

# THE HIGH COURT OF SINDH, KARACHI

## Suit No. 2316 of 2021

[Muhammad Farhan Wazir & others versus Federation of Pakistan & others]

- For Plaintiffs : M/s. Khawaja Shams-ul-Islam, Shehzad Mehmood and Imran Taj, Advocates.
- For Defendants : M/s. Makhdoom Ali Khan, Ayan Mustafa Memon, Ahmed Ali Hussain, Ali. T. Ebrahim, Muhammad Shahzeb Siddiqui, Aga Zafar Ahmed, Jazib Ali Shaikh, Kashif Hanif, Muhammad Shahnawaz, Khwaja Aizaz Ahsan, Minahil Malik, Nazia Hanjrah, Darakhshan Jahan, Muhammad Shahbaz, Saif Sohail Younus, Khurram Rashid, Asad Ali Zaidi, Aman Aftab, Ashraf Ali Butt and Rehmat-un-Nisa, Naseema Mangrio, Fahad Khan, Muhammad Imran, Syed Zaem Hyder, Liaquat Hussain, Advocates.
- For Applicants : M/s. Muhammad Ali Lakhani, Syed Ali Ahmed Zaidi, Choudhry Muhammad Iqbal, Advocates.
- For Federation : Mr. Khursheed Javed, Deputy Attorney General for Pakistan.
- For Province of Sindh : M/s. Aley Maqbool Siddiqui, Additional Advocate General, Naushaba Haq Solangi and Imran Khan, Assistant Advocate General.
- Dates of hearing : 23-08-2022, 05-09-2022, 22-09-2022, 11-10-2022, 07-11-2022 & Re-hearing on 18-04-2024.
- Date of decision : 23-04-2024

## ORDER

Adnan Iqbal Chaudhry J. - By order dated 15-12-2021 passed in HCA No. 307/2021, the applications for rejection of plaint and objections to the maintainability of the suit are to be decided first.

2. By CMA No. 20819/2021, CMA No. 21949/2021 and CMA No. 1798/2022 moved respectively by the Defendants 2, 3 and 21 under Order VII Rule 11 CPC, the objections are that the suit is barred by section 42 of the Specific Relief Act and by the Limitation Act; that it is essentially a suit for public nuisance, and without the consent of the Advocate General under section 91 CPC it is barred; and that the Plaintiffs have no cause of action and no *locus standi*. At the hearing, the other objections raised were that the suit is barred against the Cantonment Boards for non-compliance of section 273 of the Cantonment Act, 1924; that the suit cannot be taken as one in the public interest as Order I Rule 8 CPC has not been invoked; and that the suit is bad for multifariousness.

3. The Plaintiffs who claim to acting in the public interest, have challenged the alleged unlawful conversion and misuse of certain State land. The Defendants are a host of statutory authorities and private persons in occupation of different plots of land. It is averred in the plaint *inter alia*:

- (i) that the Pakistan Air Force [PAF - Defendant No. 11] has converted defense land in Class A-2 at the PAF Museum into commercial land and is letting the same for wedding marquees which is contrary to the Cantonment Land Administration Rules, 1937;
- (ii) that part of the Defence Authority Creek Club [Defendant No.13] is land reclaimed by the Defense Housing Authority [DHA- Defendant No. 2] from the creek without any approval from the Government; that by virtue of Article 172(2) of the Constitution of Pakistan such land vests in the Federal Government [Defendant No.1] and can only be used for the purposes of the Port Qasim Authority [Defendant No.7]. Same is alleged for the plot in the use of Area-51 Banquet [Defendant No.15] and the plot being used by Andalusian Banquets [Defendant No.14] at the DHA Phase VIII.

- (iii) that the Imtiaz Super Store [Defendant No.16] at Clifton is constructed in the parking area of Zamzama Park;
- (iv) that wedding marquees namely the Defendants 17 and 18 on Dalmia Road are on land intended for defense purposes only. Same is alleged in respect of a cinema and wedding hall namely the Defendant No.31 at Rashid Minhas Road, and in respect of eateries operating in the Malir Cantonment [Defendant No. 33];
- (v) that the building of Emaar Pakistan [Defendant No.21] at DHA Phase VIII too is constructed on land reclaimed by the DHA from the sea, and no title thereto has been conveyed to the said Defendant;
- (vi) that the wedding marquees namely the Defendants 22 to 28 are also misuse of the land of the Civil Aviation Authority [Defendant No.12] which is intended only for the use of airport services.

