

IN THE HIGH COURT OF SINDH AT KARACHI

IInd Appeal No. 256 of 2025

Appellants Mst. Raeesa Kareem & Others	:	Through Mr. Muhammad Ali Waris Lari, Advocate
Respondent No.1 Muhammad Aftab	:	Through M/s. Abdul Qayum and Hassan Haider, Advocates
Dates of Hearing	:	07-09-2026 & 21-09-2026
Date of Judgment	:	05-10-2026

JUDGMENT

Muhammad Saleem Jessar, J.- By means of instant IInd Appeal, the appellants have assailed the judgment & decree dated 08.03.2025 passed by learned VIth Additional District Judge, East Karachi in Civil Appeal No. 86 of 2024 whereby he dismissed the appeal and maintained the order dated 07.02.2024 passed by XIIth Senior Civil Judge, Karachi East in Suit No. 323 of 2023, where he allowed the Application U/O VII Rule 11 CPC and rejected the plaint in the suit filed by appellants.

2. Brief facts of the case are; that the petitioners herein filed Civil Suit No.323 of 2023 for declaration, cancellation, distribution/partition, mesne profit and permanent injunction, in respect of Plot No.9, Jamshed Quarter, Bahadur Yar Jung Cooperative Market, Jamshed Road No. 3, opposite BYJ School, Karachi, admeasuring 56 sq. yards and Plot No.11, Jamshed Quarters,

Bahadur Yar Jung Cooperative Market, Jamshed Road No.3, opposite BYJ School, Karachi, admeasuring 75 sq. yards, and House No. D-85 (Old No. D-6/50), situated on Plot No. 14 PIB Colony, Karachi, admeasuring 283 sq. yards, stating therein that, these properties were left behind by late Haji Muhammad Shahab, father and predecessor-in-interest of the petitioners / plaintiffs and respondents / defendants No.1 to 6; however, after death of Haji Muhammad Sahab, respondent / defendant No.1, Mohammad Aftab, by furnishing fake and false information to the concerned department, obtained lease and also took signatures of the petitioners / plaintiffs and other legal heirs of Haji Mohammad Sahab on the Relinquishment Deed. The grievance of the petitioners / plaintiffs is; that respondent No.1 is trying to deprive the petitioners from their lawful shares in the inherited properties.

3. Upon service of notice, Respondent No.1 filed written statement as well as an application under Order VII Rule 11 CPC, for rejection of plaint on the ground that the petitioners / plaintiffs have no cause of action and that the suit is barred under the law. After hearing the parties, ultimately, the trial Court rejected the plaint by allowing aforesaid application vide order dated 07.02.2024. The petitioners / plaintiffs being aggrieved by said order; preferred Civil Appeal No.86 of 2024. After hearing arguments of the advocates for the parties, the Appellate Court dismissed the appeal vide Judgment dated 08.03.2025. The appellants/ plaintiffs have assailed said judgment by filing instant IInd Appeal.

4. I have heard arguments advanced by learned counsel for the Appellants, learned counsel for the Respondents as well as learned Additional A.G. appearing for the State and have also perused the material made available before me on the record.

5. Learned counsel for the Appellants submitted that two courts below while deciding the matter, erred in law and on facts. It was further submitted that while rejecting the plaint on the ground of limitation, the trial court did not take into consideration the settled principle of law that plaint cannot be rejected in piecemeal, because in the plaint the plaintiffs have sought multiple reliefs including partition. It was further submitted that in view of factual controversy involved in the matter, it was incumbent upon the trial court to frame issues and record evidence of the parties and on the basis of such

