

IN THE HIGH COURT OF SINDH, CIRCUIT COURT MIRPURKHAS

Civil Revision Application No.S-316 of 2024

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Applicant: Umed Ali son of Pir Bux
Through Mr. Wishan Das Kolhi, Advocate.

Respondents: Dalpat Rai and 06 others.

Official Respondents: Through Mr. Muhammad Shareef Solangi, A.A.G.

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Date of hearing **14.01.2026**

Date of order **14.01.2026**

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ORDER

Muhammad Hasan (Akber), J:- The instant Civil Revision Application is directed against the impugned judgment and decree dated 30.10.2019 passed by the learned District Judge/Model Civil Appellate Court, Tharparkar @ Mithi, whereby the Civil Appeal No.13 of 2019, filed by the applicant/plaintiff has been dismissed, maintaining the order dated 28.08.2019 passed by the learned Senior Civil Judge-I, Mithi, whereby the plaint was rejected under Order VII, rule 11 C.P.C.

2. Brief facts of the case are that the applicant/plaintiff filed suit for declaration and permanent injunction against the respondents/defendants, stating that three pieces of agricultural land bearing Survey Nos.542 (07-22 acres), 757 (06-05 acres), and 614 (03-31 acres), situated at Makan/Deh/Tapo/Taluka Nangarparkar, District Tharparkar, are the subject matter of the dispute. The suit land is enemy property and originally belonged to a Hindu migrant, Veenjho, who migrated to India during the Indo-Pak war of 1971. It is stated that the suit land was leased by the Mukhtiarkar, Nangarparkar, to the father of the applicant/plaintiff on 16.04.1926. The land continued to be cultivated by the applicant's father and after his demise, has remained under the cultivating possession of the applicant/plaintiff. However, respondents/defendants Nos.1 to 3 with malafide intentions and ulterior motives are creating disturbance in his peaceful possession and are attempting to dispossess him from

the suit land. It is further averred that Order No. ADC-I/TPR/820/2018 dated 12.09.2018 clearly shows that the said land is enemy property and remains under the cultivating possession of the applicant/plaintiff, and that respondents/defendants Nos.1 to 3 have no right, title, or authority to interfere with such possession. Despite this, they approached the Assistant Commissioner, Nangarparkar, who, by allegedly favouring respondents/defendants Nos.1(a) and (b) vide Letter No.AC/NPK/356/2019 dated 30.07.2019, directed the Mukhtiarkar, Nangarparkar, to take appropriate action and maintain law and order. It is asserted that the suit land is purely enemy property and has been in possession of the applicant/plaintiff with which the respondents/defendants have no lawful concern. Nevertheless, they are illegally, unauthorizedly and fraudulently cultivating the land, thereby subjecting the applicant/plaintiff to undue hardship. It is further stated that the act of the respondents/defendants in illegally cultivating the enemy property and restraining the applicant/plaintiff from cultivating the same which was leased to his father, is unlawful, without legal authority and contrary to law, hence the applicant filed the above suit with the following prayers:-

- a) To declare that the suit land is legally cultivated by the plaintiff which was leased out to his father.
- b) To declare that the action of forcibly cultivating the suit land by the defendants No.1 to 3 by depriving the plaintiff from his lawful right of cultivation, is illegal, unlawful, unjustified, based on malafide.
- c) Grant permanent injunction against the defendants No.1 to 3 restraining and prohibiting them from interfering and cultivating the suit land themselves, through their men, agents, servants, subordinates, attorneys or any other means directly or indirectly.
- d) Costs of the suit may be awarded to the applicant.
- e) Grant any other relief which this Honorable Court deems fit and proper.

3. The learned trial court after hearing arguments of learned counsel for applicant on the point of maintainability and perusing the record, rejected the plaint under Order VII Rule 11 C.P.C vide order dated 28.08.2019 and thereafter the applicant preferred appeal

before the learned Appellate Court and the same was dismissed vide judgment dated 30.10.2019, which is impugned in this revision application.

4. Notice was issued to the respondents but they did not bother to appear and contest the matter.

5. It is contended on behalf of the applicant that the learned Courts below erred in law and exceeded their jurisdiction by rejecting the plaint under Order VII Rule 11, C.P.C as the plaint on its face discloses a cause of action and involves disputed questions of fact requiring adjudication through evidence, therefore, he prayed that application be allowed.

6. I have attentively considered the arguments of learned counsel for the applicant and perused the record.

7. Before reaching a conclusion on whether the discussed plaint is barred by any law, I intend to refer to the relevant law, i.e., Order VII, Rule 11(d) of the Civil Procedure Code (C.P.C), which is reproduced as follows:

"11. Rejection of plaint .---The plaint shall be rejected in the following cases:---

*(a) where it does not disclose a cause of action;
(b) where the relief claimed is under-valued and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so:*

(c) where the relief claimed is properly valued" but the plaint , is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law."

8. For understanding the true spirit of this provision, the following guidelines have been recorded by the superior Courts:

- (i) the Court has to presume the facts stated in the plaint as correct.
- (ii) that the plaint is not to be read in fragments but must be read as a whole.

