

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

1st Appeal No.S-01 of 2023

Appellants: Ghulam Muhammad, Faisal and Qaiser Riaz,
Through Mr. Ghulam Nabi Meo advocate.

Respondent: Jan Ali Khan, through Syed Ghulam Hyder Shah Advocate.

Date of Hearings: 24-02-2026 and 12.03.2026.

Date of Judgment: 12.03.2026.

J U D G M E N T

Muhammad Hasan (Akber), J: Assailed in this appeal is the Judgment and Decree dated 23-08-2023 (**impugned Judgment and Decree**) passed in Summary Suit No. 22 of 2018 by the learned Additional District Judge, Khipro, whereby the said Summary Suit was decreed as prayed.

2. Brief background of the controversy is that Respondent/ Plaintiff filed summary suit for recovery of Rs.9,00,000/- against the Appellants/ Defendants claiming that he owns banana garden of 24-00 acres, situated in deh Bahram Bari, which the appellants/ defendants agreed to take on lease for a period of four years commencing from 30-04-2013 to 30-04-2016, for which an agreement was executed between them with a payment schedule. Rs.700,000/- were claimed for the following dishonoured cheques whereas Rs.2,00,000/- were further claimed as fine.

Cheque No.	Date	Amount in Rs.	Bank
58022576 issued by Faisal Riaz	10-01-2017	Rs.1,00,000/-	Bank Al-Falah
58022577 issued by Faisal Riaz	10-03-2017	Rs.1,00,000/-	Bank Al-Falah
22118932 issued by Ghulam Muhammad	10-03-2017	Rs.5,00,000/-	Askari Bank

3. After leave-to-defend application was allowed, written statement was filed by the defendants and evidence of both parties was recorded, whereafter the impugned Judgment and decree were passed against the appellants.

4. Learned counsel for the appellants has vehemently opposed the impugned Judgment and decree; referred to various provisions of law;

challenged the maintainability of the suit; pointed out the lack of a valid and legal cause of action to initiate the suit; argued that the subject cheques were issued only as Security, and that too, only for the 1st Lease Agreement, which was already cancelled, and not for the 2nd Lease Agreement; that one of the cheques was not even validly dishonoured since it was a 'photo account'; that the Judgment and decree are based upon mis-reading and non-reading of evidence; and that jurisdiction under order XXXVII CPC. was illegally exercised. He lastly prayed for dismissal of the suit.

5. Heard and perused the record.

6. On the pleadings of the parties, 9 issues were framed by the learned trial Court and to prove his case, 04 witnesses were examined by the Plaintiff. In rebuttal, 6 witnesses were examined by the Defendant side. After hearing, the learned trial Court decreed the suit, which is assailed in this Appeal.

7. Perusal of the record reflects that the plaint is completely silent about the fact of the filing of the 1st first suit. Such a fact has been highlighted in the written statement and evidence, revealing that earlier, a Summary Suit 05/2017 (**1st Suit**) was filed by the plaintiff, only against Defendants 1 and 2 for recovery, based upon dishonour of the same cheques, with respect to the same transaction, on the same lease agreements, and the same cause of action. Subsequently, vide statement dated 13.09.2018, the said suit was withdrawn by the plaintiff with the prayer, **"I undersigned do hereby state that I withdraw the suit due to some technical defect, with permission to file fresh suit"**. However, no such permission to file a fresh suit was allowed in the Order dated 13.09.2018, passed by the learned Additional District Judge, Khipro, and the said suit was simply **"dismissed as withdrawn with no order as to cost."** Despite absence of permission to file a fresh suit, the same plaintiff filed another summary suit No.22/2018 (**2nd Suit**) with the same prayer, with respect to the same cheques, regarding the same transaction, the same cause of action, and against the same two Defendants, but only this time, a party was added with fine amount. Perusal of the written statement reflects that such an objection was also raised about the maintainability of the 2nd suit, however no discussion, reasoning or conclusion on this aspect of the matter could be found in the impugned Judgment. For withdrawal of a suit and filing of a subsequent suit, the provisions of Order XXIII and section 12 CPC. are relevant. Order XXIII Rule 2 CPC. provides the

procedure for withdrawal of suit with permission to file a fresh suit, whereas Rule 3 clearly bars filing of a fresh suit in the following terms: **“(3) where the plaintiff withdraws from a suit,....without permission referred in sub-rule (2), he shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.”** Filing of such a subsequent suit, without following rule 2, is therefore not permissible.¹ Even the addition of a new party or non-impleading of a previous party will not change the nature of the suit if it is based upon the same cause of action². In the present case, no permission was allowed to file a fresh suit in the Order dated 13.09.2018, was Order was also not challenged; hence, the same had attained finality. The Plaintiff was therefore precluded from filing a fresh suit in view of the bar under Order XXIII Rule 3 and section 12 CPC. Moreover, as held in the above Judgments, mere addition of a new party or a new (unpresented) cheque will not change the nature of the suit since the 2nd suit has also been filed with respect to the same 2 lease agreements. The impugned Judgment has failed to consider this aspect of the matter.

