JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

(i) W.P. No.3953 of 2019

(Saleema Bibi Vs. Worthy District and Sessions Judge (East), Islamabad and another)

(ii) W.P. No.3954 of 2019

(Muhammad Ashram Vs. Worthy District and Sessions Judge (East), Islamabad and another)

(iii) W.P. No.4140 of 2015

(Shamraiz Khan and another Vs. The Additional District Judge-III, (East), Islamabad and another)

(iv) C.R. No.128 of 2020

(Javaid Akhtar Vs. Muhammad Ashram)

(v) C.R. No.131 of 2020

(Javaid Akhtar Vs. Muhammad Shamraiz)

Petitioners by:		Raja Gul Nawaz, Advocate for the petitioners in W.Ps. No.3953 of 2019 and 3954 of 2019. M/s Zulfiqar Ali Abbasi and Shahid Munir, Advocates for petitioner in W.P. No. 4140 of 2015.
Respondents by :		M/s Amanullah Kanrani, Ch. Afrasiab Khan, Hamid Nawaz and Zakir Khan, Advocates for respondent No.2 in the writ petitions and also for petitioner in C.Rs. Nos.128 of 2020 & 131 of 2020.
Dates of Hearing	:	11.11.2022, 02.12.2022, 11.01.2023 and 21.03.2023

ARBAB MUHAMMAD TAHIR, J. Through this common judgment, I intend to decide writ petitions Nos.3953 of 2019,

3954 of 2019 & 4140 of 2015 as well as Civil Revision petitions Nos.128 of 2020 and 131 of 2020 since they are factually identical in nature and the question of law involved in all these petitions is almost similar coupled with the fact that the litigating parties are also the same.

02. Through writ petitions Nos.3953 of 2019 and 3954 of 2019, the petitioners, Saleema Bibi and Muhammad Ashram, respectively, have called into question the validity of orders dated 09.10.2019, passed by learned Additional District Judge, East, Islamabad, through which the petitioners' revision petitions against orders dated 11.02.2019 passed by learned Civil Judge, Islamabad, were dismissed. Through said orders dated 11.02.2019, learned civil court while allowing the applications filed by respondent No.2 (Javed Akhtar) under Order VII, Rule 11 of Code of Civil Procedure, 1908 ("hereinafter referred to as "CPC"), rejected the plaints in the petitioners' suits for declaration, permanent and mandatory injunction primarily on the ground that no cause of action had been disclosed in the plaints.

03. Similarly, through writ petition No.4140 of 2015, the petitioners, Shamraiz Khan and another, have called into the question the *vires* of judgment and decree dated 17.11.2015 passed by learned Additional District Judge, East-Islamabad whereby revision petition filed by respondent No.2 (Javed Akhtar) against order dated 17.07.2014, passed by learned Civil Judge, Islamabad, was accepted and resultantly, the plaint in the petitioners' suit for declaration and mandatory injunction, was rejected under Order VII Rule 11 CPC. Vide said order dated 17.07.2014, learned Civil Court had dismissed respondent No.2's application filed under Order VII Rule 11 CPC.

Writ Petition No.3953 of 2019

04. Facts in brief of writ petition No.3953 of 2019 are that on 27.02.2018, the petitioner, Saleema Bibi instituted a suit for declaration, permanent and mandatory injunction against respondent No.2 (Javed Akhtar) seeking the following relief:-

> *"foregoing in view, it is most respectfully prayed that as an ad-interim relief the respondent No.1 may graciously be restrained from asserting any right over and above the area of 20 Kanals per force of the registered sale deed mentioned in the plaint, further restraining the respondent No.1 from changing the nature of the land, creating any sort of lien, encumbrance qua the said land appropriated over and above the area of 20 Kanals in any manner whatsoever, further restraining the respondent No.1 from inducting anyone else or creating interest of any third party qua the area over and above the 20 Kanals as described in Para No.1 of the plaint through any circumvention, ruse, stratagem or pretext, raising any sort of construction or carrying on any paving / leveling work qua the area of said land and above the 20 Kanals, till the final disposal of the main suit".*

05. Respondent No.2 was put on notice and during the proceedings in the said suit, respondent No.2 moved an application under Order VII, Rule 11 CPC seeking the rejection of plaint in petitioner's suit on the ground that the plaint did not disclose any cause of action hence, the same was liable to be dismissed. The said application was accepted by learned trial court vide order dated 11.02.2019 in the following terms:-