4. Quite apart from the above, the plaint carries a variety of other contentions, such as the unchecked reclamation of land from the sea is disastrous for Karachi's protected mangroves, marine life and ecosystem; that the licensing, leasing or allotment of reclaimed land by the DHA and the Cantonment Board Clifton is non-transparent and an act of corruption; that the erection and running of unregulated wedding marquees across the city is a nuisance for the public as it causes traffic jams, law and order situations and infringes easements; that the operation of wedding marquees near the airport are a threat to flight safety; and that the DHA and the Cantonments Boards at Karachi are required to follow a unified building and town planning regime.

5. The prayers made in the plaint are broadly worded and include:

- (i) a declaration that plots reclaimed by the DHA from the sea vest in the Federal Government and can only be used for port activities; to restrain the occupying Defendants from using such plots; to cancel such plots; and to deliver possession to the Federal Government; to restore the plots for planting mangroves;
- (ii) a declaration that use of defense land by the PAF and the Cantonment Boards for commercial purposes is unlawful; to restrain the occupying Defendants from using such land; to cancel such plots;
- (iii) to declare that wedding marquees near the airport pose a threat to flight safety and to restrain the same;
- (iv) a direction to refer to the NAB the case of the officers of the DHA and the Cantonment Boards involved in the illegal conversion of State land;
- (v) a direction for demolition of illegal construction on plots occupied by the Defendants 12 to 34; and so on.

6. The discussion above is to show that the Plaintiffs have apparently joined in one suit several causes of action. Therefore, at the hearing, the foremost ground urged by the Defendants for rejection of the plaint was that the suit is bad for multifariousness. I take up that ground first.

7. As pointed out by Mr. Khawaja Shamsul Islam, learned counsel for the Plaintiffs, the word 'multifarious' does not appear in the CPC but in the heading of section 17 of the Court Fees Act, 1870 in relation to court fees chargeable on a suit that embraces two or more distinct 'subjects'. Nevertheless, it was approved by a Full Bench of this Court in *Umeed Ali v. Government of Sindh* (PLD 2007 Karachi 224) that the word 'subjects' in section 17 of the Court Fees Act has the same connotation as 'cause of action'. But even before that, it was settled law that 'multifariousness' otherwise implies misjoinder of causes of

action. The question here is whether a plaint can be rejected for multifariousness under Order VII Rule 11 CPC.

8. Mr. Makhdoom Ali Khan, learned counsel for the Defendant No. 21 who led arguments for the Defendants, submitted that a plaint can be rejected if it is bad for multifariousness and cited the following cases:

(i) *Mumtaz Khan v. Nawab Khan* (2000 SCMR 53) where it was observed by the Supreme Court, *albeit as obiter dicta*, that a suit bad for multifariousness is barred by law within the meaning of Order VII Rule 11 CPC.

(ii) *Chandi Prasad Sikaria v. Premlata Nahata* (2005 SCC OnLine Cal 281) where a Division Bench of the Calcutta High Court held that the plaintiffs had distinct and separate causes of action against the defendant on separate agreements such that they were not jointly interested against the defendant, and dismissed the suit as bad for multifariousness.

9. On the other hand, Mr. Khawaja Shamsul Islam, learned counsel for the Plaintiffs relied on the following cases to submit that multifariousness does not figure in Order VII Rule 11 CPC to reject a plaint:

(i) *Premlata Nahata v. Chandi Prasad Sikaria* (2004 SCC OnLine Cal 818) by a single Judge of the Calcutta High Court, and *Aroma Travels Services v. Faisal Al Abdullah Al Faisal Al Saud* (2017 YLR 1579) by a learned single Judge of this Court, where it was held that multifariousness cannot be equated with 'law' that bars a suit within the meaning of Order VII Rule 11(d) CPC, and therefore, even if a suit is bad for multifariousness, the plaint cannot be rejected. However, as pointed out by learned counsel for the Defendants, the case of *Premlata* was overturned by a Division Bench of the Calcutta High Court on the appeal of *Chandi Prasad Sikaria*.

(ii) *Ghazanfar Ally Effendi v. Arif Effendi* (1988 CLC 1425) where a learned single Judge of this Court observed that in a multifarious suit the Court can at best order separate trials as per Order II Rule 6 CPC, but then went on to hold that: “In case the Court comes to the conclusion that the suit suffers from multifariousness of causes of action, it shall give an option to the plaintiff to pursue particular cause of action in the suit and if the plaintiff fails to exercise such option then alone a plaint can be rejected under Order 7, Rule 11, CPC.”

10. The CPC deals with misjoinder of parties differently from misjoinder of causes of action. Misjoinder of parties can be addressed under Order I Rules 2, 4 and 5 CPC; and as per Order I Rule 9 CPC, no suit shall be defeated by reason of the misjoinder or non-joinder of parties. Joinder of causes of action on the other hand is dealt by Order II Rule 3 CPC which provides as follows:

**“Joinder of causes of action.—**(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such causes of action in the same suit.

