THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE MUHAMMAD ALI MAZHAR
JUSTICE SHAHID BILAL HASSAN

C.A. No.353-K of 2025
[*Against the Order dated 04.08.2025 passed by the High Court of Sindh, Karachi, in II- Appeal No.157/2018]*

Syed Aley Sadquain Naqvi

...Appellant(s)

Versus

Matco Rice (Pvt.) Ltd. and others

...Respondent(s)

For the Appellant(s)	**:**	Syed Qalb-i-Hassan, ASC.
For Respondent No.1	**:**	Mr. Muhammad Umer Soomro, ASC. Ms. Abida Parveen Channar AOR *(via video link Karachi)*
For Respondent No. 3 and 5	**:**	Mr. Ahmed Ali Ghumro, ASC. *(via video link Karachi)*
For Respondent No. 2 and 4	**:**	N/R
Date of Hearing	**:**	22.10.2026

J U D G M E N T

SHAHID BILAL HASSAN, J- The present dispute pertains to leasehold rights in respect of Plot No.C-10, measuring 10 acres, classified as NA Class No.89, situated at Deh Tehsil Town, Gadap Town, Karachi (hereinafter, "the subject property"). The subject property was allotted to Ali Baqar Naqvi in 1979–80 for *Wahi Chahi*/Agriculture purposes for a period of ten years, pursuant to *Ijazatnama* granted under Notification No.KBI/1-30/72/1413/ 3236 dated 27 March 1973. The lease was, subsequently, extended for a further period of 30 years exclusively for poultry farming, vide No.ACW/SCM/1097 dated 21 June 1982. The appellant's case is that, owing to his (Ali Baqar Naqvi) deteriorating health and loss of interest in the business, the original lessee executed a registered General Power of Attorney in his (appellant's) favour on 17 March 2003, authorizing him to deal with the subject property. On the

basis of the said General Power of Attorney, the appellant claims to have thereafter acquired the leasehold rights and to have continued operating a poultry farm on the land in question. An *Ijazatnama* dated 28 June 2011 was also issued by the *Mukhtiarkar* (Revenue), Gadap Town, in connection with the appellant's continued poultry business.

The appellant maintains that he remained in peaceful possession of the entire 10 acres, developed the property for poultry farming, and constructed six sheds, a servant quarter, a feed store and other structures. According to him, the dispute arose when approximately 1000 acres of land were allotted to respondent No.1, M/s Sindh Industrial and Trading Estate (SITE), in 1992, at a rate of Rs. 30,000 per acre, subject to the condition that the allotment would be cancelled if the land was not developed. The appellant alleges that, despite his lawful possession and continued payment of levies and charges, respondent No.1 threatened to dispossess him and eventually took over three acres forming part of the subject property. He further asserts that his application dated 29 June 2011 for extension of the lease remained pending before the Member, Land Utilization, Board of Revenue, Sindh, and that the Government had neither cancelled his allotment nor demanded resumption of the land from him. On this basis, he claims protection under Sections 106 and 116 of the Transfer of Property Act, 1882.

The controversy has given rise to three civil suits, besides the connected appellate and revisional proceedings, the material history of which is as follows.

First Suit: Civil Suit No.95 of 2009

The appellant initially instituted Civil Suit No.95 of 2009 before the Vth Senior Civil Judge, West Karachi, seeking a decree of permanent injunction to restrain respondent No. 1 from dispossessing him from the subject property. Respondent No. 1 contested the suit by filing an application under Order VII, Rule 11, CPC. The plaint was rejected, inter alia, on the ground that the requirements of Section 79, CPC, had not been satisfied. The

appellant challenged that order in Appeal No.85 of 2009 before the Vth Additional District and Sessions Judge, West Karachi; however, the appeal was dismissed. He thereafter assailed the appellate order through Revision Application No.158 of 2011 before the High Court of Sindh at Karachi. In the meantime, the appellant obtained an *Ijazatnama* dated 28 June 2011 from the *Mukhtiarkar* (Revenue), Gadap Town, in connection with the poultry business carried on at the subject property.

Second Suit: Civil Suit No.1635 of 2009

Respondent No. 1 instituted Civil Suit No.1635 of 2009, seeking a declaration in respect of its claim concerning the alleged dispossession of the appellant from three acres of the subject property. The suit remained pending and, following a transfer of jurisdiction, was assigned to the Court of the 5th Senior Civil Judge, Malir, Karachi, as Civil Suit No.3349 of 2025. The matter was subsequently referred back to the High Court of Sindh, as the requisite jurisdiction was stated not to be vested in the District Malir. The appellant's case is that, while the proceedings concerning the alleged threat of dispossession were pending, respondent No. 1 ultimately took over possession of the three-acre portion. Consequently, Revision Application No.158 of 2011, which concerned the earlier apprehension of dispossession, was withdrawn on 22 September 2014 with permission to institute a civil suit.

