

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit 18 of 2015

Date: Order with signature of the Judge

1. For orders on maintainability of Suit
2. For hearing of CMA No. 13537/2020
3. For hearing of CMA No. 3514/2021
4. For hearing of CMA No. 18171/2021
5. For hearing of CMA No. 4194/2021
6. For hearing of CMA No. 39/2015
7. For hearing of CMA No. 437/2015
8. For hearing of CMA No. 12154/2015
9. For hearing of CMA No. 1816/2015
10. For hearing of CMA No. 8440/2018
11. For hearing of CMA No. 5587/2021
12. For hearing of CMA No. 22421/2021
13. For examination of parties / settlement of issues

19.02.2024

Mr. Badar Alam, advocate for the plaintiff
Mr. Fiaz H. Shah, advocate for defendant No.5.
Mr. Tufail Ahmed, advocate for defendant

1-4. Three applications have been filed under Order VII Rule 11 CPC seeking for the rejection of the plaint. The grounds invoked are that the suit is time barred; no title documents have been filed with the plaint; and the succession or determination of right between the people claiming to be the legal heirs of rulers of princely states should be sent to the Central Government.

Insofar as the first ground is concerned, paragraph 6 of the plaint pleads that the cause of action accrued in the month of November 2014. Paragraph 17 of the plaint also follows the suit. The suit is filed in 2015, therefore, no bar of limitation could be demonstrated before this court.

Secondly, this court has not been assisted with any law that requires evidence / documentation to be annexed with the plaint. Learned counsel were confronted with Order VII rule 1 CPC and queried whether any requirement was stipulated therein, however, they failed to provide a satisfactory response.

Finally, Insofar as Article 3 of the Presidential Order 12 of 1961 is concerned, it requires disputes of title to property between legal heirs of princely rulers to be submitted before the Central Government. Such a question is not before this Court as the defendants claim rights by acquisition and not through succession from princely rulers

The evolution of law with respect to rejection of plaints was chronologically catalogued in the *Florida Builders case*¹ wherein the Supreme Court demarcated the anvil upon which the decisions in such matters ought to be rested. The guidelines distilled by the Court in such regard are reproduced below:

¹ Per Saqib Nisar J in *Haji Abdul Karim & Others vs. Florida Builders (Private) Limited* reported as *PLD 2012 Supreme Court 247*.

“Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint. However, this does not mean that the court is obligated to accept each and every averment contained therein as being true. Indeed, the language of Order VII, Rule 11 contains no such provision that the plaint must be deemed to contain the whole truth and nothing but the truth. On the contrary, it leaves the power of the court, which is inherent in every court of justice and equity to decide or not a suit is barred by any law for the time being in force completely intact. The only requirement is that the court must examine the statements in the plaint prior to taking a decision.

Secondly, it is also equally clear, by necessary inference that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect. In other words the court is not to decide whether the plaint is right or the written statement is right. That is an exercise which can only be carried out if a suit is to proceed in the normal course and after the recording of evidence. In Order VII, Rule 11 cases the question is not the credibility of the plaintiff versus the defendant. It is something completely different, namely, does the plaint appear to be barred by law.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded of its normal judicial power. It is not obligated to accept as correct any manifestly self-contradictory or wholly absurd statements. The court has been given wide powers under the relevant provisions of the Qanun-e-Shahadat. It has a judicial discretion and it is also entitled to make the presumptions set out, for example in Article 129 which enable it to presume the existence of certain facts. It follows from the above, therefore, that if an averment contained in the plaint is to be rejected, perhaps on the basis of the documents appended to the plaint, or the admitted documents, or the position which is beyond any doubt, this exercise has to be carried out not on the basis of the denials contained in the written statement which are not relevant, but in exercise of the judicial power of appraisal of the plaint.”

It merits mention at this juncture that the aforesaid observations are required to be paramount considerations before a learned Judge, seized of an application seeking rejection of a plaint. It is settled law that the primary instrument to be considered while dealing such matters is the plaint itself, and in the present instance it *prima facie* pleads a cause of action and could not be demonstrated to be barred by law. Whether or not the suit will be successful or otherwise can only be determined after conclusion of the proceedings, however, no case could be set forth for rejection of the plaint.

A Division Bench of this court has held in the *Rana Imran case*² that in the instance of controversial questions of fact and / or law, the provisions of Order VII rule 11 CPC would not be attracted and the proper course for the court, in such cases, was to frame the relevant issue/s and decide the same on merit in the light of evidence and in accordance with the law.

In the present facts and circumstances the plaint pleads a cause of action and could not be demonstrated to be barred by law, therefore, no case is set forth for the grant of these applications; which are hereby dismissed.

5-13. Adjourned to 22.04.2024.

J U D G E

Amjad

² Per Muhammad Ali Mazhar J. in *Rana Imran & Another vs. Fahad Noor Khan & Others* reported as 2011 YLR 1473.