> *"Bare perusal of plaint shows that plaintiff remained failed to refer any of her right / interest to claim declaration which is essential requirements under Section 42 of Specific Relief Act, 1877. The provisions of Order VII Rule 11 CPC is mandated to stop frivolous litigation on initial stage as it would not only avoid wastage previous*

> *time of court, but it will also avoid to drag party in any unnecessary litigation. By relying on the above discussed, this court is of the view that from bare of perusal of the contests of the plaint, no cause of action is disclosed for filing of instant suit, therefore instant application is allowed while plaint is rejected attracting the provisions of Order VII Rule 11 CPC."*

06. Feeling dissatisfied with said order dated 11.02.2019, petitioner preferred a civil revision before the court of Additional District Judge, East Islamabad. The revisional court through a two-page order dated 09.10.2019, dismissed said revision petition. Hence, writ petition No.3953 of 2019.

Writ Petition No.3954 of 2019

07. Similarly, facts in brief of W.P. No.3954 of 2019 are that on 07.04.2018, petitioner, Muhammad Ashram instituted a suit for declaration, permanent and mandatory injunction against respondent No.2 (Javed Akhtar) praying *inter alia* that *"a decree for declaration to the effect that registered sale deed No.661 dated 06.03.1994 is executed and transacted for 20 kanals, the principal document through which the said sale deed had been registered is of 20 kansls and figure interpolated as 24 kans in the body of said sale deed is liable to be expunged and figure that of 20 kanals be taken as the only figure, further declaring that any claim of defendant No.1 by any twist or trick over and above the 20 kanals is incorrect, unwarranted… "*

08. After respondent No.2 (Javed Akhtar) was put on notice, he moved an application on 20.10.2018 under Order VII, Rule 11 CPC seeking the rejection of plaint in petitioner's suit, which was accepted by trial Court through a detailed order dated 11.02.2019 in the following terms:-

> *"Bare perusal of plaint shows that plaintiff remained failed to refer any of his right / interest to claim*

declaration which is essential requirement under Section 42 of Specific Relief Act, 1877. The provisions of Order VII Rule 11 CPC is mandated to stop frivolous litigation on initial stage as it would not only avoid wastage of previous time of court, but it will also avoid to drag party in any unnecessary litigation. By relying on the above discussed, this court is of the view that from bare of perusal of the contests of the plaint, no cause of action is disclosed for filing of instant suit, therefore instant application is allowed while plaint is rejected while attracting the provisions of Order VII Rule 11 CPC."

09. Feeling aggrieved by said order dated 11.02.2019, petitioner preferred a civil revision before the court of learned Additional District Judge, East Islamabad. The Revisional Court through a two-page order dated 09.10.2019, dismissed said Revision petition. Hence, writ petition No.3954 of 2019.

Writ Petition No.4140 of 2015

10. Likewise, the facts in brief of W.P. No.4140 of 2015 are that on 09.04.2014, the petitioners, Shamraiz Khan and Muhammad Asif, instituted a suit for declaration, permanent and mandatory injunction against respondent No.2 (Javed Akhtar) praying *inter alia* that (i) *"a decree for declaration to the effect that the plaintiffs are the lawful owners in possession of the suit land the detail of which is mentioned in para No.2 of the plaint, and the defendant No.1 has no right or concern whatsoever with the suit land and the propose act of the defendants is illegal, unlawful and is unwarranted under the law and (ii) a decree for Permanent Injunction restraining the defendants from interfering, alienating, dispossessing, encroaching or changing the nature of the suit land or doing any act which is prejudice upon the rights and interest over the suit land in any manner whatsoever may kindly be passed in favour of the plaintiff and against the defendants……"*

11. Respondent No.2 (Javed Akthtar) resisted the said suit by filing a written statement on 25.04.2014, During the proceedings in the said suit, on 26.04.2014, respondent No.2 filed an application under Order VII, Rule 11 CPC seeking the rejection of plaint in petitioners' suit. Reply to the said application was filed by petitioners on 11.06.2014. The trial court vide order dated 17.07.2014 dismissed respondent No.2's application under Order VII, Rule 11 C.P.C. in the following terms:-

