

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH.**

(Judicial Department)

W.P No.876-B/2021

Dila Baz and others

Vs.

Balqiaz and others.

JUDGMENT

Date of hearing: **31.05.2022**

For Petitioners: Mr. Farooq Khan Surrani, Advocate.

For Respondents: Mr. Hafeez Ullah Khan, Advocate.

SAHIBZADA ASADULLAH, J.-- The petitioners through the instant constitutional petition, have questioned the judgment and decree dated 07.10.2021 passed by the learned Additional District Judge-II, Bannu, whereby, the revision petitions bearing Nos.47/CR of 2021 titled "Balqiaz Khan and others Vs. Dilabaz Khan and others" and 48/CR of 2021 titled "Arshad Ali and others Vs. Dilabaz Khan and others" instituted by the respondents / defendants were allowed and the complaints were rejected under Order VII, Rule 11, C.P.C.

2. Brief facts of the case are that the petitioners instituted civil suits bearing Nos.315/1 of 2020 and 316/1 of 2020 against the respondents / defendants with the prayers for declaration / possession and injunction

stating therein that the suit property was the ownership of their predecessors Ghulam Khan, Gul Akbar and Gul Maidar and that the same was never sold to the predecessors of respondents / defendants; that the mutation No.3469 dated 30.4.1942 in favour of Mirzadi and Salim Begum from Gul Akbar and Gul Maidar, mutation No.3778 dated 12.02.1944 from Gul Maidar etc in favour of Gul Pino, mutation No.3780 dated 12.02.1944 in favour of Gulbat Khan, mutation No.4087 dated 15.11.1946 in favour of Gulbat Khan and mutation No.4100 dated 28.12.1946 in favour of Sohail Shah and Muhammad Shah are based on fraud and misrepresentation; that the predecessors of the petitioners / plaintiffs were not in the knowledge of the same and even no legal formalities were fulfilled in that respect; that the respondents / defendants have no legal title to the property in question and that the attestation of mutations in their favour and the subsequent mutations in favour of others needs the indulgence of this Court and are liable to be cancelled and my kindly be declared as ineffective upon the legal rights and status of the petitioners. It was further mentioned in the plaints that at the time of attestation

of mutations, both i.e. Ghulam Khan and Gul Akbar Khan were not alive and that the former had died on 27.11.1931 and the latter on 21.05.1942.

3. When the respondents / defendants were put on notice, they after submitting written statements, submitted applications under ORDER VII, Rule 11 of the Civil Procedure Code, 1908 for rejection of the plaints. As per details provided by the respondents / defendants, Ghulam Khan died on 20.11.1942, in which respect, a copy from the death register maintained by the DHO office was produced, where the said Ghulam Khan is placed at serial No.42. It is pertinent to mention that mutation No.3567 was entered from Ghulam Khan and attested on 07.02.1943 i.e. by the time, when the said Ghulam Khan had already died. The claim of the respondents / defendants was further rebutted in the replication and the plaintiffs declared the same as fake and bogus and in support of their claim, the plaintiffs produced a death certificate from the same office, where the death of Ghulam Khan is mentioned as 27.11.1931 and further rebutted the claim of genuineness of the certificate produced by the respondents / defendants. The matter does not end here,

rather the respondents / defendants claimed the property to have been purchased from Ghulam Khan through registry No.295 Jild No.208 dated 17.02.1932, registry No.24 Jild 241 dated 19.11.1939 and registry No.289 Jild No. 253 dated 09.7.1941.

4. The parties remained at variance in respect of the death of Gul Akbar, as both the sides came with rival claims in respect of his death. The plaintiffs in their plaints mentioned the date of death of Gul Akbar as 29.05.1942, whereas, the respondents / defendants did not accept the same and claimed that he died on 29.08.1954. The plaintiffs in order to substantiate their claim, obtained a copy of his death certificate, where the same has been mentioned as 29.05.1942, whereas, the suits were instituted on 08.06.2020.