- (iii) that the dearth or weakness of proof would not be a justification for concluding that there is no cause of action disclosed in the plaint.
- (iv) that nothing more than the averment of the plaint has to be seen for adjudicating whether the plaint reveals a cause of action.
- (v) that even where there is a joinder of multiple causes of action, and at least some of these causes could potentially lead to a decree, a plea of demurrer cannot be admitted for rejecting the plaint.
- (vi) that if there are several parties and the plaint discloses a cause of action against one or more of them, then too, the plaint cannot be rejected;
- and (vii) that in most of the cases, the Court cannot take into consideration pleas raised by the defendants in the written statement suit, as at that stage, such pleas are only contentions in the proceedings, unsupported by any evidence on record; and that only in rare and exceptional cases, the Court can consider the legal objections in the light of averments of the written statement, but the pleading as a whole cannot be taken into consideration for rejection of a plaint. These guidelines have been provided in '**Rehmat Begum v. Mehfooz Ahmed and others**' (2024 CLD 1254), '**Media Max (Pvt) Ltd. through Chief Executive v. ARY Communication Pvt. Ltd. through Chief Executive and another**' (PLD 2013 Sindh 555) and '**Jehangir Akhter v. Inayat Ahmed**' (1990 CLC 1053).
- (viii) In '**President, Zarai Taraqati Bank Limited, Head Office, Islamabad V. Kishwar Khan and others**' (2022 SCMR 1598), it was held by the Honourable Supreme Court that in case of mixed questions of law and facts, the correct approach would be to allow the suit to proceed to the written statement and discovery phases and to determine the matter, either by framing preliminary issues, or through a regular trial.
- (ix) that factual inquiry regarding averments in the plaint is not permissible, as held in '**Mst. Shabeona Perveen V. M/S. Defence Officers, Housing Society Authority, Karachi**' (1993 CLC 2523) '**Messrs Bengal Corporation V. D.D.G. Hansa and 3 others**' (PLD 1992 Karachi 75) '**Hyderabad Municipal Corporation V. Messrs Fateh Jeans Ltd.**' (1991 MLD 284) '**Dost Muhammad V. Ghulam Nabi**' (1990 MLD 164) and '**Karachi Development Authority V. Evacuee Trust Board through Administrator**' (PLD 1984 Karachi 34).

(x) That where a cause of action is disclosed in the plaint, the plaintiff has a right to a fair trial and to produce evidence and a judicial decision on the merits of his cause; and

(xi) that even in a case of vague pleadings and lack of proper particulars and details, the Court shall ask for better particulars and the proper course is to order the party to remove the vagueness and not to reject the plaint, as enunciated in the cases of '**Dost Muhammad V. Ghulam Nabi**' (1990 MLD 164), '**N. A, Shah Riyar V. Messrs Conforce Ltd., Lahore and another**' (1981 CLC 1009), and '**Seven Stars Goods Transport Co. (Regd.), Karachi V. The Administrator, Karachi Municipal Corporation, Karachi**' (PLD 1976 Karachi 21).

(xii) The Honourable Supreme Court in the case of '**Jewan and 7 others V. Federation of Pakistan through Secretary, Revenue, Islamabad and 2 others**' (1994 SCMR 826) held that the Court cannot take into consideration pleas raised by the defendant 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. Beyond that, the Court would not be entitled to take into consideration any other material produced on record unless the same is brought on record in accordance with the rules of evidence.

(xiii) In '**Saleem Malik V. Pakistan Cricket Board (PCB) and 2 others**' (PLD 2008 Supreme Court 650) the Hon'ble Supreme Court expressed, that the scope of Order VII Rule 11, CPC. is confined only to the extent of averments of the plaint and in addition, at the most, uncontroversial material available on record can be considered for determination of the question whether plaint is liable to be rejected or not but the scope of Order VII Rule 11, CPC. cannot be enlarged to consider the pleading of the other side in the written statement or defence plea raised therein for the purpose of rejection of the plaint.

(xiv) The Hon'ble Supreme Court, in '**Haji Mitha Khan V. Muhammad Yunus and 2 Others**' (1991 SCMR 2030) has taken the view that the test of cause of action is, that where the plaintiff claims that he had entered into a valid compromise, and the respondents were party to it or bound by it, and that the rights of the applicant under the compromise were being violated, this was

enough to afford a cause of action to the plaintiff and it would only be on merits that he could be defeated. It was further observed that if it is held that the claim is not within time, or that the parties were not parties to the compromise, or the compromise is not in accordance with the law applicable to the parties, then it would be a decision on merits which must take place in proper form. If any defect was found in the frame of the suit or a deficiency in the court fee, then an opportunity is to be allowed to the Plaintiff to correct such defect and to remove the deficiency.