(2) .....

Order II Rules 4 and 5 CPC then provide exceptions to joinder of causes of action. Order II Rule 6 CPC provides that “Where it appears to the Court that any causes of action joined in one suit cannot be conveniently tried or disposed of together, the Court may order separate trials or make such other order as may be expedient.”

11. A diligent reading of Order II Rule 3 CPC reveals that while it permits joinder of several causes of action, it is not so without limitations. The first limitation is that where there is more than one plaintiff, all of them have to be ‘jointly interested’ in all the causes of action. The second limitation, and the one relevant here, is that where there is more than one defendant the several causes of action must be against all of them ‘jointly’. In other words, Order II Rule 3 CPC does not permit joinder of several causes of action where the plaintiffs and

defendants are not jointly interested, or where some causes of action are against one set of defendants and some against another set of defendants. A similar view was taken by a learned Division Bench of the Balochistan High Court in *Abdus Samad Badini v. Political Agent & Returning Officer, District Chaghi* (1984 CLC 564). In *Chandi Prasad Sikaria v. Premlata Nahata* (2005 SCC OnLine Cal 281), cited by learned counsel for the Defendants, a Division Bench of the Calcutta High Court too observed that Order II Rule 3 CPC, as Order I Rule 1 CPC, is not free from limitations. Indeed, if that were not so, then different sets of plaintiffs may well bring one suit on different cause of action against different sets of defendants thereby frustrating the scheme of the CPC. While the purpose of Order II Rule 3 CPC is obviously to avoid unnecessary multiplicity of suits, it is not intended to embarrass the trial or to vex a defendant who has no connection with a particular cause of action.

12. *Ergo* the joinder of causes of action that is not permitted by Order II Rule 3 CPC is a suit that is referred to as 'bad for multifariousness'. The argument that 'multifariousness' is not a law that bars a suit within the meaning of Order VII Rule 11(d) CPC was rejected in the case of *Chandi Prasad Sikaria* holding that the law in question would be the rule prohibiting multifariousness. I too am inclined towards the same view. In any case, the observation of the Supreme Court in *Mumtaz Khan v. Nawab Khan* (2000 SCMR 53) that a plaint can be rejected under Order VII Rule 11 CPC if bad for multifariousness, though *obiter dicta* in that case, is nonetheless binding on the High Court.<sup>1</sup>

13. As noted at the outset, the Plaintiffs have joined several causes of action in this one suit. Though each plot arraigned in the suit is a distinct subject and constitutes a separate cause of action, it can be argued that the suit is within the first limitation of Order II Rule 3 CPC as all Plaintiffs are jointly interested in the public cause. However, the plots are occupied by different defendants under

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<sup>1</sup> *Obiter dicta* of the Supreme Court is binding on the High Court - *Dr. Iqrar Ahmad Khan v. Dr. Muhammad Ashraf* (2021 SCMR 1509).

separate agreements. While some of the defendants may have acquired rights from a common defendant and may be jointly interested in common questions of law and fact, there are other defendants who are not. As for example, the DHA and the defendants who claim through it, have no joint interest in the plots of and causes of action against the PAF, the CAA, the Malir Cantonment and the defendants who claim through them, and *vice versa*. When the joinder of several causes of action is such that some of them are against one set of defendants and some against another and not all defendants are jointly interested in all of the causes of action, the plaint is clearly beyond the second limitation imposed by Order II Rule 3 CPC i.e. bad for multifariousness, and can be rejected as discussed above.

14. Can the plaint be saved from rejection by virtue of Order II Rule 6 CPC which empowers the Court to order separate trials or to make 'such other order as may be expedient'? In my humble view, Order II Rule 6 CPC is available only when the joinder of causes of action is with the limitations imposed by Order II Rule 3 CPC and the Court then feels that one or more of the causes of action cannot be conveniently tried or disposed of together. Order II Rule 6 CPC is not intended to say that even if the joinder of causes of action is beyond the limitations imposed by Order II Rule 3 CPC, the Court can nonetheless order separate trials or step into the shoes of the plaintiff to remedy the defect by other means, for that would make Order II Rule 3 CPC redundant.

15. Having concluded that the joinder of causes of action goes beyond the joinder permitted by Order II Rule 3 CPC, the plaint is rejected under Order VII Rule 11(d) CPC. Consequently, I do not consider the other grounds urged for rejection of plaint. By virtue of Order VII Rule 13 CPC the Plaintiffs are free to explore separate suits.

**JUDGE**

Karachi  
Dated: 23-04-2024