5. In their applications for rejection of plaints, the defendants further claimed that Gul Akbar, in his life time, instituted suit No.361/1 of 1945 against Gul Payow Khan & Gul Maidar etc in which he had challenged mutation No.3778 attested on 12.02.1944 to the extent of his own share. The said suit was decreed in his favour vide judgment & decree dated 04.06.1945 and consequently, his share stood restored. This

property was subsequently sold out by Gul Akbar on Gul Payow Shah vide registry No.697 dated 21.08.1946 and in this respect, mutation No.4094 was attested on 28.12.1946. It has further been averred that the said Gul Akbar had also instituted suit No.360 on 22.03.1945 against Gulabat Khan which was decided on 04.06.1945. All these facts prove that the above said predecessor of plaintiffs namely Gul Akbar was alive at the time of attestation of the impugned mutations and the claim of the plaintiffs regarding his death on 21.05.1942 is false, the defendants have claimed in their application. It was, thus, prayed that in view of aforesaid circumstances and facts brought on record, the plaints were liable to be rejected.

6. The learned trial Court heard the learned counsel for the parties and after hearing them at length, the applications under ORDER VII Rule 11 CPC were dismissed through separate orders on 12.06.2021. The same were questioned before the Court of learned Additional District Judge-II, Bannu through separate revision petitions and the learned judge after hearing the parties on the issue in hand, allowed the petitions and the orders / judgments of the learned trial Court

were set aside vide consolidated judgment & decree dated 07.10.2021. Feeling aggrieved, the petitioners have questioned the same before this Court through the instant writ petition.

7. The learned counsel for the parties were heard at length and with their valuable assistance, the record was gone through.



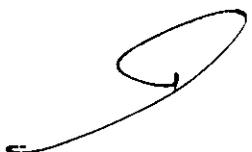
8. In order to resolve the controversy in hand, this Court deems it essential to revisit the record of the case and the rival claims of the parties before the learned trial Court. This Court is to see as to whether the approach of the learned trial Court was based on sound reasons or it was the revisional Court who dealt with the matter in accordance with law. I cannot forget that the scope for an application under ORDER VII Rule 11 CPC is narrow and limited and the courts seized of the matter must take into consideration the spirit behind the relevant rule. As the instant writ petition has been filed against the order / judgment of the provisional Court, so this Court is conscious of the fact that while sitting in constitutional jurisdiction, reappraisal of evidence is not warranted, rather this Court is to see as to what illegality and irregularity has been committed by both

the courts below. As both the courts below are at variance on this particular aspect of the case, so I deem it essential to scrutinize that which approach is in accordance with law and which not. This Court is conscious of the fact that an application under ORDER VII Rule 11 CPC shall only and only be entertained if the application could satisfy the Court regarding the following:

- i. where it does not disclose a cause of action;
- ii. where the relief claimed is undervalued, 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;
- iii. 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;
- iv. where the suit appears from the statement in the plaint to be barred by any law.

9. While deciding an application under ORDER VII Rule 11 CPC, the Court must consider the given parameters and when it comes to a conclusion that the application so submitted justifies the same then the

Court is at liberty to entertain the application by rejecting the plaint under the order. This Court is to see as to whether both the courts below were justified in their approach and that which of the Court took into consideration the above mentioned prerequisites.



10. This is interesting to note that both the parties collected the respective death certificates from the same office and both the sides put their reliance on the same, more particularly by the defendants when they submitted an application for rejection of plaints before the learned trial Court. This is surprising that both the sides rushed to the same office and collected different death certificates pertaining to Ghulam Khan and Gul Akbar with no clarification that which of the certificates are correct and which not. The learned counsel for the parties made submissions in support of their respective claims and each of the learned counsel extensively argued the genuineness and otherwise of the collected certificates. It is pertinent to mention that the learned trial Court dealt with the matter comprehensively and after application of its judicial mind to the requirements of law, declined the request for rejection of the plaints, but the learned revisional

Court formed another view and outrightly accepted the genuineness of one set of certificates collected by the defendants and the other was outrightly rejected. This Court is to see as to whether law permits such application of mind and as to whether the learned revisional Court was justified to determine the status of the collected certificates by stretching the canvass of ORDER VII Rule 11 CPC. I am afraid that the learned judge fell in error while undertaking such an unwarranted exercise, as the scope under Rule 11 of the order is very narrow and limited. In this regard, reliance can be placed on the judgment rendered by the Apex Court in case titled "Jewan and others Vs Federation of Pakistan through Secretary Revenue, Islamabad and others" (1994 SCMR 826):

"The Court while taking action for rejection of plaint under Order VII, Rule 11, C.P.C cannot take into consideration pleas raised by the defendant in the suit in his defence, 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 the Court while rejecting the plaint under Order VII, Rule 11, C.P.C. 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."

