

# **IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Civil Revision No. S – 197 of 2010**

**(Muhammad Nawaz & others v. Imam Dino & others)**

## **Hearing of Case**

- 1.For orders on office objection
- 2.For orders on CMA 690/2010 (Limitation)
- 3.For hearing of main case
- 4.For orders on CMA 691/2010(Stay)

Date of hearing: **28-03-2022**

Date of Decision: **28-03-2022**

Mr. Sohail Ahmed Khoso, Advocate for the Applicants  
Mr. Nisar Ahmed Bhanbhro, Advocate for private Respondents  
Mr. Mehboob Ali Wassan, Assistant Advocate General-Sindh

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## **J U D G M E N T**

**Muhammad Junaid Ghaffar, J. – (1)**. As to the office objection regarding Court Fee, Counsel for the Applicants undertakes to deposit the same within a week's time.

**2 to 4.** Through this Civil Revision, the Applicants have impugned Judgment / Order dated 16.06.2010, passed by III-Additional District Judge, Khairpur in Civil Appeal No.117 of 2009 (**Muhammad Nawaz and others v. Imam Dino and others**), whereby Order dated 12.09.2009, passed by II-Senior Civil Judge, Khairpur in Civil Suit No. 99 of 2009 (**Muhammad Nawaz and others v. Imam Dino and others**) through which the Application under Order 7 Rule 11 CPC was allowed, has been maintained.

I have heard both the learned Counsel and perused the record.

Learned Counsel for the Respondents has raised an objection as to delay in filing of this Civil Revision, as according to him, it is time barred by around 19-days. I have perused the record including the impugned judgments of the two Court below, and by placing reliance on the judgment of a 5 Member Bench of the Hon'ble Supreme Court reported as **Hafeez Ahmed and others Vs. Civil Judge, Lahore and others (PLD 2012 SC 400)**, the delay, if any, in filing of this Revision Application is hereby condoned.

Insofar as merits of the case are concerned, it appears that the Applicants had filed a Suit for possession, wherein the Application under Order 7 Rule 11 CPC was allowed by the Trial Court only on one ground, i.e. it is hit by *res judicata* under Section 11 CPC. The reason which has prevailed upon the learned Trial Court as well as the Appellate Court was, that an earlier Suit No.163 of 2002 filed by the private Respondents against the present Applicants was already decreed in favour of the Applicants; hence, the Suit of present Applicants was hit by *Res judicata*. To that, it may be observed that this finding of the two Courts below on the face of it appears to be against the law. Firstly, the applicability of Section 11 CPC has not been appreciated inasmuch as the Suit in hand was independently for possession and has no concern with the earlier Suit of the present Applicants, which was for declaration. The question of claim of possession by the Applicants from Respondents was neither a question in the earlier Suit nor could not have been decided in that Suit. Secondly, and for the present purposes, even otherwise, that Judgment and Decree of the Trial Court is no more in field, as the same has been set aside by learned Appellate Court, and now has been maintained by this Court in Civil Revision No. S-124 of 2009 today by way of a separate Order. In that case, both the Courts below have misconstrued the applicability of Section 11 CPC, and therefore this Civil Revision merits consideration and is hereby **allowed**. Impugned Judgment / Order dated 12.09.2009, passed by the Trial Court and Judgment / Order dated 16.06.2010, passed by the Appellate Court are hereby set aside; the Application under Order 7 Rule 11 CPC filed by the Respondents stands dismissed and the matter stands remanded to the Trial Court, which shall decide the same on merits in accordance with law preferably within a period of 90-days from today.

In view of the above findings whereby the judgments of the two Courts below are being set-aside as being perverse, based on misreading of law as well inappropriate exercise of jurisdiction, therefore, the delay, if any, resulting due to delayed deposit of Court Fee is also condoned. Let copy of this Judgment be sent to the Trial Court for compliance.

**J U D G E**

Ahmad