

**IN THE COURT OF KALEEM ULLAH,  
ADDITIONAL DISTRICT & SESSIONS JUDGE-X, MARDAN**

**Civil Revision Petition No. 16/CR of 2024**

- |   |   |                                 |
|---|---|---------------------------------|
| 1- Muhammad Ali<br>2- Farooq Ali<br>3- Sadiq<br>4- Afsar Ali<br>5- Shoaib Muhammad<br>6- Arshad Ali sons of Abdul Wadood<br>7- Mst. Ambareen Begum<br>8- Mst. Shazma Begum daughter of Abdul Wadood | } | LRs of deceased<br>Abdul Wadood |
|---|---|---------------------------------|

All residents of Swariyan Mohallah Ladni Cham, Tehsil & District Mardan  
.....(***Petitioner***)

**VERSUS**

- |  |                                     |
|--|-------------------------------------|
| 1- Alamzeb s/o Khwaja Muhammad r/o Swariyan Mohallah Ladni Cham,<br>Tehsil & District Mardan<br>2- Senior Civil Judge, Mardan. | ..... ( <b><i>Respondents</i></b> ) |
|--|-------------------------------------|

Date of Institution .....	04.05.2024
Date of Transfer In.....	27.06.2024
Date of Decision.....	11.07.2024

**JUDGMENT**  
**11.07.2024**

- 1- By way of the instant Civil Revision Petition under Section 115 CPC as amended upto date, the petitioners have called in question the order dated 02.03.2024 of the Court of learned Senior Civil Judge, Mardan whereby the application of the petitioners /defendants for rejection of plaint under Section 11 CPC r/w Order-II Rule 2 & Order-7 Rule-11 CPC in the Suit No. 131/1 of 2022 was turned down with cost without any cogent reason and lawful authority.

**FACTS:**

- 2- The respondent No.1/plaintiff (hereinafter call the respondent) brought Civil Suit No.131/1 of 2022 against present petitioners

/defendants (hereinafter call the petitioners) for permanent injunction and for declaration to the effect that the respondent is owner in possession of 03 plots alongwith pathway measuring 05 Kanals in Survey No. 611, 610, 611/1, 612/1, 612, 613, 613/1, 614, 614/1, 615, 615/1 of Moza Shamat Pur, Mardan fully detailed in the head note of the plaint.

- 3- When summoned by learned Trial Court, the petitioner turned up and submitted his written statement wherein he raised various legal and factual objections including lack of cause of action, lack of locus standi, non-joinder and mis-joinder, estoppel, not maintainable etc. The petitioners submitted application for rejection of plaint under Section-11 r/w Order-II Rule-2 and Order-7 Rule-11 of CPC repeating the same stance to which the replication followed, arguments were heard and vide order impugned herein dated 02.03.2024, the said application was dismissed with cost.
- 4- When summoned by this Court, Respondent/plaintiff No. 01 turned up and put up contest.
- 5- Arguments heard and record perused.
- 6- Learned counsel for the petitioners argued that the one series of litigation previously took place between the parties in which the respondent of the present revision petition filed a similar nature suit by title “Alamzeb Vs Abdul Wadood” regarding the thoroughfare shown in the site plan wherein the allegations of the plaintiff/present

respondent in that very suit was that the petitioners of the present revision petition was creating a hurdle in the thoroughfare in front of the constructed property situated on the front of the main pathway which was shown in the sketch attached to the record of the present respondent. The said very suit of the present respondent was decided by the competent court on 29.10.2022, now the respondent filed a similar nature suit regarding the same subject matter; however, in the instant suit the respondent has alleged that the petitioners has constructed wall and thereby creating hurdles in the thoroughfare leading to the property of the respondent/plaintiffs shown at Point “D” of the sketch Mark-“A” which has already been made part and parcel of record of the previous litigation as stated above. Now, the learned counsel for the petitioner contended that the respondent is bar under the provision of Section-11 CPC r/w Order-II Rule-2 of CPC and therefore, the suit of the present respondent is liable for rejection under Order-7 Rule-11 of CPC. He further contended that false and frivolous litigation should be cut at bud before it surface and thereby requested that the impugned order of the trial court is against law and fact. Hence, the revision petition may kindly be accepted and the impugned order dated 02.03.2024 of the trial court may kindly be set aside whereby suit of the plaintiff/ respondent may kindly be dismissed.

- 7- On the other hand, the learned counsel for the respondent contended that the impugned order dated 02.03.2024 is will reason and

*Muhammad Ali Vs Alamzeb (Case No. 16/CR of 2024)*

according to law and will within the scope of law. He further contended that factual controversy cannot be adjudged under Order-7 Rule-11 of CPC and recording of evidence in such eventuality is necessary. The learned counsel for the respondent further argued that the present dispute pertains to another property of the respondent, situated in the same locality; however, at the time of the institution of the previous suit as stated above the present dispute has not erupted. Furthermore, the issue pertains to another property; therefore, the suit of the present respondent is not hit by the principle of res-judicata as provided under Section-11 r/w Order-II Rule-2 of CPC and the present suit has rightly been filed. Therefore, requested that the revision petition may kindly be dismissed.

- 8- Perusal of record reveals that that the respondent instituted suit for declaration-cum-perpetual injunction against the petitioners in respect of the suit property duly specified in the head note of the plaint. However, in the previous suit of the respondent the sketch that was prepared by the Patwari Halqa concerned and which was annexed as Mark-A the dispute between the parties pertains to property situated on the front of the main road; however, in that very suit the dispute pertains to the present suit was not added. Perusal of the statement of Patwari Halqa recorded before the competent court also admittedly make it clear that nothing was stated with regard to the present dispute nor anything with regard to the construction of the wall in front of the property shown in the sketch at Point "D" of

the Mark-A which was also exhibited as PW-1/6. In the present scenario the matter pertains to factual controversy as to whether the present issue was available to the respondent/plaintiff at the time of previously instituted suit or not which could and should be best adjudged after recording pro and contra evidence.

- 9- In the above backdrop, the instant Civil Revision petition is hereby dismissed and impugned order dated 02.03.2024 is upheld however, to the extent of cost the order of the learned trial court dated 02.03.2024 is hereby annulled.
- 10- Parties are left to bear their own expenses.
- 11- Copy of this judgment be sent to the learned Trial Court while file of this Court be consigned to the Record Room after its necessary indexing, completion and compilation.

**ANNOUNCED**

11.07.2024

**Kaleem Ullah  
AD&SJ-X, Mardan**

**CERTIFICATE**

Certified that this judgment consists of (05) pages. Each page has been checked corrected and signed wherever necessary.

**Kaleem Ullah  
AD&SJ-X, Mardan**

**IN THE COURT OF KALEEM ULLAH, AD&SJ-X, MARDAN****Civil Revision Petition No. 16/CR of 2024****Muhammad Ali Vs Alamzeb****Order.....09**

11.07.2024

- 1- Contested parties present. Arguments already heard and file perused.
- 2- Vide my detailed judgment of today consisting (05) pages, placed on file, the instant Civil Revision petition is hereby dismissed and impugned order dated 02.03.2024 is upheld however, to the extent of cost the order of the learned trial court dated 02.03.2024 is hereby annulled.
- 3- Parties are left to bear their own expenses.
- 4- Copy of this judgment be sent to the learned Trial Court while file of this Court be consigned to the Record Room after its necessary indexing, completion and compilation.

**ANNOUNCED**

11.07.2024

**Kaleem Ullah  
AD&SJ-X, Mardan**