evidence decide the fate of the suit. It was further submitted that the suit properties were owned by late father of the parties and the petitioners acquired a vested right to claim their shares in the inherited properties. It was further submitted that the case of the petitioners / plaintiffs is; that by conveying fake and false information, respondent No. 1 obtained registered lease in his favour and so also by making a false promise, persuaded the petitioners and other legal heirs of deceased Mohammad Sahab, he obtained their signatures on the relinquishment deed, therefore, as the allegation of fraud was levelled against the respondent, therefore, there was no question of limitation for filing the suit. It was also submitted that as the matter related to the shares of the legal heirs in the inherited property, therefore the plaint could not be rejected on the ground of limitation. Lastly, it was prayed that the orders passed by two courts below may be set aside and the matter may be remanded back to the trial court for deciding the case in accordance with the law after affording proper opportunity of hearing to both parties to adduce their evidence. It was further submitted that the fact regarding registration of lease in respect of first property bearing Plot No. 9 came to the knowledge of the petitioners / plaintiffs for the first time in the year 2022 during the rent proceedings, therefore the suit was filed within three years of gaining such knowledge, thus the same was within time. In support of his contentions, learned counsel placed his reliance upon the cases of Najamuddin Zia and another Vs. Mst. Asma Qamar and others (2013 CLD 1263), Farzand Ali and another Vs. Fateh Muhammad (2005 CLC 1223), Abdul Rehman Vs. Sher Zaman and another (2004 CLC 1340), Jewan and 7 others vs. Federation of Pakistan and 2 others (1994 SCMR 826), Mst. Rabia Gula and others vs. Muhammad Janan and others (2022 SCMR 1009), Ali Haider and another Vs. Muhammad Boota and another (2006 CLC 283).

6. Conversely, learned counsel for respondent No. 1 submitted that the orders of the courts below are in accordance with the law, having been passed after taking into consideration all factual and legal aspects of the case. It was further submitted that as the plaintiffs themselves stated in the plaint that they had come to know about the registered lease after death of their father in 1999, therefore the suit is barred to that extent by 38 years. It was further submitted that the plaintiffs / petitioners also admitted that they were persuaded by respondent No. 1 to sign the relinquishment deed, thus, they were well aware of the same, therefore the suit is also barred by limitation by 15 years to that

extent. In the circumstances, the trial court rightly rejected the plaint on the ground of limitation and the appellate court also rightly upheld such order. In support of his contentions, he relied upon the case of Moulana Nur-ul-Haq vs. Ibrahim Khalil, (2000 SCMR 1305).

7. Learned Addl. A.G. opposed the appeal and supported the impugned judgment / order passed by the two courts below.

8. It seems that the petitioners had filed suit for the reliefs of declaration to the effect that the lease deed dated 10.01.1985 in respect of Plot No.11, Jamshed Quarters, Bahadur Yar Jung Cooperative Market, Jamshed Road No.3, opposite BYJ School, Karachi, admeasuring 75 sq. yards and relinquishment deed dated 19.08.2008 in respect of Plot No.9, Jamshed Quarter Bahadur Yar Jung Cooperative Market, Jamshed Road No. 3, opposite BYJ School, Karachi, admeasuring 56 sq. yards in favor of Respondent No.1 are null and void, having been obtained by means of fraud and false and incorrect information, thus the same are liable to be cancelled. The plaintiffs also prayed for partition of the suit properties, so also for mesne profit and permanent injunction.

9. From perusal of the order passed by the trial Court whereby it allowed the application under Order VII Rule 11 CPC filed by respondent No.1, it appears that the main ground for rejection of plaint was; that the suit is barred by the law of limitation. It was observed that the limitation period for the relief of declaration is **six years**, as provided under Article 120 of Limitation Act, while the limitation for the relief of cancellation is three years as provided under Article 91 of Limitation Act, therefore, the suit, to the extent of relief of cancellation of lease deed dated 10.01.1985 was barred by 38 years and to the extent of relief of cancellation of relinquishment deed dated 19.08.2008 by a period of 15 years. It would be advantageous to reproduce hereunder concluding para from the order of the trial Court:

“In view of the above discussion, I am of the considered view that the suit of plaintiffs is not maintainable and also barred under Article 120 & 91 of the Limitation Act, therefore, suit of plaintiffs for Declaration, Cancellation & Distribution/ Partition, Mense Profit and Permanent Injunction is not maintainable, hence, the application under Oder VII Rule 11 CPC read with Section 151 CPC, filed by the Defendant No.1 is hereby

allowed, consequently suit / plaint is hereby rejected under Order VII Rule 11 CPC, along-with listed applications..”

10. It may be observed that in the suit filed by the petitioners, multiple prayers were made such as declaration, cancellation, Distribution / Partition, Mesne Profit and Permanent Injunction. However, the plaint was rejected by the trial Court mainly on the ground that the suit was barred by law of limitation.