> *"… Sifting of pleas raised by defendant no.1 / applicant in application U/O 7 rule 11 CPC depict that same are mixed questions of law and facts which can only be decided after deliberation of oral as well as documentary evidence of parties, which is yet to be produced, as rejection of plaint on technical grounds asserted by the petitioner/defendant no.1 in his application U/O 7 Rule 11 CPC, at this early stage, may deprive the plaintiffs from their legitimates rights of availing the legal remedy by way of approaching to the court of competent jurisdiction. Even otherwise, it is settled principal (sic) of law consistently appreciated by superior courts that mater should be decided on merits rather than technicalities. In above said back drop, application U/O 7 Rule 11 CPC, filed by the defendant no.1 stands dismissed, being devoid of merits."*

12. Feeling aggrieved by said order dated 17.07.2014, respondent No.2 (Javed Akhtar) preferred a civil revision before the court of Additional District Judge, East Islamabad. The revisional court through judgment and decree dated 17.11.2015, accepted said Revision petition. Hence, writ petition No.4140 of 2015 filled by the Shamrez Khan, etc.

Civil Revision Petition No.128 of 2020 (Javaid Akhtar Vs. Muhammad Ashram)

13. The facts in brief of this revision petition are that on 23.01.2019, the respondent, Muhammad Ashram, instituted a suit for damages on account of false, malicious vexatious and unjustified litigations as well as for mental agonies, loss of repute, lowering of status, physical discomfort and financial losses against the petitioner (Javaid Akhtar) by seeking the following prayer:-

> "*foregoing in view, it is most respectfully prayed that the suit of the plaintiff for grant of damages on all counts duly elaborated and enumerated in the body of plaint, may graciously be decreed in favour of plaintiff conjointly against the defendant, please."*

14. During the proceedings in the said suit before the civil court, the petitioner moved an application on 29.07.2019 under Order VII, Rule 11 CPC praying *inter alia* for rejection of plaint in the petitioner's suit. Reply to the said application was filed by the plaintiff / respondent on 21.09.2019 with the prayer of its dismissal. The trial Court after hearing the arguments, turned down petitioner's application under Order VII, Rule 11 CPC on 18.01.2020 in the following terms:-

> *"…the plaintiff / respondent did not merely sought damages for malicious prosecution rather sought general damages under distinct heads as well. Thus, the contentions of the Defendant / petitioner can be at best appreciated after recording of evidence and controversy reflected through title suit can only be determined after recording of evidence instead of summary manner. Thus, applicant in hand being without merits is turned down…."*

15. Feeling dissatisfied with the said order dated 18.01.2020, the petitioner (Javed Akthar) preferred this civil revision.

Civil Revision Petition No.131 of 2020 (Javaid Akhtar Vs. Muhammad Shamraiz)

16. Facts in brief of this revision petition are that on 24.01.2019, the respondent, Muhammad Shamraiz, instituted a suit for damages on account of false, malicious and vexatious litigations as well as for mental agonies, lowering of status, physical discomfort and financial losses against the petitioner (Javaid Akhtar) by seeking the following relief:-

> *"foregoing in view, it is most respectfully prayed that the suit of the plaintiff for grant of damages on all counts duly elaborated and enumerated in the body of plaint, may graciously be decreed in favour of plaintiff conjointly against the defendant, please."*

17. During the proceedings in the said suit before the civil court, the petitioner moved an application on 29.07.2019 under Order VII, Rule 11 CPC praying *inter alia* for the rejection of plaint in the petitioner's suit. Reply to the said application was filed by respondent (Muhammad Shamraiz) on 21.09.2019 with prayer of said application's dismissal. The trial Court after hearing the arguments on the said application under Order VII, Rule 11 CPC, dismissed the same through order dated 18.01.2020 in the following terms:-

> *"…the plaintiff / respondent did not merely sought damages for malicious prosecution rather sought general damages under distinct heads as well. Thus, the contentions of the Defendant / petitioner can be at best appreciated after recording of evidence and controversy reflected through title suit can only be determined after recording of evidence instead of summary manner. Thus, applicant in hand being without merits is turned down…."*

18. Being aggrieved by said order dated 18.01.2020, the petitioner (Javaid Akhtar) preferred this civil revision petition.