Third Suit: Civil Suit No. 2141 of 2015

Following the alleged dispossession from three acres of the subject property, the appellant instituted Civil Suit No.2141 of 2015 before the VIIIth Senior Civil Judge, West Karachi, seeking a declaration and consequential relief, including protection of his asserted leasehold rights. He pleaded that he had been in peaceful possession of the entire 10 acres before the alleged dispossession; that his application for extension of the lease remained pending; and that he continued to pay the applicable levies, fees and charges. He further contended that the allotment in favour of SITE had been

cancelled by the Government of Sindh for failure to deposit the prescribed occupancy value, as reflected in the Board of Revenue's letter No.08-54-09/SO-V/2011/296 dated 11 February 2011, addressed to the Advocate General, Sindh.

Respondent No. 1 contested the suit through an application under Order VII, Rule 11, CPC, and the plaint was rejected. The appellant preferred Appeal No.311 of 2017 under Section 96, CPC. The learned First Appellate Court, by judgment dated 12 September 2018, allowed the appeal and remanded the matter to the Trial Court for decision after recording and appreciating the evidence.

Respondent No. 1 challenged the judgment of the First Appellate Court through Second Appeal No.157 of 2018 before the High Court of Sindh at Karachi under Section 100, CPC. The appeal was heard on 6 March 2024 and decided on 4 August 2025. The High Court allowed the appeal and restored the order of the Trial Court rejecting the plaint. Aggrieved thereby, the appellant has approached this Court through the instant appeal.

2. Learned counsel for the appellant contended that the appellant had lawfully acquired the leasehold rights in the subject property through the original lessee and had remained in peaceful possession thereof while operating a poultry farm. It was argued that the appellant had duly developed the land, continued to pay the requisite government dues, and had applied for extension of the lease, which remained pending. Learned counsel submitted that the alleged dispossession from three acres by respondent No. 1 gave rise to a distinct cause of action, warranting adjudication of the appellant's rights on the basis of evidence rather than rejection of the plaint under Order VII, Rule 11, CPC. It was further contended that the First Appellate Court had rightly remanded the matter for decision after recording evidence, whereas the High Court erred in restoring the order of the Trial Court without properly appreciating the appellant's pleaded case and the circumstances surrounding the disputed allotment in favour of respondent No. 1. Accordingly, the

impugned judgment was assailed as being contrary to law and liable to be set aside.

3. Learned counsel for respondent No. 1 supported the impugned judgment of the High Court, contending that the order rejecting the plaint had rightly been restored. He emphasised that the instant proceedings constituted the third suit instituted by the appellant in respect of the same subject matter and cause of action and were, therefore, barred by law. It was argued that the appellant had previously instituted civil proceedings concerning the same property and the alleged threat of dispossession, which had culminated in the rejection of the plaint and subsequent appellate and revisional proceedings. Learned counsel maintained that the appellant could not, by instituting successive suits, reopen the same controversy or circumvent the consequences of the earlier proceedings. Accordingly, he submitted that the High Court had rightly allowed the second appeal and restored the order of the Trial Court rejecting the plaint, and prayed for dismissal of the instant appeal.

4. We have heard learned counsel for the parties and examined the record with their able assistance.

5. The pivotal question requiring determination in the instant appeal is whether the third suit instituted by the appellant, namely Civil Suit No.2141 of 2015, was barred by law, particularly in view of the earlier proceedings instituted by the parties concerning the same subject property and the alleged dispossession therefrom. The question entails examining whether the subsequent suit was founded upon the same cause of action and sought substantially the same relief as the earlier suits, so as to attract the bar under the applicable provisions of the Code of Civil Procedure, 1908, or whether the alleged actual dispossession gave rise to a distinct cause of action entitling the appellant to maintain a fresh suit.

6. In the facts and circumstances of the present case, the question whether the third suit was barred by the principle of res judicata or Order II, Rule 2, CPC, could not have been determined

merely on the basis that the appellant had instituted two earlier suits concerning the same property. The first suit was held to be pre-mature, whereas the second suit was withdrawn with permission to institute fresh. Neither of these circumstances, without examination of the relevant pleadings and orders, was sufficient to establish that the appellant's claim in the third suit was barred by law. It was necessary to determine what reliefs had been claimed in the earlier suits, what causes of action had been pleaded, what circumstances had given rise to the subsequent suit, and what legal effect followed from the orders passed in the previous proceedings. These questions involved the ascertainment of facts from the record of the earlier litigation and the application of the relevant provisions of law thereto.

7. The distinction between the two pleas is material. Section 11, CPC, embodies the principle of res judicata and requires, inter alia, that the matter directly and substantially in issue in the subsequent suit must have been heard and finally decided in the former suit by a competent Court. In the present case, since the first suit was held to be pre-mature and the second was withdrawn with permission to institute fresh one, it was necessary to examine whether any matter directly and substantially in issue in the third suit had, in fact, been finally adjudicated in the earlier proceedings. The principle recognised in *Muhammad Saleem Ullah and others v. Additional District Judge, Gujranwala and others* **(PLD 2005 SC 511)**, as discussed in subsequent jurisprudence, is that a matter not substantially decided in earlier litigation does not operate as res judicata, actually or constructively. Thus, in the absence of a determination on the substantive controversy, the bar of res judicata could not be presumed merely from the institution of previous suits.

