

Order Sheet  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT, HYDERABAD

CP No. D- 38 of 2020

**BEFORE:**

Mr. Justice Adnan-ul-Karim Memon  
Mr. Justice Anan Iqbal Chaudhry

Petitioners: Assistant Administrator Evacuee Trust  
Property through Mr. Atta Hussain Gaddi  
Pathan, Advocate.

Respondent: Pardeep Kumar & Shri. Gyani Bai through  
Mr. R.B. Solangi who is called absent today.

Mr. Rafiq Ahmed Dahri, Asstt: A.G.

Date of hearing & decision: 24.11.2021

**ORDER**

**ADNAN-UL-KARIM MEMON, J:-** Through instant petition, the petitioners have challenged the Order dated 28.9.2019 passed by learned District Judge / MCAC, Tando Muhammad Khan, in Civil Revision Application No. 11 of 2019 whereby he maintained the Order dated 5.7.2019 passed by the trial Court dismissing application, under Order VII Rule 11 CPC in F.C. Suit No. 01 of 2016 moved by petitioners and directed the matter to be proceeded on merits.

2. Brief facts of the case are that respondents 1 & 2 / plaintiffs filed F.C. Suit No. 01 of 2016 for declaration, cancellation, mandatory and permanent injunction against petitioners claiming their ownership over shops constructed over CS No. 1296/6-08, 1297/13-07, 1298/32-08 sq yards & 47 sq yards out of CS No. 1294 total admeasuring 529 sq ft situated inward B, opposite to Government Girls College Tando Muhammad Khan having purchased through registered sale deed dated 22.09.2011; that 15 days prior to filing of the suit, the respondent No.1/plaintiff No.1 was called by Mukhtiarkar (Revenue) Tando Muhammad Khan and asked him that property bearing CS No. 1294 to 1298 is Evacuee trust property declared vide order dated 26.05.1986 by Chairman Evacuee Trust

Board, Government of Pakistan, Lahore, hence he was/is going to keep the entry in its name, canceling the present entry in favor of respondent No.1 / plaintiff, hence he filed the suit.

3. The petitioners 2, 3 & 4/defendant No. 2, 3 & 4 filed written statement denied the allegations by stating therein that the property in question is the property of Evacuee Trust Board as declared by Chairman and the title of respondent No.1 & 2/plaintiffs, as claimed in the plaint, has been denied.

4. During pendency of the suit, petitioners filed an application under Order VII R.11 CPC, the respondent No. 1 & 2 filed objections to the application to the effect that the matter requires evidence. In the meantime learned trial Court framed issues and recorded evidence of three PWs. Thereafter, the application under Order VII R.11 CPC was heard and dismissed vide order dated 05.07.2019; and that order was impugned in Civil Revision before learned District Judge / MCAC Tando Muhammad Khan, who also dismissed the Revision Application, hence the petitioners have filed the instant petition.

5. We have heard learned counsel for the petitioners on the point of maintainability of the instant petition and perused the material available on record. The main thrust of the arguments of the petitioners is that the suit filed by the private respondents is barred under the Evacuee Laws.

6. To appreciate the contentions of learned counsel for the petitioners, primarily Order VII Rule 11 CPC speaks about the rejection of plaint, if it appears from the statement sculpted therein to be barred by any law or disclosed no cause of action. The court is under obligation to give a meaningful reading to the plaint, if it is manifestly vexatious or meritless in the sense of not disclosing a clear right to sue, the court may reject the plaint. Even if the expression of the statement in the plaint is given a liberal meaning, documents filed with the plaint may be looked into but nothing more. To decide whether the plaint disclosed a cause of action or not, the court has to perceive and grasp the averments made in the plaint and the accompanying documents. The Court has also to presume the facts stated in the plaint as correct and for the determination of any such application, the court cannot look into the defense. In case of any

mixed question of law and facts, the right methodology and approach are to let the suit proceed to written statement and discovery and determine the matter either on framing preliminary issues or regular trial. This Rule does not justify the rejection of any particular portion of the plaint or in piecemeal as the concept of partial rejection is seemingly incompatible with the provisions of Order VII Rule 11 CPC. Nevertheless, the court is bound to reject the plaint if it does not disclose any cause of action but at the same time, a plea that there is no cause of action for the suit is different from the plea that the plaint does not disclose cause of action. Smart drafting for creating illusions of the cause of action is not permitted in law but a clear right to sue ought to be shown in the plaint. A plea that the plaint does not disclose a cause of action can be taken only when on that plea the plaintiff can be entirely non-suited. Where there is a joinder of several causes of action on some of which at least a decree could be passed, no plea of legal objection may be admitted to rejecting the plaint. Where there are several parties and the plaint discloses a cause of action against one or more of them then also the plaint cannot be rejected as what is required in law is not the piecemeal reading of the plaint but reading it in its entirety.

