

IN THE HIGH COURT OF SINDH CIRCUIT COURT
LARKANA

Civil Rev. Application No. S-59 of 2024

Applicant : Abdul Hameed son of Khadim Hussain Solangi, *through* Mr. Shakeel Ahmed Abro, Advocate.

Respondents No.1 to 7 : Nazir Ahmed and others, *through* Mr. Imdad Ali Mashori, Advocate.

Respondent No. 8 to 16 : Mukhtiarkar (Estate) and others, *through* Mr. Saeed Akbar Siyal, Assistant Advocate General, Sindh.

Date of Hearing : 24.08.2026

Date of Decision : 24.08.2026.

Date of Reasons : 28.08.2026.

JUDGMENT

Ali Haider 'Ada' J.- The applicant (plaintiff) filed F.C. Suit No. 34 of 2023 before the Senior Civil Judge Warah (trial Court) on the main ground to cancel the entries and registered sale deed in favor of private respondents, as before the revenue hierarchy, the same were upheld by the Member Judicial-III, Board of Revenue, as well as the subordinate hierarchy of the revenue.

2. After the filing of the suit, the private respondents /defendants preferred an application under Order VII Rule 11 of the Civil Procedure Code (C.P.C) as the learned trial Court rejected the plaint and passed an order dated 19.09.2023. A decree was formed on the same date. Being aggrieved, the applicant preferred an appeal before the District Judge, Kamber at Shahdadkot, which was entrusted to the Additional District Judge-II, Kamber, who maintained the learned trial Court's order vide judgment dated 29.04.2024 and also passed the decree on the same date. Feeling aggrieved, the applicant preferred this Civil Revision

3. Learned counsel for the applicant submitted that despite the case of the applicant being that they are aggrieved by the entries as well as the registered document, and in such aspect filed the civil

suit on the main point that the land was illegally granted by the Colonization Officer, such an aspect in true sense requires evidence. However, such factual controversy was decided by the trial Court by passing an order whereby it rejected the plaint under Order VII Rule 11 CPC. Even if any point of jurisdiction is involved, the same requires framing of issues, as before the revenue hierarchy, the entire procedure was adopted and calls into question the legality of the revenue hierarchy's decision. He prayed for setting aside the decisions of the courts below.

4. On the other hand, learned counsel for the Respondent Nos. 1 to 7 is on the footing that the applicant has no case for the grant of relief, as jurisdictional errors can be decided by the trial Court under an application under Order VII Rule 11 CPC. Even if the revenue hierarchy passed any order, the same can be challenged by way of a petition instead of filing a civil suit. He further submitted that there is no illegality or irregularity passed by the learned courts below. He relies upon: PLD 2012 Sindh 92, PLD 1997 Karachi 299, 2011 MLD 216, 2010 SCMR 306, 2015 SCMR 380, 2015 CLC 1564, PLD 2004 Supreme Court 622, 2020 YLR 2353 and 2018 YLR 425.

5. Conversely, learned Assistant Advocate General also supports the impugned order and judgment on the ground that Section 172 of the Land Revenue Act comes under the purview; therefore, the civil suit is not to be entertained.

6. Heard and perused.

7. Perusal of the record reflects that the applicant challenged the grant which was in favor of the private respondents on the point that the land was malafidely transferred to their name due to the influence of the zamindar of the locality. He challenged the prescribed procedure which was not followed regarding the allotment process, as once his case was knocked out by the revenue hierarchy, then, to establish his right, he filed the civil suit for declaration and cancellation as the learned trial Court and the Appellate Court decided the same under Order VII Rule 11 CPC.

8. It is pertinent to note that where a factual controversy is involved regarding an illegal grant (if any), the same requires evidence and is not permissible to be decided under Order VII Rule 11 CPC. However, as far as the question of Section 172 of the Land Revenue Act is concerned, even though the same bars the civil court, it does not bar the revenue hierarchy. Once the revenue hierarchy completed its round of litigation up to the final stage (the Member, Board of Revenue), the applicant has the remedy to approach the Civil court, as it is well settled that the Civil Court is the mother Court for the settlement of issues. Reliance in this regard is also placed upon the case of **Municipal Committee Mingora versus Nasar Khan (2016 MLD 1610)**.

9. Under Order VII, Rule 11, C.P.C. provides for rejection of a plaint where, from a meaningful reading of the averments contained therein, it becomes apparent that the suit is barred by any law or that the plaint fails to disclose a cause of action, while examining the question of rejection, the Court is required to restrain its consideration primarily to the assertions made in the plaint and the documents appended thereto. Where the plaint, upon proper scrutiny, appears to be manifestly vexatious, frivolous or devoid of an apparent right to sue, the Court is competent to reject the same. For determining whether a cause of action has been disclosed, the averments pleaded in the plaint are to be read in their entirety and given their true and substance-oriented meaning and where the matter involves disputed or mixed questions of law and fact, the appropriate course is to allow the proceedings to continue through filing of written statement and discovery, and thereafter adjudicate the controversy either upon framing of a preliminary issue, where permissible, or after a regular trial. The jurisdiction under Order VII, Rule 11, C.P.C. cannot be invoked to reject only a particular part or portion of the plaint, as partial or piecemeal rejection of the plaint is not contemplated by the scheme of the said provision — Reliance is placed upon **PRESIDENT, ZARAI TARAQIATI BANK LIMITED,**

HEAD OFFICE, ISLAMABAD vs. KISHWAR KHAN (2022 SCMR 1598).

10. In the present case, it is reflected that reliance on documents by the applicant requires examination after a full-fledged trial, instead of deciding the documents in an application under Order VII Rule 11 CPC. The learned trial Court even observed in the impugned order that the applicant/plaintiff, merely on assumptions, did not produce any evidence in this aspect. However, averments in the plaint are to be seen, and if the court requires production of evidence, the same should be decided after giving an opportunity for the production of evidence.

11. Keeping in view the aforesaid facts and circumstances, this Civil Revision application is hereby allowed. The impugned order and decree dated 19.09.2023 passed by the learned trial Court, as well as the impugned judgment and decree dated 29.04.2024 passed by the Additional District Judge-II, Kamber (Appellate Court), are hereby set aside. The matter is remanded back to the trial Court. The learned trial Court is directed to proceed with the matter after framing proper issues, completing all required procedural formalities, and, after a full-fledged trial, pass a speaking judgment. Such exercise shall be concluded expeditiously without delay.

These are the detailed reasons in support of the short order of even date.

J U D G E