Arguments of learned counsel for petitioners in writ petitions Nos.3953 of 2019 and 3954 of 2019

19. That the impugned orders passed by learned courts below are not just erroneous but also against the facts as well as law. That the petitioners suits could not have been dismissed summarily without there being an exercise of recoding of *pro* and *contra* evidence. That it is one of cardinal canons of law that prior to disposal of an application under Order VII, Rule 11 CPC, averments made in the plaint are to be considered as true and unimpeachable and the matter ought to be decided on merits rather than on technicalities. The learned courts below did not take into account the averments made in the plaints and considered the stance of respondent No.2 (Javed Akhtar) without any plausible explanation. That the guidelines set forth in the verdicts of the superior courts were not taken into account by the courts below while accepting respondent No.2's applications under Order VII, Rule 11 CPC. That the impugned orders add a premium to respondent No.2/Javaid Akhtar's wrongful gains, which is not only unjustified but also uncalled for. That the controversies involved in the suits were such, which necessitated the recording of evidence. That through impugned orders, the petitioners have been deprived of their lawful rights over their inherited properties. That trial Courts erred in law by not appreciating the petitioners' stance. That the orders passed by courts below are patently illegal and do not deserve to be sustained. Learned counsel prayed for writ petitions to be allowed and for impugned orders to be set aside.

Arguments of learned counsel for petitioner in writ 4140 of 2015.

20. That order dated 17.07.2014 dismissing respondent No.2's application under Order VII, Rule 11 CPC is based on correct appreciation of law on the subject, whereas impugned judgment and decree dated 17.11.2015 passed by first appellate court is erroneous inasmuch as the same is bereft of any cogent reasons. That it is only after recording of evidence, that a court reaches to a conclusion that the plaint does not disclose any

cause of action hence, the same is barred by law. That first appellate court committed a grave illegality while passing impugned judgment and decree dated 17.11.2015. That first appellate court exercised the jurisdiction with which it was not vested so. That provisions of Order VII, Rule 11 CPC were not attracted to the controversy involved in the *lis*. That the impugned judgment and decree passed by first appellate court suffer from patently illegality which cannot be allowed to prevail. That this court is vested with ample powers to convert a writ into an appeal. Learned counsel prayed for writ petition to be converted into an appeal & allowed and for impugned judgment and decree to be set at naught. As regards revision petitions Nos.128 of 2020 and 131 of 2020 filed by respondent No.2 (Javaid Akthar), it was argued by learned counsel for writ petitioners that impugned orders passed by revisional court do not suffer from any illegality calling for interference by this court, hence, it was prayed that the same be dismissed.

Arguments of learned counsel for respondent No.2 (Javaid Akhtar in writ petitions Nos.3953 of 2019, 3954 of 2019 and 4140 of 2015 as well as for petitioner (Javaid Akhtar) in C.R. Nos. 128 of 2020 and 131 of 2020.

21. That all the writ petitioners have admitted the fact that respondent No.2 (Javaid Akhtar) is the owner in possession of the disputed land and they have nothing to do with the same. That the writ petitions have been filed with the sole intent to abuse the process of law and to pressurize respondent No.2 to give up his lawfully owned land through registered deed dated 06.03.1994. That the suits filed by writ petitioners were barred by law. That writ petitioners had suppressed material facts from the courts below. The impugned orders allowing respondent No.2's applications under Order VII, Rule 11 CPC do not suffer from any illegality thus do not call for any interference by this court. That the courts below rightly rejected the plaints in the petitioners' suits at their inceptions. That no cause of action

was shown by writ petitioners in their plaints hence, further proceedings in the suits were not called for. That the suits filed by writ petitioners were not proceedable in their present form. That courts below have rightly exercised the jurisdiction vested in them by rejecting the plaints in writ petitioners' suits.

22. Insofar as revision petitions filed by petitioner (Javaid Akhtar) / respondent No.2 are concerned, it was argued that the revisional court did not appreciate the fact that no cause of action had been shown by writ petitioners/respondents. That the suits filed by writ petitioners/respondents were barred by limitation. That learned courts below erred in law by not dismissing writ petitioners / respondents' suits by invoking the provisions of Order VII, Rule 11 CPC and that the suits filed by writ petitioners/respondents were such which necessitated outright dismissal. That the impugned orders passed by courts below suffer from gross illegality thus, merits setting aside by this Court. Learned counsel prayed for revision petitions to be allowed and as a result thereof, the setting aside of impugned orders dated 18.01.2020 was sought.

Heard the arguments advanced at the bar and perused the record with able assistance of the learned counsel for parties.

23. Perusal of record would show that the writ petitioners filed suits for declaration, permanent and mandatory injunctions against respondent No.2 (Javed Akhtar). Along with the said civil suits, applications for interim injunctions under Order XXXIX Rules 1 and 2 CPC were also filed.