11. This is pertinent to mention that the intent and purpose behind the relevant law is to curb the menace of frivolous litigations and the courts of law are vested with the powers to do away with the same, when it come to a conclusion that to proceed further will end in a nullity. The purpose behind was to save the precious time of both the courts and the litigants who appear before the courts to contest their claims with no end to

come. But a system of check and balance has been created when the legislature inserted the relevant circumstances where the courts must apply its judicial mind in favour of the rejection of a plaint. To my understanding, no ambiguity is left that which plaints are to be rejected and which not, as the very rule has provided a touchstone, the courts should refrain from undertaking extra burden to discover the circumstances in favour of either side. If the Court indulges in discoveries then at that point of time, its jurisdiction is ousted and nothing is left for the Court to decide under ORDER VII Rule 11 CPC, rather in such eventuality, it becomes obligatory for the trial Court to proceed with the matter on merit.

12. Now, advertent to the factual aspects of the present case, I deem it essential to reproduce that both the sides approached the learned trial Court with their rival claims in respect of the documents collected from the respective office regarding the death of their predecessors. The learned trial Court while holding that the authenticity of the documents provided by both the parties cannot be gone into at this stage, as for its just appreciation, the appearance of the relevant officials

was a must. This is yet to be ascertained that who was the author and custodian of the record and as to whether the parties were competent enough to collect the same on their own and to produce the same before the learned trial Court while asking for its determination in their favour. No ambiguity is left that a proper procedure and mechanism for production of the documents, more particularly of the public documents has been provided. It would be a dangerous approach to determine the genuineness of a document while sitting in its limited jurisdiction. It is pertinent to mention that the provisions of ORDER VII Rule 11 CPC cannot be invoked in cases involving controversial questions of law or facts as is held by the Apex Court in the case of *“Saleem Malik Vs Pakistan Cricket Board and others” (PLD 2008 Supreme Court 650):*

“This is settled law that in case of controversial questions of fact 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 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, C.P.C.”

13. As it is too early to give findings in that respect, as the genuineness of the produced documents is yet to be tested, that too, by producing the relevant persons in whose custody the same were lying. I am surprised that what yardsticks were used by the learned judge when he accepted one set of documents produced by one

party and declined to accept the other. As the approach and assessment of the learned judge is based on his personal presumption, so I am afraid that no weight can be attached to it, as presumptions has a very limited role to play, more particularly in such like cases. As the death certificates produced by both the sides are the documents which are to decide the controversy between the parties, so such a shallow approach will prejudice the case of either side, that too, at such an initial stage, when yet the parties are to walk an extra mile.

14. The circumstances do suggest that the learned revisional Court travelled beyond his jurisdiction and fell in committing a legal error which can neither be rectified nor condoned, whereas, the learned trial court was fully justified to decline the request. Keeping in view the prerequisites for submitting an application under ORDER VII Rule 11 CPC, this Court is not hesitant to hold that the applications submitted by the defendants for rejection of plaints are lacking substance and cannot be answered in positive. As the matter involves factual controversy, so it can adequately be resolved by affording an opportunity of production of

evidence to the parties as has been held by the Apex Court in the judgment (*supra*) followed by the judgment in case titled “Mir Sahib Jan Vs Janan” (2011 SCMR 27):

“A factual controversy could adequately be resolved by granting opportunity to the parties of producing evidence after framing necessary issues.”

15. There is no cavil to the proposition that while considering application under ORDER VII, Rule 11, C.P.C the court is to look into the contents of the plaint and the documents appended and after considering the same, must apply its judicial mind to decide the fate of the submitted application. The court under no circumstances can travel beyond the scope of the relevant provision and the prerequisites mentioned therein, as in that eventuality, the power so exercised will yield to injustice which has never been the intent and purpose of law. In this particular case, the learned revisional court went an extra mile which has never been and can never be permitted. As the matter before the court was purely of factual controversy and could

not place itself within the parameters laid down for rejection of plaint, I lurk no doubt in mind that the learned judge fell in error and misdirected himself both in law and on facts of the case. The impugned judgment & decree are lacking strength to hold ground and call for interference. The impugned judgment is, therefore, set aside and the judgment / order of the learned trial court is restored. The matter is remitted back to the learned trial court to decide the *lis* on merit after affording an opportunity to the parties to contest their claims.

16. Accordingly, instant writ petition is allowed in the above terms.

Announced
31.05.2022
Ghafoor Zaman/steno



JUDGE

(S.B) Hon'ble Mr. Justice Sahibzada Asadullah



13/6/2022
13 JUN 2022