11. It is a well settled principle of law that plaint cannot be rejected in piecemeal. In this connection, reference may be made to the case of **AHMED ALI TALPUR Vs. SUB-REGISTRAR LATIFABAD, HYDERABAD and others**, reported in **PLD 2025 SC 302**, wherein Honourable Supreme Court held as under:

“However, the law does not permit **piecemeal** rejection. If even one prayer in the plaint is found to be maintainable, the plaint cannot be rejected in parts.”

12. In the case of **AJAMUDDIN ZIA and another Vs. Mst. ASMA QAMAR and others (2013 C L D 1263) [Sindh]**, it was held by this Court as under:

“15. The plaintiffs have claimed multiple reliefs and the plaint cannot be rejected in **piece meal**.”

13. As stated above, in instant case, plaint was rejected mainly on the ground that the suit is bared by the law of limitation. In this context, suffice it to say that limitation being a mixed question of law and fact, Plaint cannot be rejected merely on the basis of such ground, particularly in the matters of inheritance. Of course, this may be treated as an objection on the part of the respondents/defendants that the suit is barred by limitation; however, such objection could be dealt with by framing an issue as to whether the suit is barred by limitation? which may be decided in accordance with the law. For this view, I am fortified by a judgment delivered by a Division Bench of Lahore High Court in the case of **DEFENCE HOUSING AUTHORITY LAHORE through Secretary Vs. FARZAND ALI and 9 others**, reported in **2026 YLR 1357 [Lahore]**, wherein it was held:

“9. It is settled proposition of law that question of limitation is a mixed question of law and facts, which requires recording of evidence, therefore, the same cannot be decided keeping in view the respective pleadings of parties. For reference, reliance can be placed on judgments reported as Messrs Anwar Textile Mills Limited v. Pakistan Telecommunication Company Limited and others (2013 SCMR 1570), Haji Abdul Sattar and others v. Farooq Inayat and others (2013-SCMR 1493), Collector of Customs E and S.T, and Sales Tax v. Pakistan State Oil Company Ltd. (2005 SCMR 1636), Tariq Mahmood Chaudhry, Kamboh v. Najam un Din (1999-SCMR 2396), Government of the Punjab through Secretary. Education, Lahore v. Shahida Begum (1994 SCMR 1488) and Irshad Ali v. Sajjad Ali and 4 others (PLD 1995 SC 629).”

14. Yet, in another case of **AKHTAR NAWAZ and others Vs. AZRA BEGUM and others**, reported in **2025 Y L R 544 [Peshawar (Abbottabad Bench)]**, it was held as under:

“It is part of the record that both the parties are siblings inter se and dispute pertains to legacy of their father namely Abdul Aziz, therefore, in the given facts and circumstances whether the disputed gift mutation(s) were validly made or the same is the result of any fraud, are the questions which would be determined by the learned trial Court **after recording of pro and contra evidence** and thus, rejecting such a plaint at the initial stage would not meet the ends of justice specially on the ground of **limitation**. It may be reiterated that as per law developed so far, the principle of **limitation law, acquiescence as well as estoppel could not be strictly adhered to in the cases of legal heirs who are deriving their title(s) from a common predecessor.**”

15. In the case of **GHEE CORPORATION OF PAKISTAN (PVT.) LTD. Through Secretary Vs. Mst. SURRAYA JAN and 8 others**, reported in **2003 YLR 839 [Lahore]**, it was held:

“7. Attending to the question about the bar of limitation, suffice it to say that the suits of the respondents are not simplicities for possession of the property, rather, primarily for the **partition** as co-sharer and for the separate possession thereof. The key question for determination before the Courts is, about therefore, once it has been held by the two forums below and affirmed by this Court, that they are the co-owners, thus **for a co-owner, to seek a decree for**

partition, there is no period of limitation, resultantly, argument that suit having been brought after 12 years i.e. after 1960 or three years on attaining the majority by respondents Nos. 8 and 9, are barred, is misconceived and has no force.”

16. In the case of **Mst. BIBI FATHUL BARI Vs. UBAID UR RAHMAN and others**, reported in **2026 C L C 176 Peshawar (Mingora Bench)**], it was held:

“9. Generally, in the matters involving **inheritance dispute**, limitation is not taken into consideration to make such issue crucial for the dismissal of a suit especially of women folks and other fragile persons in the society when an element of fraud is involved and those in which a parda nasheen lady applies for her share in her lifetime.”