24. On 20.10.2018, respondent No.2 (Javed Akhtar) filed separate applications under Order VII, Rule 11 CPC in writ petitions No.3953 of 2019 and 3954 of 2019, whereas in writ petition No.4140 of 2015, he filed the said application on

26.04.2014 seeking the rejection of plaints in the writ petitioners' suits *inter alia* on the ground that no cause of action had been disclosed by writ petitioners, and that the said suits had been filed with an intention to abuse the process of court. Respondent No.2 also filed an application under Section 2(1)(i) of the Costs of Litigation Act, 2017 read with Section 151 C.P.C. However the said application was dismissed by learned civil court through orders dated 11.02.2019 (assailed in W.Ps. No.3953 and 3954 of 2019).

25. Apparently, no replies to the applications under Order VII, Rule 11 CPC (which are available at page 25 of W.P. No.3953 of 2019 & page 23 of W.P. No.3954 of 2019, respectively), were sought from the petitioners by learned civil court. However, reply to the said application (filed on 26.04.2014, which is available at page-76 of W.P. No.4140 of 2015) was filed on 11.06.2014

26. In W.P. No.4140-2015, learned civil court dismissed respondent No.2's said application by holding as follows:-

> *"...therefore, for conclusive determination of rights of parties to suit and resolve their actual controversy, pro and contra evidence from both sides are necessitated to be considered. sifting of pleas raised by defendant no.1/application in application U/O 7 rule 11 CPC depict that same are mixed questions of law and facts which can only be decided after deliberation of oral as well as documentary evidence of parties, which is yet to be produced, as rejection of plaint on technical grounds asserted by the petitioner/defendant no.1 in his application U/O 7 Rule 11 CPC, at this early stage, may deprive the plaintiffs from their legitimates rights of availing legal remedy by way of approaching to the court of competent jurisdiction."*

27. Whereas in writ petitions Nos.3953 of 2019 and 3954 of 2019, learned civil court had allowed respondent No.2's application under Order VII, Rule 11 CPC by holding *inter alia* that *"...the provisions of Order VII Rule 11 CPC is mandated to stop frivolous litigation on initial stage as it would not only avoid wastage precious time of court, but it will also avoid to drag party in any unnecessary litigation. By relying on the above, discussed, this court is of the view that from bare perusal of the contents of the plaint, no cause of action is disclosed for filing of instant suit."*

28. In the applications under Order 7 Rule 11 CPC for rejection of plaints, respondent No.2 had pleaded that the suits were hopelessly time barred. That the writ petitioners/plaintiffs suppressed certain material facts from the Court which were essential for just adjudication of the *lis*. It was also pleaded by respondent No.2 that he is in possession of land under the registered sale deed dated 06.03.1994 from a part whereof, he was dispossessed by writ petitioners/plaintiffs; and that writ petitioners / plaintiffs allege themselves to be co-sharers in the land in question for which, they can file a suit for partition and not a suit for declaration. It was, therefore, prayed that in view of aforesaid circumstances as well as the facts brought on record, the plaints were liable to be rejected.

29. Since the entire edifice of the issue in hand relates to the scope and applicability of Order VII Rule 11 CPC thus, it is imperative to reproduce Order VII Rule 11 CPC, which reads thus:-

> *"**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.

30. Perusal of aforementioned provision of law makes it abundantly clear that a plaint could only be rejected for want of jurisdiction, lack of cause of action, barred by law, plaint written on insufficiently stamped paper and non-affixation of court fee, etc.

31. Undeniably, the scope for an application in terms of Order VII, Rule 11 CPC is narrow and limited. The court, which is seized of the matter is under a legal obligation to take into consideration the spirit behind the relevant Rule. It is well settled that while considering an application under Order VII, Rule 11 CPC, the court is duty bound to consider only the contents of plaint and the documents annexed therewith and written statement is not to be taken into consideration. The court may also assess whether the averments/pleadings in the plaint and the facts as stated therein, if accepted in their totality as true, would show the cause of action. It is also well settled that it is the plaint which has to be seen for the purposes of concluding whether it discloses any cause of action or otherwise. The facts as stated in the plaint have to be deemed to be true and thereafter the court has to examine as to whether or not it disclosed any cause of action which warrants full-fledge trial. After perusing the contents of plaint, the court shall assess as to whether or not any triable issue had been raised or any entitlement to relief sought for had been shown which needed to be adjudicated upon. Furthermore, on merits whether

or not the plaintiff could succeed in getting the relief sought in the suit, is a question which can only be determined after framing of issues and recording of evidence.

