

# HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

## Civil Revision Application No.S-270 of 2024

Applicant: Choudhry Abid Farooque s/o Choudhry Zafar Khan  
Through Mr. Ghulam Rasool Samoon, Advocate (called absent).

Respondents: 1. Wali Muhammad s/o Rano Khaskheli  
2. Province of Sindh through Secretary Revenue,  
Board of Revenue Shahbaz Building Hyderabad.  
3. Deputy Commissioner, Sanghar.  
4. Assistant Commissioner Sanghar.  
5. Mukhtiarkar (Revenue) Sanghar.  
6. Zafran Khan s/o Qayoom Khan.

Official respondents through Mr. Ayaz Ali Rajpar, A.A.G.

Date of hearing: 09.03.2026.

Date of Order: 09.03.2026.

## ORDER

**Muhammad Hasan (Akber), J.-** Assailed in this revision is the Order dated 29-03-2021 passed in Civil Misc. Appeal No.78/ 2020 by the learned 2<sup>nd</sup> Additional District Judge, Sanghar, maintaining the Order dated 03-11-2020 whereby the applicant's plaint in F.C. Suit No.139/ 2019 was rejected by the learned Senior Civil Judge-I, Sanghar.

02. Brief facts are that suit for Specific Performance of Contract and Permanent Injunction was filed claiming therein that the respondent No.1 based on his possession over Survey No.54, area 16 acres situated in Deh Awadh, Tapa Samathri, Taluka and District Sanghar was granted to him being landless Hari vide Order of C.O Sukkur Barrage bearing No TB/749 dated 27.11.1988 and was allowed to remain in possession of the suit land. The respondent No.1 fully paid the price of the suit land; therefore, he became the owner of the suit land. The respondent agreed for sale of the suit land with the applicant/ plaintiff for total sale consideration of Rs.10,00,000/= and delivered the possession of the suit land as part performance of contract; no time for execution of sale deed was fixed in agreement and it was left at the option of the applicant whenever he demanded, but in the meanwhile the respondent undertook to get the mutation entries in the Revenue record and to obtain sale certificate. Before entering into a sale agreement with the applicant, one Zafran Khan son of Qayoom, by tempering the record i.e. A-Form in the name of the respondent/ defendant No.1 bearing No.PE/1129, in collusion with the staff of the Barrage authority, got mutation entries in his name in Village Form XV, which were cancelled by the Deputy Commissioner, Sanghar, vide Order dated 22-10-2014. Zafran Khan filed F.C Suit No.132 of 2014 to get a declaration of his title on the

suit land on 20-11-2014, which was dismissed vide Judgment dated 28-2-2017. Since Khata of Zafran Khan has been cancelled and his suit against the respondent/ defendant No.1 has also been dismissed, therefore a fortnight back the applicant/ plaintiff demanded execution of Sale Deed from the respondent/ defendant No.1 after getting mutation of the suit land in his name and getting sale certificate but the respondent/ defendant No.1 refused to do the same and showed his intention to sale the suit land to other person on higher rates, hence the applicant/ plaintiff filed suit.

03. The learned trial Court recorded in the order that during pendency of the suit, as per NADRA report dated 12.05.2020 CNIC number of the alleged seller (respondent/ Wali Muhammad) is in the name of Arbab Jamali son of Ramzan Jamali, whereupon the learned trial Court framed preliminary issue that whether agreement signed by respondent/ defendant Wali Muhammad having CNIC No. 45402-7059001-5 is forged one? The report was called from the NADRA and as per report of NADRA, the CNIC No. 45402-7059001-5 is in the name of one Arbab Jamali son of Ramzan Jamali but the applicant/ plaintiff entered into alleged sale agreement with the respondent/ defendant No.1, which apparently executed by the respondent/ defendant No.1 by showing forged and manipulated CNIC number 45402-7059001-5, which is in the name of one Arbab Jamali instead of Wali Muhammad the respondent/ defendant No.1. Furthermore, the applicant/ plaintiff failed to submit any title document to show that the respondent/ defendant No.1 has any right or title over the suit land; hence the applicant/ plaintiff has no cause of action to file this suit for specific performance with forged CNIC of the respondent/ defendant No.1 and without any title in his favour. Unregistered agreement/ documents without registration, without submitting any details of right, title and ownership of the respondent over the suit land without submitting any document in this regard that whether the respondent/ defendant No.1 was competent to enter into agreement, is null and void document and has no value in the eye of law and liable to register case for submitting forged documents in Court. After hearing learned counsel for the applicant/ plaintiff on the pint of maintainability of suit under section 42 and 56(d) of the Specific Relief Act, the learned trial Court rejected the plaint of the suit of the applicant under Order VII Rule 11 C.P.C by holding that suit is not maintainable, plaintiff has no cause of action to file this suit on the basis of forged agreement/ forged CNIC number of the respondent/ defendant No.1, barred by section 25, 42 and 56(d) of the Specific Relief Act. The said Order was assailed in Civil Misc. Appeal No. 78/ 2020, which was dismissed by the learned appellant Court vide Order dated 29-03-2021; hence this Revision Application.

