

JUDGMENT SHEET

IN THE HIGH COURT OF BALOCHISTAN, SIBI BENCH AT QUETTA

Civil Revision Petition No. (S) 57 of 2022
(ID-100207500606)

Zaheer-Ud-Din alias
Zahro Khan & others

VERSUS

Fazul & others

Under section 115, C.P.C

ORDER

Date of hearing: 07.10.2022

Announced on: 11.10.2022

Petitioners by: Mr Sohail Abid, Advocate

NAZEER AHMED LANGOVE, J.-This petition is directed against the order dated 16th June 2016 (hereinafter the "**order**"), passed by the learned Civil Judge, Dera Bugti at Sui (hereinafter the "**trial court**") in civil suit No.11/2015; the petitioners' suit was dismissed under Order-VII Rule-11, C.P.C. Assailed in civil appeal; but met with the same fate, vide order and decree dated 9th January 2017 (hereinafter the "**impugned order**"), passed by the learned District Judge, Dera Bugti at Sui (hereinafter the "**appellate court**"). Hence, this petition with the following prayer:

"It is, therefore, respectfully prayed that the impugned order & decree dated 16.06.2016 passed by the learned Civil Judge, Dera Bugti at Sui and the order & decree dated 09.01.2017 passed by the learned District Judge, Dera Bugti at Sui may be set aside, and the matter may be remanded to the trial court to proceed with the same on merit and in accordance with the law, in the interest of justice, equity and Fairplay."

2. Heard the petitioners' learned counsel and gone through the record.

3. Facts of the case are that the petitioners (plaintiffs) filed a suit for declaration, cancellation and permanent injunction against the respondents (defendants) with the averments that they are the recorded joint owners of the land, bearing Khasra Nos.104 to 111, 114 & 115, (52 shares) and Shamilat land AAF-Shaif/Mohag-Wa-Musawi situated at Mahal & Mouza Aashqani Shishi, Tappa Sughari, Tehsil Sui, District Dera Bugti (hereinafter the "**property-in-question**"), which is un-partitioned.

The petitioners' (plaintiffs') case is that the respondents (defendants Nos.1 to 5) have no right to enter into an agreement or receive compensation amount in respect of the un-partitioned property-in-question from Pakistan Petroleum Limited Company (defendant No.6) and for cancellation of the agreement executed between defendant Nos. 1 to 5 & 6 in respect of the Well Nos.98 & 39 with the compensation.

On service of notices, the respondents (defendants) filed their written statements, wherein they raised various legal objections regarding the maintainability of the suit and contested the same on merits besides filing an application under Order-VII Rule-11, C.P.C for rejection of the suit.

4. After hearing the arguments on the application, vide order dated 16th June 2016, the learned trial court (Civil Judge, Dera Bugti at Sui) dismissed the suit under Order VII, Rule-11, C.P.C being without any cause of action and concealment of facts. Assailed in appeal, but upheld, vide impugned judgment 9th January 2017 rendered by the appellate Court (District Judge, Dera Bugti at Sui). Hence, this petition with the prayer mentioned above.

5. Perusal of the record reflects that before the instant suit, one Gul Muhammad had filed a civil suit No.8/2014 against the defendant No.6 (PPL Manager) and others, which was dismissed, vide judgment dated 26th March 2015, passed by Civil Judge, Dera Bugti at Sui, wherein it had been admitted that the petitioners (plaintiffs) have been receiving compensation from PPL, since 1957; hence this suit on the same subject matter.

Law recognizes that the conduct of a person may be such that he is estopped from litigating the issue all over again; this conduct sometimes consists of active participation in the previous proceedings, which is apparent on the face of the record and applicable in the matter at hand.

The doctrine of *res judicata* and its applicability defined under section 11 of the Code of Civil Procedure, which reads as under:

"Res Judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try a such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court."

This section codifies, in so far as suits are concerned, the doctrine of *res judicata* where there is a judgment inter parties, it will prevent a fresh suit between them regarding the same matter; it is a universal application and, in fact, a fundamental concept in the organization of every jural society. The rule of *res judicata* is based on the consideration that it would be a hardship to an individual if vexed twice

for the same cause and that it is in the interest of the State and the parties in lis that there should be an end of litigation.

Section 11, C.P.C has barred the Court to try any suit or issue in which the matter directly or substantially in issues has been directly and substantially in issue in a former suit between the same parties or between parties under whom they or any of them has claimed or litigating under the same title in a court competent to try a such subsequent suit or the suit in which such issue has been substantially raised, heard and finally decided by such Court.

Order VII Rule 11 C.P.C speaks of the grounds for rejection of the plaint, which reads as under:

"VII Plaint

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."*

The Court is bound to reject a plaint where the suit appears prima-facie barred by any law. Time and again, it has been held by the

Superior Courts of the Country that frivolous litigation must be uprooted in its very inception.

6. The instant petition was instituted on 27th September 2022, challenging the order and decree dated 9th January 2017, passed by the appellate Court (after the lapse of more than five years), and was barred by time. Time and again held by the Hon'ble Supreme Court of Pakistan that any aggrieved person has to pursue his legal remedy with diligence. Each day's delay must be explained if a petition is filed beyond limitation. In the instant case, no explanation was given.

The aggrieved party must pursue legal remedies with utmost diligence and satisfy conscious of the Court or quasi-judicial authority for approaching respective forums beyond prescribed limitation, even if objections to that effect were not raised. This principle has been discussed in Hakim Muhammad Buta & another v. Habib Ahmed & others (PLD 1985 SC 153) and Province of Punjab & others v. Muhammad Hussain & others (PLD 1993 SC 147). Thus, the aggrieved person seeking redress has a legal obligation to justify each day's delay in launching proceedings because valuable right accrues to the opposite side with the lapse of time. The superior Courts have consistently maintained this view. However, in the instant case, the petitioners failed to explain the delay of more than five years in filing this petition, which no stretch of the imagination can condone.

7. Furthermore, the concurrent findings of fact and law arrived at by the two courts below can only be disturbed if this Court concludes that the same are illegal and unlawful based on a misapplication of relevant law provisions; shocking, perverse, artificial and; fanciful. In the

instant case, the petitioners failed to point out any above-referred grounds for interference in the orders and decrees impugned; thus, the same is not open to any exception and is maintained.

Consequently, the petition filed by the petitioners being devoid of merit stands dismissed in limine

Quetta,
Announced today on:
11th October 2022

JUDGE

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