


Order No 23
12.08.2025

Parties present. Arguments on behalf of counsel for the parties on applications under order VII Rule 11 heard and record perused.

The court intends to dispose of the application U/O VII, Rule-11 CPC filed by defendants/petitioners.


Brief facts of the case are that plaintiffs have filed the instant suit against the defendants to the effect that plaintiff No.1 and defendants No.01 to 05 are relative inter se and real offspring of late Bandyali and defendant No.1 is the uncle of plaintiff while defendant No.02 to 05 is the cousins of plaintiff. That defendant No.01 to 05 secretly sold the ancestral property of plaintiff to the defendant No.06, which is the joint property of defendant No.01 to 05 and plaintiff. That defendant No.01 to 05 have no right to sell the joint property to the defendant No.06 or any other person without partition. When plaintiff came to know that defendant No.6 has secretly purchased the property from defendant No.1 to 05. Plaintiff asked time and again the defendant no.6 to return his share but he showed the sale agreement deed through which defendant No.06 has purchased the suit property. That suit property is the joint and ancestral property of plaintiff and defendant No.01 to 05 and defendant No.1 to 05 have no right to sell the suit property without his permission. That plaintiff offered defendant No.06 to returned the suit property but he alongwith defendant No.01 to 05 refused. Firstly, defendant No.6 agreed with plaintiff but later on he refused to return


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the suit property. That case titled "Jahanzib Khan vs Khushal Khan" is pending before the court of Civil Judge-II for the purpose of partition. That defendants were asked time and again to admit the legal claim of plaintiff but in vain, hence, the present suit.

This application u/s O-VII, Rule-11 CPC is filed by petitioners/defendants contending that claim of plaintiff/respondent in the plaint for cancellation of sale deed is also a claim demanded in another suit prior to the instant suit. The plaintiff/respondent have filed the case titled as "Jahanzib Khan vs Khushal Khan" which is also pending before this court in which plaintiff has sought cancellation of the said sale deed in para jeem of the plaint. Therefore, the instant case is against the law and baseless. As per law of Res Subjudice i.e. section 10 CPC two cases on the same subject matter and between the same parties is not maintainable, therefore, liable to be dismissed. Furthermore, as per order II Rule 02 of CPC it is very clear that plaintiff would advance all their legal claims in the plaint as per law. Lastly, requested for acceptance of the application under order VII Rule 11 for rejection of the plaint. Plaintiff/respondent denied the stance of petitioners/defendants.

In the given circumstances, the object of exercise of power Under Order-VII, Rule-11 CPC is to bring an end to the incompetent suits at the earliest to avoid wastage of time as a trial would be futile exercise. As mentioned above, plaintiff/respondent is seeking return of joint suit property which is allegedly the joint suit property of plaintiff and


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defendant No.01 to 05. Petitioners/defendants have denied the stance of plaintiff and stated in his application that a civil case regarding partition is pending on that very suit property. Therefore, court cannot pass a vague decree if it is on the same suit property. Furthermore, plaintiff admitted in para No.05 of plaint that case titled "Jahanzib Ali vs Khushal Khan" is pending before the court of Civil Judge-II regarding the partition. Therefore, application under order VII Rule 11 is hereby accepted and the plaint in hand is hereby rejected being comes under the ambit of Res Subjudice i.e. section 10 of CPC. No order as to cost.

File be consigned to record room after necessary completion and compilation.

Announced:
12.08.2025



Muhammad Junaid Alam
Civil Judge-II, Tehsil Court
Kalaya Orakzai