04. Heard learned A.A.G and perused the record. This matter was adjourned on last date of hearing with clear directions that in case of absence of learned counsel for the

applicant, the matter would be decided based on the material available on record. Notices were also issued to the respondent and also to the learned counsel(s) for the applicant through e-intimation notice and Secretary(s), District Bar Association(s), Hyderabad/ Sanghar, but despite the above, no one is in attendance. This is an old Revision Application of year 2021 pending since last five years and could not be dragged any further; hence with the able assistance of learned A.A.G., the impugned Orders have perused, which reflect that plaint of the suit for Specific Performance of Contract was rejected based upon the alleged absence of title of the vendor by the learned trial Court, which was concurrently upheld by the learned Appellate Court.

05. There is an abundance of case law regarding the scope and applicability of Order VII rule 11 CPC., covering the following principles:

- The Court has to presume the facts stated in the plaint as correct.
- (ii) nothing more than the averment of the plaint has to be seen for the purposes of adjudicating whether the plaint unveiled any cause of action;
- (iii) that in case of any mixed questions of law and facts, the correct methodology and approach is to allow the suit to proceed to the written statement and discovery phases and to determine the matter either by framing preliminary issues or through a regular trial;
- (iv) that the dearth or weakness of proof would not be a justification for concluding that there is no cause of action disclosed in the plaint;
- (v) that for the rejection of a plaint, 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; that only in rare and exceptional cases, the Court can 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;
- (vi) that even where there is a joinder of multiple causes of action, and at least some of these causes could potentially lead to a decree, a plea of demurrer cannot be admitted for rejection of plaint.
- (vii) that if there are several parties and the plaint discloses a cause of action against one or more of them, then too, the plaint cannot be rejected; and
- (viii) that the plaint is not to be read in fragments, but it has to be read as a whole. The above principles have been enumerated in the cases of **Rehmat Hussain** and **Media Max.**<sup>1</sup>
- (ix) That with the aim of deciding whether the plaint discloses a cause of action or not, the court has to perceive and grasp the averments made in the plaint and the accompanying documents, as held in **Jehanqir Akhter case;**<sup>2</sup>

- (x) that in case of any mixed question of law and facts, the right methodology and approach is to let the suit proceed to written statement and discovery and determine the matter either on framing preliminary issues or regular trial, as held in **Kishwar Khan case**.<sup>3</sup>
- (xi) Moreover, factual inquiry regarding averments in the plaint is not permissible.<sup>4</sup>
- (xii) That where a cause of action is disclosed in the plaint, the plaintiff has a right to a fair trial and to produce evidence and a judicial decision on merits of his cause;
- (xiii) In **Dost Muhammad and other cases**<sup>5</sup> it was concluded that even in the case of vague pleadings and lack of proper particulars and details, the Court shall ask for better particulars and the proper course is to order the party to remove the vagueness and not to reject the plaint.
- (xiv) It has also been held that the Court cannot take into consideration pleas raised by the defendant in his defence, as at that stage the pleas raised by the defendant are only contentions in the proceedings unsupported by any evidence on record. However, if there is some other material before the Court apart from the plaint at that stage which is admitted by the plaintiff, the same can also be looked into and taken into consideration by the Court. Beyond that the Court would not be entitled to take into consideration any other material produced on record unless the same is brought on record in accordance with the rules of evidence, as held by the Supreme Court in the case of **Jewan and others**. It was further held that the rejection of plaint at a preliminary stage when the plaintiff has not led any evidence in support of his case, is possible only if the Court reaches this conclusion on consideration of the statements contained in the plaint and other material available on record before the Court which the plaintiff admits as correct.

