sake of convenience)

24. It is significant to point out at this juncture that while deciding the fate of a case, particularly that of an application under Order VII Rule 11 CPC, which is a relief of summary nature, the conduct of the parties is also to be taken into consideration. In instant case, first suit was filed in May, 2022 whereas the defendants / petitioners filed written statement after about one year viz. in May, 2023, while the first application under Order VII Rule 11 CPC was filed by them after about six months of filing of written statement and after about one and a half year of the institution of the suit. The said application was dismissed vide order dated 29.11.2023 which was assailed by the petitioners by means of a Civil Revision which was also dismissed vide order dated 15.02.2024; however, the petitioners did not challenge the said order before the higher forum and instead on 07.01.2025 i.e. after about 11 months, they filed second application under Order VII Rule 11 CPC which was also dismissed vide impugned order passed by the trial Court. In the circumstances, the order dated 15.02.2024 whereby first Revision Application was dismissed, attained finality, thus, second application under Order VII Rule 11 CPC was not warranted under the law as the grounds taken in both the applications under Order VII Rule 11 CPC were almost the same.

25. As regards the case-law relied upon by petitioners' counsel, it seems that mostly the said cases are on the proposition that a suit for simple

possession and/or injunction without seeking any declaration is not maintainable. There is no cavil to such legal proposition; however, such cases relied upon by petitioners' counsel are distinguishable and not attracted to the facts of the present case, as the plaintiff has not sought relief of simple possession and injunction, rather the plaintiff has also sought relief of **cancellation of Lease Deed** as well as **Partition** and **Mesne Profit**. Even, the ultimate purpose of the second prayer whereby a direction has been sought to be issued to the Nazir for obtaining possession of the suit property, is the distribution of shares as per Shariah amongst the legal heirs of deceased Ali Sher including defendants/petitioners No.1 and 2. Another distinguishing feature, as stated above, is that in the instant case issues have already been framed, so also evidence of plaintiff's has been recorded. Certain cases relied upon by the petitioners' counsel are on the point that the suit seeking negative declaration is not maintainable. From perusal of the prayer clause, I do not find any such negative declaration, on the other hand, the plaintiff has sought cancellation of the lease deed allegedly obtained by the petitioners by playing fraud and misrepresentation.

26. The upshot of above discussion is that I do not find any justification to interfere with the orders passed by the two Courts below. Accordingly instant petition is **dismissed**. The trial Court is hereby directed to expedite the trial and conclude the same within shortest possible time preferably within six months from the date of receipt of this Judgment.

JUDGE
HEAD OF CONST. BENCHES

Karachi
Dated. 20.04.2026
Approved for Reporting