7. The expression cause of action has been discussed in various pronouncements that the word “cause of action” means a bundle of facts which if traversed, a suitor claiming relief is required to prove for obtaining the judgment. Nevertheless, it does not mean that even if one such fact, a constituent of the cause of action is in existence, and the claim can succeed. The totality of the facts must co-exist and if anything is wanting the claim would be incompetent. A part is included in the whole but the whole can never be equal to the part. It is also well understood that not only the party seeking relief should have a cause of action when the transaction or the alleged act is done but also at the time of institution of the claim. A suitor is required to show that not only a right has been infringed in a manner to entitle him to a relief but also that when he approached the Court the right to seek the relief was in existence.

8. At this juncture, we would like to rely on the case of Ghulam Ali Vs. Asmatullah (1990 SCMR 1630), in which, the honorable Supreme Court has held that assertion made in the plaint had to be seen to determine whether plaint disclosed any cause of action. Lack

of proof or weakness of proof in circumstances of the case did not furnish any justification for concluding that there was no cause of action shown in the plaint. In another case of Jewan v. Federation of Pakistan, (1994 SCMR 826), the honorable Supreme Court has held that while taking action for rejection of plaint under Order VII, Rule 11, C.P.C., the Court cannot take into consideration pleas raised by the defendants in the suit in his defense as at that stage the pleas raised by the defendants 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 while rejecting the plaint. In the case of Saleem Malik Vs. Pakistan Cricket Board PCB, (PLD 2008 Supreme Court 650) it was held that the rejection of plaint on technical grounds would amount to deprive a person of his legitimate right of availing the legal remedy for undoing the wrong done in respect of his such rights, therefore, the Court may, in exceptional cases, consider the legal objection in the light of averments of the written statement but the pleading as a whole cannot be taken into consideration for rejection of the plaint. Subject to certain exception to the general principle, the plaint in the suit cannot be rejected based on a defense plea or material supplied by the opposite party with the written statement. This 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 rather the proper course for the court in such cases is to frame issues on such question and decide the same on merits in the light of the evidence under law.

9. The evolution of law concerning the rejection of plaints was chronologically cataloged in the case of Haji Abdul Karim & Others vs. Florida Builders (Private) Limited (PLD 2012 Supreme Court 247).

10. The arguments advanced before us, by the counsel for the petitioners, have been unable to dispel the reasoned conclusions arrived at by the subordinate Courts, while determining the application of Order VII Rule 11 CPC. The original Order was assailed in revision and a reasoned order was passed upholding the conclusion arrived at by the trial court. The ambit of revisionary court is circumscribed to the mandate of Section 115 CPC and a bare perusal of the Revision Order demonstrates that the same has been

rendered within the four corners of the provision enabling such jurisdiction.

11. It is well-settled law that exercise of constitutional jurisdiction in such matters was only warranted in rare circumstances, if the findings recorded in the orders under scrutiny were without jurisdiction, arbitrary, and /or were predicated upon misreading / non-reading of evidence. In this matter, the findings placed before us suffer from no such infirmity and the petitioners have failed to plead any rare circumstance, which would attract the exercise of writ jurisdiction by this Court.

12. As a result of the above discussion, the impugned orders passed by the trial Court and revisional Court are maintained. Since much time has been consumed in the protracted proceedings, therefore, learned trial Court is directed to decide the suit of the private respondents within two months after recording evidence and hearing the parties on merits.

13. In view of the reasoning and rationale contained herein, we are of the considered view that the petitioners' counsel has failed to set forth a case for exercise of extraordinary Constitutional jurisdiction by this Court, hence, this petition, along with listed applications, is dismissed with no order as to costs.

14. These are the reasons for our short order dated 24.11.2021, whereby we have dismissed the captioned petition.

JUDGE

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