8. The second aspect of the matter was that the prayer in the second suit was for recovery of Rs.700,000/- for the amount of 3 subject cheques, plus Rs.200,000/- as fine amount. Two cheques were issued by Appellant No.2 for Rs.100,000/- each, whereas one cheque was issued by Appellant No.3 for Rs.500,000/-. The examination in chief of the appellant side narrates complete details of the above aspect, which could not be shaken in the cross-examination. Even the Plaintiff's attorney himself admitted that **“It is correct to suggest that the subject property was leased out in year 2013. Vol. says it was cancelled in the year 2014. It is correct to suggest that the agreement of 2013 was ended, and the agreement of 2014 was commenced”**. P.W Din Muhammad also admitted, **“It is correct to suggest that in the year 2013 the lease agreement was executed. It is correct to suggest that in the year 2014 another lease agreement was executed. It is correct to suggest that in the lease agreement of 2014 Faisal is not made party”**. The 1st lease agreement of 2013 was executed between appellants 1 and 2, and the respondent, whereas 2nd Agreement was executed between appellants 1 and 3 and the respondent.

1. *‘Muhammad Yar vs. Muhammad Amin’ (2013 SCMR 464), ‘Muhammad Ali vs. Province of Punjab’ (2009 SCMR 1079)*

2. *Sardar Muhammad Aziz Khan vs. United Kashmir Flour Mills Pvt. Ltd. (PLD 2004 SC (AJK) 1), ‘Bibi Gul vs. Khor Bibi’ (1997 MLD 2964).*

The cheques were issued in terms of the 1st agreement as security. As admitted by PW, the 1st Agreement was cancelled, and subsequently the 2nd Agreement was executed between Respondent and Appellants 1 & 3. The most relevant fact in the 2nd Agreement is that the subject cheques were not issued with respect to the 2nd Agreement but were only issued for the 1st Agreement. Once the 1st Agreement stood cancelled without any express reference to the subject security cheques, such security cheques, having no nexus with the 2nd Agreement, stood discharged. From the above, it appears that no valid or legal cause of action existed in favour of Respondent No.1 for initiating summary proceedings, as against the Appellants, with respect to the subject cheques. This aspect of the matter, which also goes to the root of the controversy and raises serious questions on the maintainability of the suit, was also not appreciated by the learned trial court. The Respondent No.1 may have other remedies for recovery of his claim amount through an ordinary suit, subject to limitation and strictly in accordance with law; nevertheless, initiation of summary proceedings under Order XXXVII CPC. with respect to the subject cheques was not tenable.

9. The third aspect of the matter is that perusal of the 2nd Agreement further reveals that it only refers to 2 cheques without any details or particulars, whereas in the present suit, the suit has been initiated based upon 3 cheques. The question is, for which of the two cheques (out of the total three cheques claimed) would the suit be maintainable? Since no details of the cheques were mentioned in the 2nd agreement, and no evidence on this point was led by the plaintiff, none of the subject cheques could be considered as forming part of the 2nd agreement. Fourthly, the subject account of the appellant No.1 was a 'photo account', meaning thereby that the personal appearance of the account holder was necessary at the time of operation of the account and encashment of any cheque. In the present case, the respondent presented the cheques in the absence of appellant No.1. Hence, on the strength of the principle settled in **Salamat Ali's case**³, such a return of cheque could not be considered as validly 'dishonoured' since it was not presented in the prescribed manner.

3. unreported Judgment in 'Salamat Ali vs. Sabohi Naz' in RFA No.27359/2024 by the Honourable Lahore High Court.

10. The fifth aspect of the case is that the cheque of one of the appellants was not even written/ filled by the drawer of the cheque himself, as duly admitted by the Plaintiff's attorney, **"I do not remember the exact date of issuance of cheques by the defendant. The cheques were written by Qaiser and Ghulam Muhammad. The cheques given are pertaining to Faisal and Ghulam Muhammad. It is correct to suggest that Faisal was not lessee of agreement pertaining to the year 2014 to 2016. It is correct to suggest that the cheque of Bank Al-fallah and Askari bank which were dishonoured the number of cheques are not mentioned in the agreement..... the cheques were given six months of post-dated."** This corroborates and gives credence to the grounds agitated by the appellants, that one of the appellant is not a literate person; his CNIC also carries his thumb impression and not his signature; he was not lessee of the transaction in any of the 1st and 2nd Agreements; and his cheque was only as security for the 1st agreement, which stood cancelled and superseded by the 2nd Agreement; his cheque does not find mention in the second agreement; his cheque was not even written/ filled by him; and his cheques were misused by the Respondent. The cheque of one of the appellants, who had a photo account, was presented in his absence; whereas one of the cheques was not even presented for encashment and was not even dishonoured.