32. It goes without saying that the intent and purpose behind the provisions of Order VII, Rule 11 CPC is to curb the menace of frivolous litigations at its inception and court is vested with ample powers to do away with the same, when it comes to a conclusion that in case the court proceeds further with the *lis,* the same would culminate in a futile and an academic exercise. It is also noteworthy to mention that for the purposes of dispensing justice, technicalities of law should not be allowed to impede and prejudice the rights of the litigants. The provisions of Order XVI, Rule 1 CPC are not mandatory in nature, rather these are directory and in appropriate cases, the Court has the authority and the power to invoke such provision. The purpose behind such provision of law is to save precious time of not just that of courts but also to put an end to the mental agonies of an innocent and unnecessarily embroiled party, who appears before court to contest its claims with no end to come. A court must apply its judicial mind while entertaining an application under Order VII Rule 11 CPC for rejection of plaint where it finds that proceeding further with the matter would result in a nullity.

33. As mentioned above, there is no cavil to the proposition that while considering an application under Order VII, Rule 11 CPC, the court is only expected to look into the contents of plaint and the documents annexed therewith. After considering the same, the court is under a legal obligation to apply its judicial mind in order to decide the fate of application under VII, Rule 11 CPC. The Court has to remain within the parameters and scope of Order VII, Rule 11 CPC and under no circumstances, can the court travel beyond the scope of the said provision of law and prerequisites mentioned therein. It is also

well settled proposition of law that when a court exceeds the jurisdiction with which it is vested, then the power so exercised by such court would yield to injustice, which the law does not only permit but also deprecates.

34. This Court intends not to delve into the merits of the petitions rather confines itself to the question qua the validity of orders / judgments passed by the courts below allowing and/or dismissing the applications under Order VII Rule 11 CPC seeking the rejection of the plaints in the suits instituted by writ petitioners. The essential facts which led to the filing of the abovementioned petitions have substantially been discussed *supra* and need no reiteration. The writ petitioners are aggrieved by orders dated 09.10.2019 and judgment and decree 17.11.2015 passed by learned courts below rejecting the plaints in their suits by invoking the provisions of order VII, Rule 11 CPC whereas respondent No.2, namely Javed Akhtar is aggrieved by orders dated 18.01.2020 dismissing his application under Order VII, Rule 11 CPC, which are challenged in aforementioned civil revision petitions.

35. As mentioned above, this court has to see whether or not the orders passed by the courts below on the applications under Order VII, Rule 11 CPC suffer from any illegality calling for interference by this court. The CPC is in fact a procedural law, which *inter alia* provides for the procedure for enforcement of civil rights and the liabilities specified under various substantive laws. An integral part to such procedural formalities is the institution of suits against defendants in a court of law. Taking a glance at the CPC, Section 26 read with Order IV "Institution of Suits" specifies that a suit has to be instituted by presenting a plaint. Presentation of the plaint is subject to Orders VI and VII of CPC. Order VII CPC specifically deals with plaints and their formalities such as the particulars to be contained therein. Among other Rules, Order VII, Rule 11

CPC states the various grounds upon which the court can reject a plaint.

36. It goes without saying that rejection of plaint is something which is entirely different from the return of a plaint (Order VII, Rule 10 CPC). Where the court finds that it does not have the jurisdiction to try the matter before it, the court, at its very inception, returns the plaint so that the same could be presented before an appropriate court which holds the rightful jurisdiction. It is also well settled that whenever an application under Order VII, Rule 11 CPC is filed, the court before moving forward, needs to evaluate and determine the validity of said application whether or not the plaint is admissible to be instituted or not. For the purposes of deciding an application under Order VII, Rule 11 CPC, only the averments made in the plaints are germane and the pleas taken by the defendant in the written statement at such a stage is totally of no relevance. Furthermore, the direction to file a written statement by the trial court without deciding the application under Order VII, Rule 11 CPC would not just be a futile exercise but also a procedural irregularity. Furthermore, if the plaint in the suit fails to meet the requirements specified under Order VII, Rule 9 CPC, the court is empowered to reject the plaint. It is well settled that a plaint in the suit cannot be rejected on flimsy grounds since factual controversies are generally involved therein and those factual controversies could only be determined only through the process of recording of evidence.