17. In view of above legal position, it is evident that the rejection of plaint by the trial court on the ground of limitation and affirmation of such order by the Appellate Court, is against the principle settled by the Superior Courts from time to time.

18. The respondent / defendant has also pleaded that no cause of action had accrued to the plaintiffs / petitioners to institute the suit as the suit property was owned by respondent No.1 and the same was not inherited property having been left behind by their deceased father, Haji Mohammad Sahab. Such assertion has been denied by the petitioners / plaintiffs and their plea is; that by conveying fake and false information to the concerned department and by persuading the petitioners / plaintiffs on the basis of false promise, respondent No.1 managed to obtain the lease and relinquishment deed. It may be observed that it is a settled law that any weakness in the case of plaintiff, is not sufficient to arrive at a conclusion that no cause of action is disclosed in the plaint. For this view, I am fortified by the judgment of Honourabnle Supreme Court passed in the case of **Ahmed Ali Talpur** (supra), wherein it was held:

“A dearth or weakness of proof in the circumstances of the case does not justify the conclusion that no cause of action is disclosed in the plaint. For the rejection of a plaint, the Court cannot consider pleas raised by the defendants at that stage, as those are merely contentions unsupported by any evidence on record. Nonetheless, if some material apart from the plaint is available on record and admitted by the

plaintiff, the Court may take it into consideration. However, in the case of mixed questions of law and fact, the correct approach is to allow the suit to proceed to the written statement and discovery phases, determining the lis either by framing preliminary issues or through a regular trial with equal opportunities for both parties."

It was further held in the above case as under:

"However, such a controversy cannot be decided summarily without framing proper issues and allowing the parties to present evidence. The controversy involved does not support the conclusion that the petitioner approached the Court without cause of action or that the plaint is barred by any law under Order VII, Rule 11, C.P.C."

19. In the case of **AKHTAR NAWAZ and others** (supra), it was **held**:

"5. It is relevant to mention here that while deciding the application filed under Order VII Rule 11, C.P.C., the Court has just to see that as to whether the plaintiff has disclosed a cause of action or not and as such at this initial stage it should not be the concern of the Court to record any finding that the plaintiff is not having a cause of action or that he would not be able to prove the cause of action, as, such aspect of the case is to be determined after recording of pro and contra evidence."

20. In the case of **Ghulam Ali vs. Asmatullah**, reported in 1990 SCMR 1630, Honourable Supreme Court held that *assertions made in the plaint had to be seen for the purposes of determining whether plaint disclosed any cause of action. Lack of proof or weakness of proof in circumstances of case did not furnish any justification for coming to conclusion that there was no cause of action shown in the plaint.*

21. In view of this legal position, the rejection of plaint by the trial Court even on the ground of lack of cause of action and maintaining such order by the Appellate Court, is contrary to the settled principles of law.

22. Now, it is also well settled that; *when there is a factual controversy between the parties, in such an eventuality, the rejection of plaint is not warranted, and such controversy could be resolved only by framing issue and then recording evidence of the parties.* From perusal of the record in instant case, it is apparent that both parties are at variance on factual aspects of the case, as such, in my humble opinion, unless and until evidence of both parties is

recorded, the controversy between the parties could not be resolved and adjudicated upon in a proper manner. In this connection, reference may be made to case of *Shaikh Ishtiaq Ahmed Vs. Mohammad Usman Ali Shaikh*, reported in 2021 YLR 315 [Lahore (Multan Bench)], wherein it was held that *in view of the serious factual controversy, the rejection of plaint was not permissible, nor conclusive view as to the nature of transaction could be taken without evidence and that proper course was to frame issue, allow the parties to lead evidence and, thereafter, determine the question as to the nature of the transaction.*

23. In the case of **MUHAMMAD ALTAF and others Vs. ABDUR REHMAN KHAN and others**, reported in 2001 S C M R 953, it was held by the Apex Court:

“In the case in hand, learned Judges of the Division Bench have rightly pointed out that the allegation of fraud which was also averred in the plaint could not have been resolved without recording evidence. In this view of the matter, the learned Single Judge was justified in non-suiting the petitioners under Order VII, Rules 11, C.P.C.”