8. The objection founded upon Order II, Rule 2, CPC, however, required a separate examination. The provision prohibits the splitting of a claim arising from the same cause of action and precludes a plaintiff from subsequently suing for a portion of the claim or relief omitted from the earlier suit, subject to the terms of the Rule. Its applicability does not depend upon the former suit

having been decided on merits; rather, the decisive question is whether the subsequent suit is founded upon the same cause of action and seeks a claim or relief that ought to have been included in the earlier proceedings. In *Abdul Hakim and 2 others v. Saadullah Khan and 2 others* **(PLD 1970 SC 63)**, this Court explained that the identity of the cause of action requires examination of the facts giving rise to the right claimed as well as the infringement complained of, and recognised that a subsequent act of trespass may give rise to a fresh cause of action. Similarly, in *Matloob Ellahi Paracha v. Raja Arshad Mahmood and another* **(PLD 2024 SC 663)**, this Court reiterated that Order II, Rule 2, CPC, is directed against splitting a cause of action and does not require the joinder of distinct causes of action merely because they arise from the same transaction.

9. Applying the above principles, the question whether the third suit was barred under Order II, Rule 2, CPC, could not be answered without examining the plaints of the earlier suits alongside the plaint in the third suit. The first suit concerned an apprehension of dispossession and was held to be premature; the second was withdrawn with permission to institute fresh proceedings; whereas the appellant's case in the third suit was founded upon, inter alia, his alleged dispossession from a portion of the subject property. It was, therefore, necessary to ascertain whether the alleged dispossession constituted a subsequent infringement giving rise to a fresh cause of action, or whether the relief claimed in the third suit had already been available to the appellant in the earlier proceedings. The mere identity of the parties and the subject property could not, by itself, establish that all three suits arose from an identical cause of action. The objection under Order II, Rule 2, CPC, accordingly involved a mixed question of law and fact requiring examination of the relevant pleadings and record.

10. The legal position concerning the determination of res judicata as a mixed question of law and fact is explained in *Ram Harakh (Dead) by LRs. v. Hamid Ahmed Khan (Dead) by LRs. and others* **((1998) 7 SCC 484)**, wherein the Supreme Court of India observed

that the existence of a decree passed by a competent Court and its finality were matters requiring consideration before the plea could be entertained, and that a contention based on mixed questions of law and fact could not be raised for the first time at that stage. Similarly, in *Smt. V. Rajeshwari v. T.C. Saravanabava* **(2004 (1) SCC 551)**, it was held that the plea of res judicata is founded upon proof of facts followed by the application of law thereto; the necessary foundation must be laid in the pleadings, an issue framed, and the plea tried on the basis of the relevant record, including the pleadings, issues and judgment in the former suit. Although these are Indian authorities and are persuasive rather than binding in Pakistan, the principles stated therein reinforce the need to establish the factual foundation of the objection before applying the legal bar.

11. In these circumstances, we are of the view that the learned High Court ought not to have restored the order rejecting the plaint without the requisite examination of the previous proceedings and the causes of action underlying the respective suits. The controversy between the parties is of considerable vintage, yet their substantive rights in respect of the subject property have not been adjudicated on merits. The ends of justice would, therefore, be better served by allowing the matter to proceed before the learned Trial Court, which shall examine the objections relating to res judicata, Order II, Rule 2, CPC, and all other questions of maintainability in accordance with law, on the basis of the relevant pleadings and record. We emphasis that the remand does not foreclose either party from raising any legally available objection, nor does it pre-determine the outcome of such objections.

12. For the foregoing reasons, the instant appeal is allowed in terms of our short order dated 22.10.2026, which is reproduced as under:

> *'For the reasons to be recorded later, the Civil Appeal is allowed and as a consequence thereof the impugned Judgment dated 04.08.2025 passed by the High Court of Sindh, Karachi is Second Appeal No.157/2018 is set aside and the Judgment*

> *passed by the Additional District Judge IV Karachi West dated 12.9.2018 is restored. Let the Trial Court proceed with the suit in accordance with the law, provide ample opportunity to the parties and decide the same on merits.'*

Consequent whereof, the impugned judgment dated 04.08.2025 passed by the High Court of Sindh at Karachi is set aside, and the judgment dated 12.09.2018 passed by the First Appellate Court, whereby the order rejecting the plaint was set aside and the matter was remanded to the Trial Court, is restored, the suit between the parties will be deemed to be pending before the trial Court. The learned trial Court shall endeavour to decide the suit expeditiously, preferably within a period of six (06) months from the date on which the parties first appear before it pursuant to this order. The learned District Judge concerned shall ensure that the record is transmitted to the learned trial Court forthwith and shall fix the matter before the appropriate Court. The parties shall appear before the learned District Judge concerned on 16.11.2026, without awaiting any further notice.

13. The reasons recorded hereinabove constitute the basis of our short order, reproduced above.

JUDGE

JUDGE

Islamabad,
22nd of October, 2026
Approved for Reporting
M.A. Hassan