37. Looking the present petitions on the perspective and touchstone of Order VII, Rule 11 CPC, it is to be seen as to whether the pre-requisites as set out in Order VII, Rule 11 CPC were fulfilled or otherwise. It is my view that for deciding an application under Order VII, Rule 11 CPC, the court need not go into deeper appreciation of the material rather a tentative assessment needs to be made.

38. Perusal of the plaints in writ petitions No.3953 of 2019, 3954 of 2019 and 4041-2015 would show that the plaintiffs / writ petitioners claim to be the owners / co-sharers of their inherited *Malkieti* and *Shamlati* land falling in Khewat No.754, Khatooni No.1521, Khasra No.3043/2474 situated in the revenue estate, Phulgran, Tehsil and District, Islamabad. Furthermore, it is asserted by writ petitioners that respondent No.2 (Javed Akhtar) being an influential person, got managed to incorporate figure of 24 kanals of land over and above the land which had been sold to him by the vendors i.e. 20 kanals. They also assert that respondent No.2 procured the registered sale deed in question through unfair means. Whereas, respondent No.2 (Javed Akhtar) takes the plea that writ petitioners/plaintiffs suppressed certain material facts from the court which were essential for just adjudication of the *lis*. It was also pleaded by respondent No.2 that he is in possession of the land under registered sale deed dated 06.03.1994 from a part whereof, he was dispossessed by writ petitioners/plaintiffs; and that writ petitioners / plaintiffs allege themselves to be co-sharers in the land in question for which, they can file a suit for partition and not a suit for declaration. All these facts and assertions entail controversial features which can only be determined after recording of evidence.

39. It is well settled that a party cannot be knocked out on mere technicalities. *Prima facie,* the pre-requisites of Order VII, Rule 11 CPC do not appear to have been met. It is astonishing to note that the courts below accepted one set of documents produced by one party and declined to accept the same from the other party. Apparently, such an approach and assessment by courts below is based on presumptions and such presumptions cannot be allowed to be prevailed over since presumptions have a very limited role to play, more particularly in such like cases, where the valuable rights of the parties qua landed properties are involved. The courts are duty bound to

resolve the controversy between the parties strictly in accordance with law and shall not prejudice the case of either side by mere presumptions, that too, at an initial stage, when yet the parties are to walk an extra mile.

40. The circumstances do suggest that the learned courts below while accepting the applications under Order VII, Rule 11 CPC travelled beyond the jurisdiction with which they were so vested and thus, erred in law which can neither be rectified nor condoned given the fact that the matter involved factual controversies and disputed which could adequately be resolved by affording an opportunity of production of evidence to the parties. In holding so, guidance in this regard can be sought from the dictum as laid down by the august Supreme Court in the case titled "Saleem Malik v. Pakistan Cricket Board and others" (PLD 2008 Supreme Court 650), whereby it was held as under:-

> ***"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."***
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> **(Emphasis supplied)**

41. Furthermore, the august Supreme Court in the case titled **Mir Sahib Jan Vs. Janan (2011 SCMR 27**) had the occasion to hold as follows:-

> *"**A factual controversy could adequately be resolved by granting opportunity to the parties of producing evidence after framing necessary issues."***
> **(Emphasis supplied.)**

42. In the case titled **Dilabaz Khan and others Vs Balqiaz and others (2022 M L D 1673),** it was held as under:-

> ***"14. ...Keeping in view the prerequisites for submitting an application under Order VII, Rule 11, C.P.C., 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"***
> **(Emphasis supplied)**

43. Furthermore, it was held as follows:-

> ***"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."

(Emphasis supplied)

44. In the case titled **Haji Abdul Karim and others Vs. Messrs Florida Builders (Pvt.) Ltd. (PLD 2012 SC 247),** the august Supreme Court after comprehensively discussing the scope and parameters of Order VII, Rule 11 CPC has set out the following guidelines for interpretation of the said provision**:-**

"Firstly, there can be little doubt that primacy, (but not necessarily exclusivity) is to be given to the contents of the plaint .

Secondly, it is also equally clear, by necessary inference, that the contents of the written statement are not to be examined and put in juxtaposition with the plaint in order to determine whether the averments of the plaint are correct or incorrect.