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1. 'Rehmat Begum V. Mehfooz Ahmed and others' 2024 CLD 1254; 'Media Max (Pvt) Ltd. through Chief Executive V. Ary Communication Pvt. Ltd. through Chief Executive and another' (PLD 2013 Sindh 555)

2. 'Jehangir Akhter V. Inayat Ahmed' (1990 CLC 1053)

3. 'President, Zarai Taraqjati Bank Limited, Head Office, Islamabad V. Kishwar Khan and others' (2022 SCMR 1598)

4. 'Mst. Shabeona Perveen V. M/S. Defence Officers, Housing Society Authority, Karachi', (1993 CLC 2523) 'Messrs Bengal Corporation V. D.D.G. Hansa and 3 others', (PLD 1992 Karachi 75) 'Hyderabad Municipal Corporation V. Messrs Fateh Jeans Ltd.' (1991 MLD 284), 'Dost Muhammad V. Ghulam Nabi' (1990 MLD 164) and 'Karachi Development Authority V. Evacuee Trust Board through Administrator'.

5. 'Dost Muhammad V. Ghulam Nabi' (1990 MLD 164), 'N. A, Shah Riyar V. Messrs Conforce Ltd., Lahore and another' (1981 CLC 1009), and 'Seven Stars Goods Transport Co. (Regd.), Karachi V. The Administrator, Karachi Municipal Corporation, Karachi' (PLD 1976 Karachi 21).

- (xv) In the case of **Saleem Malik**<sup>1</sup> Supreme Court expressed that the scope of Order VII, Rule 11, C.P.C. is confined only to the extent of averments of the plaint and in addition, at the most uncontroversial material available on record can be considered for the purpose of determination of the question whether plaint is liable to be rejected or not but the scope of Order VII, Rule 11, C.P.C. cannot be enlarged to consider the pleading of the other side in the written statement or defense plea raised therein for the purpose of rejection of plaint;
- (xvi) In **Mushtaq Ahmad Khan case**<sup>2</sup> it was held that in order to enable a Court to reject a plaint on the ground that it does not disclose a cause of action under Order VII rule 11(a) CPC, it should travel within the four corners of the plaint and nothing else. Neither the defence set up nor the documents annexed thereto could legitimately be looked into. For failing to disclose the cause of action, the plaint can be rejected only if the allegations given in the plaint, even if it is taken to be true in the manner and form, the plaintiff is not entitled to any relief whatsoever. If the contents of the plaint read as a whole disclosed triable issues, then the dispute between the parties should not be resolved without a proper trial i.e. settlement of proper issues and recording of evidence and opportunity of cross-examination.

06. A plain reading of this provision would show that, subject to certain exceptions to clause (d) as a general principle, the plaint in a suit cannot be rejected on the basis of a defence plea or material supplied by the opposite party with the written statement. It is settled law that in case of controversial questions of fact or law, the provision of Order VII, Rule 11, C.P.C. cannot be invoked; the proper course for the Court in such cases is to frame issues on such questions and decide the same on merits in the light of evidence and cross-examination, in accordance with law. The rejection of plaint on technical grounds would amount to deprive a person from his legitimate right of availing the legal remedy for undoing the wrong done in respect of his legitimate right, therefore, the Court may in exceptional cases, consider the legal objection in the light of averment of the written statement but the pleading as a whole cannot be taken into consideration for rejection of plaint under Order VII, Rule 11, C.P.C. Same view was held in the case of Saleem Malik supra.

07. Perusal of the plaint in the present case shows that it is specifically mentioned therein that suit land was granted to the respondent being landless Hari vide Order of C.O Sukkur Barrage bearing No.TB/749 dated 27-11-1988 and he was allowed to remain in possession of the suit land. The respondent/ defendant No.1 fully paid the price of the suit

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<sup>1</sup> 'Saleem Malik V. Pakistan Cricket Board (PCB) and 2 others' (PLD 2008 Supreme Court 650).

<sup>2</sup> 'Mushtaq Ahmad Khan and another V. Mercantile Cooperative Finance Corporation Ltd. and another' (PLD 1989 Lahore 320)