11. Sixthly, the multiple contradictions amongst Plaintiff's witnesses qua issuance of cheques further weaken the Plaintiff's claim. For instance, P.W Damsaz in his cross-examination has deposed that **"It is correct to suggest that defendants had given cheques at the agreement 2013, but the payment was deposited through online"**. P.W Din Muhammad contradicted the version of P.W Damsaz by deposing that **"It is incorrect to suggest that cheques in question pertaining to agreement of 2013"**. The attorney of the respondent, namely Darya Khan, in his cross-examination, has deposed that **"I do not remember the exact date of issuance of cheques by the defendants"**. Furthermore, there are also contradictions regarding writing over the cheques. The attorney of the respondent in his cross-examination has deposed that **"the cheques were written by Qaiser and Ghulam Muhammad"**, whereas P.W Damraz Ali and P.W Din Muhammad in their cross-examination have deposed that **"The cheques were written by Faisal"**. Furthermore, admittedly, appellant Faisal was not executant of the second lease agreement; therefore, issuance of said cheques in the 2nd lease agreement by appellant Faisal is quite illogical. Therefore, in such circumstances, the respondent has failed to prove by

producing tangible evidence that the cheques in question were issued to the respondent in respect of the 2nd lease agreement. Since, admittedly, the 1st lease agreement was cancelled, and as per the claim of the appellants, they issued said cheques as security at the time of execution of the first lease agreement and were lying with the respondent, therefore, in such circumstances, dishonouring of said cheques doesn't put any obligation upon the respondents. The finding recorded by the learned trial Court on these issues appears to be a result of non-reading and misreading of the material available on record.

12. The seventh aspect for consideration is with regards to the claim of payment of the lease amount by the appellants 1 and 2 to the respondent through other modes/ online banking etc. in Plaintiff's bank account. The appellants, in their evidence, deposed about the details of payments made online in the account No.2045-9 of the respondent's MCB Branch. In support of such plea, the appellants examined Shah Jahan Shah, Branch Manager MCB Sir Syed Road Mirpurkhas, who in his evidence has deposed that different cheques on different dates were deposited in their branch in the account of Ali Khan (respondent) in account No. 2045-9, originally opened in MCB Sanghar branch, which were deposited in his account on online. The P.W Damsaz Ali, in his cross-examination, has deposed that **"It is correct to suggest that defendants had given cheques of the agreement 2013 but the payment was deposited through online"**. P.W Din Muhammad, in his cross-examination, has deposed that **"It is correct to suggest that defendants used to make payment through online and some through cheques"**. The Plaintiff's attorney, in his cross-examination, has deposed that **"I do not know how the payment was made for lease"**. The evidence produced by the appellants and the admission of the respondent's side clearly show that the appellants had made payment of the lease amount to the respondent/ plaintiff through online transfer, hence the learned trial Court erred in deciding this issue in "negative".

13. Lastly, the Bank witness from Bank Alfalah Limited clearly deposed that **"in our record, such cheque is not mentioned and the same was not deposited in our bank for encashment."** Hence, if one of the cheques being claimed in the suit was not even presented to the concerned bank, how was it considered as dishonoured, and how, based on such a cheque, was the claim in the summary suit decreed? All the above-discussed factors raise serious questions about the validity of the Judgment and decree.

14. Cumulative effect of this entire discussion is that the Plaintiff was unable to establish the maintainability of the suit; the validity of the cause of action; and was also unable to prove through irrefutable evidence that the subject cheques were issued for valid consideration for the 2nd lease agreement, so also the fact that all subject cheques were validly dishonoured, to establish his claim under summary jurisdiction of Order XXXVII CPC. The impugned Judgment and Decree therefore are not based upon a proper appreciation of the legal position and the evidence, hence unsustainable in law. This Appeal is therefore allowed; the impugned Judgment and Decree dated 23-08-2023 passed in Summary Suit No.22 of 2018 by the learned Additional District Judge, Khipro, are hereby set aside; and the suit of the respondent is dismissed with no order as to the cost.

These are the detailed reasons for my short Order dated 12-03-2026.

JUDGE