JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Civil Revision Application No.S-296 of 2023

Applicants	:	Mst. Husna and others through Mr. Muhammad Zakaria Baloch, Advocate.
Respondent No. 1	:	Federation of Pakistan through Ms. Shamim Mughal, Asst. Attorney General for Pakistan.
Respondent No. 2	:	Province of Sindh not represented.
Respondents No. 3 to 5	:	Manager Operations NADRA and others through Mr. Habib-ur-Rehman, Advocate.
Respondent No. 6	:	Mst. Shama in-person.
Date of Hearing	:	23.10.2026
Date of Judgment	:	30.10.2026

JUDGMENT

Muhammad Humayon Khan, J.: The Applicants had filed First Class Suit No. 39 of 2023 before the learned Senior Civil Judge-I, Tando Allahyar for declaration, cancellation, mandatory and permanent injunction against the Respondents, pleading as follows:

i) The husband of the Applicant No. 1, Muhammad Ali, had contracted two marriages, the first with the Applicant No. 1 on 01.05.1994 and the second with the Respondent No. 6 by way of oral Nikah (the date thereof not having been mentioned).

ii) The said Muhammad Ali gave oral *talaq* (divorce) to the Respondent No. 6 within one month before witnesses due to her bad attitude.

iii) Muhammad Ali died on 18.09.2021. On 02.02.2023, the Respondent No. 6 made an application to the Senior Superintendent of Police, Tando Allahyar, demanding pension and respective share in the agricultural land and plots left by Muhammad Ali.

iv) The Respondent No. 6 is not the legal heir of Muhammad Ali and she had prepared an illegal and fraudulent CNIC reflecting Muhammad Ali as her husband.

v) The Applicant No. 1 approached the Respondent No. 4 for issuance of a Family Registration Certificate in favour of four family members, namely (i) Muhammad Ali (deceased), (ii) Mst. Husna (Applicant No. 1), (iii) Hamid Ali (Applicant No. 3) and (iv) Mst. Gulshana (Applicant No. 2).

vi) The official Respondents are under legal obligation to cancel the CNIC issued to the Respondent No. 6 reflecting deceased Muhammad Ali as her husband.

2. Against the suit, the Respondent No. 6 filed her written statement denying the case and simultaneously she filed an application under r. 11 of O. VII of the CPC seeking the rejection of the plaint. The said application was opposed by the Applicants by filing a counter-affidavit. By Order dated 30.03.2023, the learned Senior Civil Judge allowed the said application and rejected the plaint under r. 11 of O. VII of the CPC. Against the said Order dated 30.03.2023, the Applicants preferred Civil Appeal No. 31 of 2023 under s. 96 of the CPC which came up before the learned District Judge, Tando Allahyar, and the said appeal was dismissed by Judgment dated 07.09.2023 and Decree dated 13.09.2023 and the Order dated 30.03.2023 of the learned Senior Civil Judge was maintained. Now, the Applicants have filed the present revision application under s. 115 of the CPC seeking to restore the suit for decision on merits.

3. Heard. Perused.

4. It is one of the most basic principles relating to exercise of jurisdiction under r. 11 of O. VII of the CPC that the plaint cannot be rejected unless, upon presuming the contents of the plaint to be correct, the suit is found to be barred by law or as not disclosing any cause of action. On a perusal of the Order dated 30.03.2023, it is quite clear to me that the learned Senior Civil Judge has gone way beyond the scope of his jurisdiction under r. 11 of O. VII of the CPC

in appreciating controversial facts and questions which ought to have gone to trial. The learned Senior Civil Judge has even given conclusions as to validity of the alleged divorce which was a function of trial and could not have been decided prematurely as it was. To this extent the learned Senior Civil Judge exercised his jurisdiction illegally and with material irregularity. However, the more substantial objection against the maintainability of the suit lies in relation to the *locus standi* or legal character of the Applicants under s. 42 of the Specific Relief Act, 1877 ("1877 Act") to which I now turn.