(xv) ***‘Mushtaq Ahmad Khan and another V. Mercantile Cooperative Finance Corporation Ltd. and another’*** (PLD 1989 Lahore 320) was the case wherein it was held that to enable a Court to reject a plaint on the ground that it does not disclose a cause of action, it should travel within the four corners of the plaint and nothing else. Neither the defence set up nor the documents annexed thereto could legitimately be looked into. For failing to disclose the cause of action, the plaint can be rejected only if the allegations given in the plaint, the plaintiff could not be entitled to any relief whatsoever, even if it is taken to be true in the manner and form. If the contents of the plaint read as a whole disclosed triable issues, then the dispute between the parties should not be resolved without proper trial, i.e. settlement of proper issues and recording of evidence.

9. What appears to have been settled in the above-discussed citations is, that in case of controversial questions of fact or law, the provision of Order VII Rule 11, CPC. cannot be invoked. Rather, the proper course for the Court would be to frame an issue on such a question and decide the same on the merits in the light of evidence in accordance with law. The rejection of plaint on technical grounds would amount to deprive a person from his legitimate right of availing the legal remedy for undoing the wrong done in respect of his legitimate right, therefore, the Court may in exceptional cases, consider the legal objection in the light of averment of the written statement; but the pleading as a whole cannot be taken into consideration for rejection of plaint under Order VII Rule 11 CPC. The same view was also taken in the case of ***Saleem Malik supra***. A plain reading of the provision shows that, subject to certain exceptions to clause (d) as a general principle, the plaint in a suit cannot be rejected based upon a defence plea or on disputed material supplied by the opposite party with the written statement. In the instant case,

since the question of lack of cause of action was involved, hence the above principles have been applied, whereas the situation may differ in cases where a plaint is rejected being 'barred by law', under clause (d) of Rule 11 of Order VII, for instance, barred under the principles of *Res judicata*; or *estoppel*; or under Order II Rule 2; or barred under any other law.

10. Upon examining the available material on record, it is evident that the learned Courts below have not confined themselves to the averments made in the plaint while exercising jurisdiction under Order VII Rule 11, C.P.C. A meaningful reading of the plaint clearly shows that the applicant has specifically pleaded continuous cultivating possession over the suit land on the basis of lease granted to his father by the Mukhtiarkar, Nangarparkar and has further alleged unlawful interference by the respondents No.1 to 3. These averments, if taken as correct for the purpose of Order VII Rule 11, C.P.C disclose a clear cause of action.

11. It is a settled principle of law that while deciding an application under Order VII Rule 11, C.P.C the Court is required to examine only the statements made in the plaint and the documents relied upon by the applicant/plaintiff and the defence taken by the respondent/defendants or disputed questions of fact cannot be considered at that stage. In the present case, the learned trial Court has entered into the merits of the controversy by recording findings regarding the status of the suit land as enemy property, alleged lack of entitlement of the applicant and availability of remedies before the revenue authorities. Such findings could only have been returned after framing of issues and recording of evidence.

12. Turning to the last aspect of the matter, I am mindful that the instant Revision application has been filed against concurrent findings by two Courts below, for which the basic rule is, that the scope of revisional jurisdiction is limited to the extent of jurisdictional error or an illegality of the nature in the judgment which may have material effect on the result of the case, or if the conclusion drawn therein is perverse or conflicting to the law. The ratio laid down by the Honourable Supreme Court in the case of '**Cantonment Board through Executive Officer, Cantt. Board, Rawalpindi v. Ikhtlaq Ahmed**'

(2014 SCMR 161) is that provisions of section 115 CPC., under which a High Court exercises its revisional jurisdiction, confer an exceptional and necessary power intended to secure the effective exercise of its superintendence and visitorial powers of correction, unhindered by technicalities. But at the same time, the Court could interfere when the concurrent findings of fact recorded are based on erroneous assumptions of fact or patent errors of law or reveal arbitrary exercise of power or abuse of jurisdiction or where the view taken is demonstrably unreasonable. The cases of **"Asmatullah v. Amanat Ullah through Legal Representatives"** (PLD 2008 SC 155) **"Abdul Sattar v. Mst. Anar Bibi and others"** (PLD 2007 SC 609), and **"Mst. Naziran Begum through Legal Heirs v. Mst. Khurshid Begum through Legal Heirs"** (1999 SCMR 1171) can be referred to support this. Hence, as discussed at paras 10 and 11 *ibid* in detail, by deciding the question of truth or falsity of the claim of the Plaintiff on multiple questions of fact at such stage of hearing of application under Order VII Rule 11 CPC., the learned trial Court materially erred by acting beyond its jurisdiction and the parameters under Order VII Rule 11 CPC., whereas the learned appellate Judge also followed lead and failed to apply correct judicial approach in light of the dictum discussed above, this appears to be a fit case for exercise of revisional jurisdiction under section 115 CPC. In view of the above-discussed principles and judgments, the principles enunciated in the two Judgments referred by the Respondent have already been taken care of.

13. In view of above, the civil revision application is allowed and impugned order/judgment are set-aside and the case is remanded back to the learned trial Court with direction to decide the suit on merits after recording evidence of the parties in accordance with law.

These are the reasons of short order dated 14.01.2026.

JUDGE

"Faisal"