Thirdly, and it is important to stress this point, in carrying out an analysis of the averments contained in the plaint the court is not denuded to its normal judicial power "

45. In the case titled **Haji Abdul Karim and others (supra),** the august Supreme Court further went on to hold as follows:-

"(b) At the same time we have to consider the matter from the other point of view as well. ***It is important that injustice should not be caused to a plaintiff merely because, for example, of defective drafting in the plaint. No irretrievable loss should be caused to a plaintiff in the event of a plaint being rejected merely on the basis that it "appears" to be barred. It is for this reason that the legal status of rejection of***

a plaint has not been equated to that of a judgment and decree given after the recording of evidence."

(Emphasis supplied)

46. In the case titled **Jewan and 7 others Vs. Federation of Pakistan (1994 SCMR 826),** it was held that *"the law permits consideration only of the contents of the plaint and the defence raised in the written statement is to be disregarded. However, it was also observed that in addition to the plaint if there is some other material also available before the court which is admitted by the plaintiff the same can also be looked at. It was further observed that the court would not be entitled to examine any other material unless it was brought on record in accordance with the rules of evidence."*

47. In the case titled **Haji Allah Bukhsh Vs. Abdul Rehman and others (1995 SCMR 459)** it was observed by the august Supreme Court that the averments contained in the plaint are presumed to be correct.

48. In the case titled **"Muhammad Saleemullah and others Vs. Additional District Judge, Gujranwala (PLD 2006 SC 511)** the august Supreme Court has observed that Order VII, Rule 11 CPC contemplates the rejection of a plaint only on the basis of averments made in the plaint and the pleas raised in the written statement are not to be considered. It was also observed that the court was entitled to rely on the documents annexed to the plaint.

49. Likewise, in the case titled **Salamat Ali Vs. Khairuddin 2007 YLR 2453.** it was observed that although the proposition that a court while rejecting the claim under Order VII, Rule 11, C.P.C. could only examine the contents of the plaint, was correct nevertheless, this rule should not be applied mechanically.

50. After considering the ratio *decidendi* in the abovementioned cases *qua* the applicability of Order VII, Rule 11 CPC, I have gone through the plaints in detail and have come to the safe conclusion that none of the defects mentioned under Order VII, Rule 11 CPC, prima facie, appear in the plaints leading same to be rejected. Furthermore, plaints in the writ petitioners' suits do not appear to be suffering from any flaw postulated in the aforementioned provision of law. The pleas and assertions of respondent No.2 warrant the recording of evidence and thus the plaints in the writ petitioners' suits could not have summarily been rejected merely on the whims of the rival party.

51. This Court is mindful of the fact that claims asserted in the plaints and there denial by respondent No.2 is a controversial question which could only be determined after providing the parties with adequate opportunities to produce their evidence in support of their respective claims in order to meet the ends of justice. Simultaneously, it is also a well settled principle of law that plaints cannot be rejected in piecemeal. Even otherwise, the plaint cannot be rejected under Order VII Rule 11 if there exists a single prayer which is maintainable under the law.

52. In sequel of what has been discussed above, writ petitions Nos.3953 of 2019 and 3954 of 2019 are **allowed** and consequently, the impugned orders dated 11.02.2019 and 09.10.2019 passed by the learned courts below are **set aside.**

53. Writ petition No.4140 of 2015 has been directed against impugned judgment dated 17.11.2015 and a decree of even date has also been drawn up. This Court is mindful of the fact that a writ petition against a judgment and decree is not entertainable since an appeal lies against a judgment and decree, hence, this Court in exercise of its inherited powers

converts writ petition No.4140 of 2015 into an appeal and allow the same in terms that the impugned judgment and decree is not sustainable in the eye of law hence, the same is **set aside.** The matter is remanded to the concerned learned District and Sessions Judge, Islamabad with direction to entrust these cases to a court of Civil Judge, which is well versed in civil matters. Upon receipt of the matter, the learned civil Court is expected to frame the issues properly, give adequate opportunities to the parties to produce their respective evidence and decide the case expeditiously and preferably within a period of five (05) months from the date of receipt of this judgment.

54. Insofar as civil Revision petitions filed by respondent No.2 (Javed Akhtar) are concerned, needless to observe that the said petitions are devoid of any reasons hence, they are **dismissed.** There shall be no order as to costs.

ARBAB MUHAMMAD TAHIR/
JUDGE

Announced in open Court on_____05.2023.

JUDGE

//Kamran//