5. In order to understand the legal character of the Applicants, it is necessary to go through their prayer clause in their suit which reads as follows:

> "That, the plaintiffs, therefore, prays for Judgment and Decree as under: -
>
> a) That this Honorable Court may be pleased to declare the late Muhammad Ali pronounced oral Talaq to Mst. Shama & such decree be sent to the defendant No. 5.
>
> b) That this Honorable Court may be pleased to cancel the husband name of Mst. Shama as Muhammad Ali from her present CNIC & such decree be sent to the defendant No. 5.
>
> c) Mandatory injunction to be issued against the defendants directing them to cancel the husband name of the Mst. Shama as Muhammad Ali & make new CNIC in her Father name.
>
> d) Costs of the suit be born by the defendants.
>
> e) Any other relief be granted as may deem fit and proper under the circumstances of the case."

It is clear from a reading of the prayer that the Applicants have failed to seek a declaration of their own existing legal rights and have rather sought a declaration against the rights of the Respondent No. 6 in view of her recorded status as widow of deceased Muhammad Ali. To put it another way, they have failed to disclose their own legal entitlement or right and have asserted that it be declared that the Respondent No. 6 has none.

6. Under analogous circumstances, the Supreme Court has already decided two important cases. The first case was *Munir Hussain and others v Riffat Shamim and others* 2023 SCMR 6 and the

second was *Mst. Laila Qayyum v Fawad Qayyum and others* PLD 2019 SC 449. In both these cases, the putative parents of certain children had never challenged their paternity while they were alive but it was challenged by some other individuals (siblings etc.), and the Supreme Court arrived at the common conclusion that a third person would have no legal character or right to challenge someone else's paternity without asserting their own right. Consequently, if someone's paternity was being denied, they could file a suit seeking to have it declared that they are the legal heir of such and such person, but someone else having no direct connection to the relationship would not have the right to say that the said person is not a legal heir. In that context, it was held that a person seeking a declaration that someone is *not* the child of someone would be seeking a *negative declaration* and their suit would not be maintainable within the meaning of s. 42 of the 1877 Act.

7. I am not unmindful that *Mst. Laila Qayyum* and *Munir Hussain* were both on matters of paternity, however, if closer attention is paid it will be seen that both raise a transferrable principle and I do not see why the ratio in those cases should not be extended here. Over here, for example, the Applicants have failed to provide material facts in the shape of the date of the alleged oral divorce or how it was pronounced. It is simply stated that an oral divorce was pronounced within one month but no material facts whatsoever supporting such a claim have been filed with the plaint nor any witnesses of the alleged divorce have been pleaded in the plaint. The pleadings are vaguely formulated and the Court is entitled to see through any imprecise or astute drafting for purposes of r. 11 of O. VII of the CPC.

8. It is equally important, according to the Applicants' own pleadings, that deceased Muhammad Ali did not challenge the putative relationship with the Respondent No. 6 during his lifetime and rather the Applicants have challenged the same after his death. Consequently, for the same reasons that found favour with the Supreme Court in *Mst. Laila Qayyum* and *Munir Hussain*, I believe that the Applicants do not have a better claim than deceased Muhammad Ali in respect of something as to which he remained silent during his lifetime and died without having filed a suit himself. I am therefore of the view that the Applicants had sought a negative declaration as against the title of the Respondent No. 6 in a manner

that is beyond their own legal character under s. 42 of the 1877 Act. It is already well-established that where the main relief is barred, all consequential prayers are also barred and the suit would have to be dismissed. Consequently, since the prayer for declaration is barred under s. 42 of the 1877 Act, all other prayers made by the Applicants have paled into insignificance.

9. For these reasons, I dismiss this revision application along-with pending application(s), if any, and I would maintain the Judgment and Decree of the learned District Judge and the Order of the learned Senior Civil Judge. There shall be no order as to costs.

J U D G E

Approved for reporting