

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Suit No.2134 of 2017**

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DATE ORDER WITH SIGNATURE OF JUDGE

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**Plaintiffs:** Abbas Sarfaraz & others through  
Mr. Yawar Farooqui, Advocate.

**Defendants:** Abdullah Hussain Haroon & others Through Ali  
Asghar, Advocate.

For hearing of CMA No. 15633/2017  
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**Date of Hearing: 15.03.2018**

**Date of Reasons: 15.03.2018.**

**ORDER**

**Muhammad Junaid Ghaffar J.** This is an Application under Order VII Rule 11 CPC, filed on behalf of the Defendants for rejection of Plaint. Learned Counsel for the Defendants submits that no cause of action has accrued to the Plaintiffs, whereas, there are various Suits pending before this Court on the same subject matter, hence this Suit cannot be entertained in view of Section 11 CPC. Per learned Counsel this is a fit case for exercise of jurisdiction under Rule “d” of Order VII Rule 11 CPC, therefore, the plaint be rejected. Learned Counsel has read out the prayer clauses in other Suits bearing Nos.595/1998, 896/1998 & 93/1998.

2. Learned Counsel for the Plaintiffs has opposed this application and submits that instant Suit has been filed for a fresh cause of action, which is in respect of the appointment of Defendant No.3 as third “**Mutawali**” in respect of Waqf-2, whereas, the earlier Suits, which are pending are not in respect of this cause of action nor in respect of same Waqf.

Learned Counsel further submits that in fact Defendants had filed a Suit No.371/2011 and had come to the Court for assistance in appointment of a fresh “**Mutawali**” and subsequently they have withdrawn the Suit and appointed Defendant No.3 as a “**Mutawali**”, and therefore, instant Suit has been filed. Learned Counsel has also read out the cross-examination of Plaintiff in Suit No. 371/2011 and submits that it is only through such cross-examination that present cause of action has arisen, therefore, application be dismissed with cost as the same is misconceived and frivolous. In support he has relied upon **PLD 2017 Sindh 438 (Dr. Abdul Jabbar Khatak through Attorney and another v. IInd Senior Civil Judge, Larkana and 3 others)** and **2013 CLC 1641 (Waseem Qazi v. Province of Sindh through Executive District Officer, Revenue, Matiari and others)**.

3. I have heard both the learned Counsel and perused the record. After briefly hearing the learned Counsel for Defendants he was confronted as to maintainability of this application as apparently no legal ground was either raised in the application nor argued before the Court and the Counsel was warned that in case of dismissal cost may be imposed. However, learned Counsel refused to withdraw the application and insisted for a decision on merits. On perusal of the application and the arguments made by the learned Counsel it appears that an effort has been made to raise two grounds for rejection of Plaint. First one is that no cause of action has accrued, however, learned Counsel despite several chances, could not satisfy the Court as to why this is a case of no cause of action. The plaint clearly discloses the

cause of action that now Defendant No.3 has been appointed as a third “**Mutawali**” in violation of Clause-9 of Waqf-2, and therefore, the same may be declared as unlawful. Learned Counsel for Defendants could not rebut such stance of the Plaintiffs. Hence this objection stands repelled.

4. The second ground, which has been raised is in respect of pendency of various Suits, as according to the learned Counsel, similar prayers have been made in this Suit, therefore, the principle of Resjudicata applies and Plaintiff be rejected. To this, I may observe that while making arguments learned Counsel for Defendants himself conceded that insofar as prayer clauses “a” & “e” of this Suit are concerned, they were not raised in the earlier Suits; however, according to the learned Counsel all prayers are interrelated, therefore, Resjudicata will apply. To that I may observe that this argument is misconceived and fallacious. Once it is admitted that a different prayer or prayer(s) have been made, then it is settled law that a Plaintiff cannot be rejected in piecemeal. Moreover, it is also reflected from the record that in the previous Suits, the parties were materially different, whereas, the cause of action in this matter is also a fresh cause of action and is different, as stated hereinabove, therefore, this ground also fails. Moreover, it is also to be noted that there may be a case that ultimately the Suit at the trial is dismissed as not maintainable, but on the same issue it is not necessary that the plaintiff may also be rejected under Order 7 Rule 11 C.P.C. The Hon’ble Supreme Court in in the case of ***Al-Meezan Investment Management Company Ltd & Others V. WAPDA First Sukuk Company***

***Limited, Lahore, etc*** reported as **PLD 2017 SC 1** has observed that ...Suffice it to say that the question of whether a suit is maintainable or not is moot with respect to whether or not a plaint is to be rejected as being barred by law. Both are a different species altogether and it may well be that a plaint is not rejected in terms of Order 7 Rule 11 CPC but the suit is dismissed eventually as not maintainable for a possible host of reasons.

5. It may further be observed that even otherwise, if the contention of the learned Counsel for Defendants is accepted, the provisions of Section 11 regarding Resjudicata will not be applicable as the Suits filed earlier have not been finally adjudicated, whereas, the ground so raised may be a case of Section 10 CPC (this is without prejudice to the fact that it is conceded that prayer clause(s) “a” & “e” are new and different prayers) for stay of Suit but in no manner the plaint can be rejected on this ground.

6. In view of hereinabove facts and circumstances of this case, the Defendants have failed to make out a case for rejection of plaint and despite an option given to the learned Counsel for Defendants for not pressing this application, the same was pressed upon, and therefore, by means of a short order today in the earlier part of the day, the same was dismissed by imposing cost of Rs.10,000/- (to be deposited in the account of Sindh High Court Clinic) as precious time of the Court was wasted for a considerable duration with no justifiable case for rejection of plaint being made out. These are the reasons thereof.

Judge