

**IN THE COURT OF ASGHAR HABIB, CIVIL JUDGE-XIV MARDAN**

*Suit No. 528/1 of 2023*  
*Title; Fazal Akbar etc. Vs Ahmad Ali etc.*

**Order--12**  
09.07.2024

Parties present as before.

This order is aimed to decide the instant application under *Order 7 Rule 11, CPC*, filed by defendants.

1. Brief facts of the case are that plaintiffs have filed the instant suit for declaration, correction of revenue record, perpetual injunction and possession. Contention of the plaintiffs is that they, being legal heirs of their predecessor namely *Mst. Muhammadia* (deceased) D/O Muhammad Yaqoob (deceased) are owners in possession to the extent of their legal shares in the legacy of *Muhammad Yaqoob* (their maternal grandfather), however, shares of their predecessor namely *Mst. Muhammadia* has been incorporated in revenue record as 01K-09M instead of 05K-10M, which is wrong, against the law & facts, hence is liable to be rectified. That inheritance mutation No. 5181 dated 1984 of the deceased *Muhammad Yousaf* and later on, mutation *No. 1070* and mutation *No. 1786* in favor of defendants are wrong, fake and fabricated, based on misrepresentation, hence are liable to be cancelled. Plaintiffs have further prayed for correction of revenue record as per detail mentioned in headnote of the plaint. They have also prayed for possession as an alternate relief.

2. Defendants were summoned, amongst whom defendants No. 01 to 04 appeared and submitted written statement, wherein denied stance of the plaintiffs. Similarly, filed the instant application for rejection/dismissal of instant suit under *Order 7 Rule 11, CPC*, wherein have contended that the matter in dispute between the parties has already been decided by the competent courts in suits No. 142/1, 56/1, 57/1, 58/1, 59/1 and later on suit bearing No. 209/1 titled "*Fazal Rabi*

*Vs Ahmad Ali etc.*” was decided on dated 04.09.2018, therefore, the instant suit is liable to be rejected.

3. Plaintiffs rebutted the same by filing replication.

4. Arguments of the learned counsels for the parties heard and record perused.

5. Perusal of case file reveals that plaintiffs have filed the instant suit, wherein primarily they have challenged the inheritance mutation bearing *No. 5181* of the year 1984, vide which legacy of deceased Muhammad Yousaf devolved upon his legal heirs i.e his widow namely Mst. Zuhra, his daughter namely Mst. Khalida and his brother namely Yaqoob Khan.

6. Perusal of case file transpires that plaintiffs in para No. 08 of the instant plaint have themselves admitted the fact that earlier a suit filed by them on the basis of same subject matter against the same defendants was rejected under *Order 7 Rule 11, CPC*. Similarly, in the instant application defendants have mentioned so many earlier suits, which allegedly were filed by the present plaintiffs regarding the suit property. Although, no details of most of the cases have neither been mentioned in the instant application nor attested photocopies of the same have been annexed, however they have produced photocopies of some of the earlier litigations during the course of arguments. Moreover, as discussed earlier some litigations have even been admitted by the plaintiffs in the instant plaint. Petitioners/defendants have produced photocopies of *suit No. 209/1 of 2017 titled “Fazal Rabi etc. Vs Ahmad Ali etc.”*, which was decided on dated 04.09.2018. Perusal of the same reveals that the mentioned suit was filed by the present plaintiffs against the present defendants regarding the same subject matter on the basis of same cause of action, which was dismissed under *Order 7 Rule 11, CPC*. It is also evident that the learned court has categorically held in the above mentioned order that earlier similar nature suits had already been decided. This clearly suggests that even before the above mentioned

suits, some litigations took place between the parties, which were decided in favor of the defendants.

7. Perusal of record further transpires that the above mentioned order was challenged before the appellate forum through an appeal bearing No. 40/13 of 2018, however the same was dismissed by the worthy ADJ-V, Mardan vide order dated 14.09.2020. Similarly, revision filed against the same was also dismissed by the august *Peshawar High Court, Peshawar* vide order dated 11.01.2021.

8. Perusal of case file further transpires that petitioners/defendants have also produced photocopies of another suit bearing *No. 261/1 of 2017 titled "Fazal Rabi Vs Raid Khan"*, which was also dismissed under *Order 7 Rule 11, CPC* by the learned *Civil Judge-XVI, Mardan* vide order dated 09.06.2023. Similarly, petitioners/defendants have also produced photocopies of so many other litigations, which have not been denied by the plaintiffs during the course of arguments.

9. Now coming to another aspect of the instant suit, it is evident that plaintiffs are seeking shares in the legacy of deceased *Muhammad Yousaf*, who happened to be the paternal uncle of the mother of the plaintiffs. It is evident that after the death of above mentioned Muhammad Yousaf, as he was not having any male issue, therefore, his property devolved upon his widow, daughter and his brother namely Muhammad Yaqoob (maternal grandfather of the plaintiffs). This clearly suggests that at the time of death of the above mentioned Muhammad Yousaf, his brother/predecessor of the plaintiffs was alive, therefore, mother of the plaintiffs namely Mst. Muhammdia was not entitled for any share in the legacy of Muhammad Yousaf.

10. Therefore, in light of the above discussion, it is held that earlier so many suits filed by the plaintiffs against the present defendants regarding the same subject matter, on the basis of same cause of action were heard by the competent courts and decided on merits, wherein the matter in issue was directly and substantially the same, therefore, the

instant suit comes under the ambit of res-judicata. The basic object of the rule of res-judicata is based upon the consideration that it would result in hardship to an individual, if he were to be vexed twice for the same cause and it is in the interest of the state that there should be an end to litigations.

11. Therefore, in light of the above discussion, by allowing the instant application, suit/plaint of the plaintiffs stands dismissed/rejected under *Order 7 Rule 11* and *Section 11, CPC*, at the cost of Rs. 10,000/-.

Plaintiffs shall bear cost of the suit.

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

**Announced**  
09.07.2024

**(Asghar Habib)**  
Civil Judge-XIV, Mardan