24. In the case of **Mst. BANO GUL BANO and others Vs. Begum DILSHAD ALAM and 4 others** (2011 CLC 88 [Karachi], this Court held as under:

“It is well settled old age principle that for the purposes of rejection of plaint, only the averments of the plaint are to be looked into and the word "cause of action" means the bundle of facts incorporated in the plaint..... The bone of contention between the parties as recounted in the plaint and the written statement shows a substantial dispute with mix question of law and facts which require evidence and unless evidence is recorded, the dispute between the parties cannot be resolved. At this juncture, I would like to rely upon a judgment reported in PLD 2008 650, (Saleem Malik v. Pakistan Cricket Board) in which, the Hon'ble Supreme Court has held that rejection of plaint on technical grounds would amount to deprive a person from his legitimate right of availing legal remedy for undoing the wrong done in respect of his such right. This is a settled principle of law that in case of controversial questions of facts 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 issue on such question and decide the same on merits in the light of evidence.”

25. Needless to emphasize that rejection of the plaint is a serious action as it disposes of entire suit, and for this reason, under the law, the order whereby plaint is rejected, is treated as a Decree. In the circumstances, the courts must be most cautious while rejecting a plaint. For this view, I am fortified by a judgment of Honourable Supreme Court passed in the case of *Misree Khan Vs. Abdul Ghafoor*. reported in PLD 2025 SC 24, wherein it was held as under:

*"...we take a pause to say that rejecting the plaint under Order VII, Rule 11, C.P.C. is a **drastic power** conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to exercising power under Order VII, Rule 11, C.P.C. are stringent."*

26. It is also significant to point out at this juncture that the Superior Courts have desired that extra- ordinary care must be taken in the matters of inheritance, particularly where the share of women folk is involved. In instant case, the position is same. In this context, reliance may be placed on the case of *Atta Muhammad and others vs. Mst. Munir Sultan (deceased) through her LRs and others* (2021 SCMR 73), wherein Honourable Supreme Court observed that *extra vigilance must be exercised in cases where purported gifts are made to deprive daughters and widows from what would have constituted their share in the inheritance of an estate*. In the case of *Mrs. Khalida Azhar Vs. Viaar Rustam Bakhshi and others* (2018 SCMR 30), it was held by the apex court that *purported gifts and other instruments used to deprive female family members including daughters and widows are contrary to law and public policy*. Similarly, in the case of *Ghulam Ali and 2 others Vs. Mst. Ghulam Sarwar Naqvi* (PLD 1990 SC 1) it was held by Honourable Supreme Court that *often male members of the family deprive entitled female members of their inheritance and, in doing so, law is being violated and that when vulnerable women are at such times compelled to relinquish their inheritance in favour of their male members such relinquishment offends public policy and is contrary to shariah*.

27. From scrutiny of pleadings of the parties, it appears that respondent / defendant No.1 has pleaded that the two suit properties situated at Jamshed Quarters are owned by him and that deceased Haji Mohammad Shahab, late father of the parties, had no concern with the same. Such plea, on the face of it, appears to be misconceived for the simple reason that the very execution of Relinquishment Deed is a solid proof that the suit property in respect whereof

said Relinquishment Deed was executed, is an inherited property that is why respondent / defendant No.1 requested the petitioners and other legal heirs of their deceased father to execute such relinquishment deed in his favour. Apart from this, in the Relinquishment Deed itself, it is mentioned in clear terms that the suit property viz. Plot No.9, admeasuring 56 sq. yards stands leased in the name of deceased Haji Mohammad Sahab, who is sole and absolute owner thereof.

28. In view of above discussion, it can safely be held that order of the trial court whereby plaint was rejected, so also the impugned judgment of the Appellate Court upholding such order, are against the principles enunciated by the Superior Courts. Accordingly, the same are set aside. Consequently, instant Second Appeal is allowed. The matter is remanded to the trial Court with direction to decide the same after affording full and equal opportunity of hearing to the parties to adduce their respective evidence. It is expected that the exercise of conclusion of the trial of the suit shall be completed within a period of six (6) months from the date of receipt of this judgment.

Karachi

Dated:05.10.2026

Approved for Reporting.

**JUDGE
HEAD OF CONST. BENCHES**