land, and then A-Form bearing No.PE-1129 was issued and a Possession Certificate was also issued by the Mukhtiarkar (Land Revenue) Taluka Sanghar, in his name, which is annexed as annexures 'B' and 'C' along with plaint. Perusal of A-Form shows that suit land was allotted/ granted to the respondent/ defendant No.1 in Khuli Katchery held on 21-09-1987. The said A-Form was also produced in F.C Suit No.132/ 2014, which was filed by one Zafran Khan against the respondent/ defendant No.1 and others for declaration of his title over the suit land, which, as per averments of plaint, was dismissed vide Judgment dated 28-02-2017 and then entry in the name of Zafran Khan in village form XV was cancelled, which was also annexed with the plaint as annexure-F. Moreso, Possession Certificate bearing No.Se/815 of 2015 dated 13-04-2015 issued by the Mukhtiarkar (L.R), Sanghar, is also annexed with the plaint as annexure-C, which shows that the agricultural land comprising of B.No.54, an area of 16 acres of deh Awadh, Taluka Sanghar, is uncultivated and the possession is held by Wali Muhammad s/o Rano Khaskheli (respondent/ defendant No.1) as reported by the Tapedar of the beat. Another Possession Certificate is also available on record, which shows that Block No.54, an area 16-00 acres, situated in Deh Awadh Tapa Samathri, Taluka Sanghar, is under possession of Abid Farooque s/o Muzaffar Khan (applicant/ plaintiff). Moreso, entry No.46 of Form XV in respect of said land is also annexed with this Revision Application, which was produced at Ex.56, in F.C.Suit No.132/ 2014 Re: Zafran Khan vs. P.O Sindh and others, which, though shows the name of owner/ Khatedar as Zafar Khan s/o Qayoom Khan, but a note is made by the Mukhtiarkar, Sanghar, in the said entry that said land was allotted/granted to Wali Muhammad s/o Rano (respondent/ defendant No.1) through A-Form No.PE/1129, but by way of fraud, the same was mutated in the name of another person namely Zafran Khan s/o Qayoom Khan. The material annexed with the plaint clearly shows the title of the respondent/ defendant No.1 over the suit land being allottee/ grantee by the Barrage department and it is quite clear on record that the learned Courts below have passed the impugned Orders without considering the facts of the plaint so also documents annexed with it and thus have wrongly held that there is no title document in the name of the respondent/ defendant No.1 in respect of suit land, hence the applicant/ plaintiff has no cause of action to file said suit.

08. Hence, applying the above-discussed principles as at para 5 *ibid* to the facts of the present case, it appears that the factual allegations in the contents of the plaint clearly disclose a triable cause of action. Whether the allegations levelled in the plaint are true or false, and whether the plaintiffs will be able to succeed in their claim based on the allegations levelled in the suit, are all questions of fact, the burden to prove whereof lies on the Plaintiffs, and without which the plaintiffs would not be able to succeed. This can only be decided once issues are framed, and the opportunity of leading evidence is allowed to the Plaintiffs. Without recording evidence, it would not be appropriate to hold at

this stage as to which of the versions is correct, whether the one set up in the plaint is true, or the other one as pleaded in the defense is the correct version of the events. The defendants will also be at liberty to lead their evidence.

09. Turning to the holding of inquiry by the trial Court and observation that the CNIC number mentioned in the Qabuliat/ agreement to sale does not belong to the respondent No.1 but the same belongs to one Arbab Jamali s/o Ramzan Jamali, as per the report of NADRA authority, is concerned. Firstly, it is settled law that an inquiry at the stage of hearing of Order VII rule 11 CPC. is not permissible. Secondly, the declaration of forgery of the sale agreement by the learned trial Court, at the stage of hearing of the application under Order VII Rule 11 CPC., is not in consonance with the principles settled by the superior Courts of Pakistan; instead, such an exercise could have been conducted after conclusion of the trial. Nothing is available on record to show that the learned trial Court extended any opportunity to the plaintiff to contest such factual aspects, which defeats the cardinal principle of natural justice *audi alteram partem*, i.e. no one should be condemned unheard. If the learned Courts below relied on NADRA's report, the plaintiff shall have full opportunity to rebut the same during evidence and cross-examination. Valuable rights of the parties are involved in the matter, which could not be knocked out technically in a slipshod manner.

10. Considering the above, I am of the humble view that the plaint in the subject suit was wrongly rejected under VII Rule 11 CPC. Consequently, the instant Revision application is therefore allowed; the impugned Order dated 29.03.2021, passed in Civil Misc. Appeal No.78/ 2020 by the learned 2<sup>nd</sup> Additional District Judge, Sanghar and Order dated 03-11-2020 passed in Civil Suit No.139 of 2019 by the learned Senior Civil Judge-I, Sanghar, are hereby set aside; and the case is remanded back to the learned trial Court with direction to issue intimation notices to the respective parties, allow them opportunity to file written statement and to proceed with the trial and decide the *lis* strictly on merits within a period of 90 days from the receipt of this Order. These are the detailed reasons for my short Order dated 09-03-2026.

**JUDGE**