Fresh Suit Not Barred Merely by Earlier Litigation Over Same Property: Supreme Court

Supreme Court restores Naqvi's suit, requires separate res judicata and Order II Rule 2 inquiries, and leaves maintainability objections open on remand.

Civil Appeal No. 353-K of 2025 | Decision: 2026-10-22

Published 5 November 2026 | Shahbaz Shah Legal Journal



Editorial illustration: Shahbaz Shah Legal Journal.

Read article online | Read full judgment

The Supreme Court of Pakistan has restored a property suit after holding that earlier litigation over the same land did not, by itself, establish res judicata or the bar against splitting a claim under Order II Rule 2 CPC. The courts had to compare the actual pleadings, reliefs, causes of action and earlier orders before applying either bar. Judgment, paragraphs 6–9.

In Syed Aley Sadquain Naqvi v. Matco Rice (Pvt.) Ltd. and others, the Court allowed Civil Appeal No. 353-K of 2025 and restored the first appellate court's remand. Justice Shahid Bilal Hassan wrote the reasons for the bench, which also included Justice Muhammad Ali Mazhar. The judgment explains the short order of 22 October 2026. Case particulars Paragraphs 12–13.

A threatened dispossession and an alleged later takeover

The litigation concerned asserted leasehold rights in a ten-acre plot in Gadap, Karachi. Naqvi claimed through the original lessee, relied on a power of attorney and documents concerning a poultry business, and alleged that three acres had subsequently been taken from him. His leasehold entitlement and the alleged dispossession remained matters for adjudication. Paragraph 1, pages 1–3.

The plaint in Civil Suit No. 2141 of 2015 was rejected under Order VII Rule 11 CPC. On 12 September 2018, the first appellate court restored the matter for decision after evidence. The Sindh High Court reversed that outcome on 4 August 2025. The Supreme Court's intervention returns the case to the trial court, rather than granting Naqvi the substantive declaration he seeks. Paragraph 1 Paragraph 12.

The central question was whether the alleged actual dispossession represented a distinct infringement, or whether the later suit sought relief which should already have been claimed. Counting the number of suits could not answer it. Paragraphs 5–6.

Res judicata requires a matter heard and finally decided

Section 11 CPC concerns a matter directly and substantially in issue which has been heard and finally decided by a competent court in the earlier proceedings. The Supreme Court required examination of what the earlier litigation had actually determined. Its reasoning addressed proceedings treated as premature and a withdrawal with permission to bring fresh proceedings; neither could simply be assumed to amount to a final adjudication of the substantive controversy. Paragraphs 6–7.

That distinction matters when a defendant seeks rejection of a plaint. An earlier adverse order is not enough without identifying its subject, the issue it decided and its legal effect on the later claim. The judgment rejects a presumed bar based solely on previous institution of proceedings about the property. Paragraph 7.

Order II Rule 2 asks a different question

Order II Rule 2 prevents splitting a claim arising from the same cause of action, subject to the terms of the Rule. Its application does not require the previous suit to have ended in a decision on the merits. The inquiry instead concerns the cause of action and whether a claim or relief available on that cause was omitted earlier. Paragraph 8.

It therefore does not follow that defeating res judicata also defeats Order II Rule 2. A court must examine each objection on its own requirements. Conversely, a connection between two claims or their common property does not establish that the causes of action are identical. The judgment distinguishes an impermissibly split claim from genuinely distinct causes of action. Paragraphs 8–9.

The earlier plaints must be compared with the later claim

The Court required the previous plaints to be examined alongside the plaint in the 2015 suit. An apprehension that a person may be dispossessed and an allegation of a later actual dispossession can raise different questions. The trial court must establish when the alleged infringement occurred and whether the relief now claimed had already been available. Paragraph 9.

On this record, the objection involved a mixed question of law and fact. The identity of parties and land could not replace examination of the earlier proceedings. The Court also discussed persuasive Indian authorities on the need to establish the factual foundation for res judicata; it expressly distinguished those authorities from binding Pakistani precedent. Paragraphs 9–10 Paragraph 10.

For a lawyer raising or resisting the objection, a useful comparison should identify the pleaded infringement, its date, the relief then available, the relief actually sought and the precise earlier determination. That is the practical implication of the record-based inquiry directed in paragraphs 6–11. A comparison based only on party names, plot numbers and the number of proceedings would leave the decisive questions unanswered. Paragraphs 6–9.

Restoration preserves the objections for decision

The Supreme Court did not finally declare the suit maintainable against every objection. It expressly left res judicata, Order II Rule 2 and all other legally available maintainability questions open for the trial court. Nor did it determine title, confirm the lease or find that dispossession had been proved. The relief gives the parties an opportunity for proper adjudication. Paragraph 11.

The parties must appear before the concerned District Judge on 16 November 2026 without awaiting further notice. The record is to be transmitted promptly and the trial court should endeavour to decide the suit expeditiously, preferably within six months from the parties' first appearance pursuant to the order. This is a direction to endeavour to conclude the trial, rather than a finding that the plaintiff has already won it. Paragraph 12.

Read alongside the journal's analysis of rejection of a plaint and the need to examine the pleaded case.

Sources

- Complete Supreme Court judgment.
- Download judgment PDF.
- Case details and searchable judgment summary.

- Code of Civil Procedure, 1908 — Pakistan Code, section 11, Order II Rule 2 and Order VII Rule 11.

Frequently asked questions

Is a third suit barred merely because it concerns the same property?

No. The earlier and later pleadings, causes of action, reliefs and orders must be examined. Identity of parties and property did not, by itself, establish the asserted bars in this case. paragraph 9.

How do res judicata and Order II Rule 2 differ?

Res judicata requires the relevant matter to have been heard and finally decided by a competent court. Order II Rule 2 addresses omitted claims or reliefs arising from the same cause of action and does not depend on a previous decision on the merits. paragraphs 7–8.

Can actual dispossession create a fresh cause of action?

It may. The court must determine whether dispossession was a later infringement or whether the claimed relief was already available in the earlier proceedings. The Supreme Court left that examination to the trial court. paragraph 9.

Did the Supreme Court finally reject every maintainability objection?

No. It expressly preserved res judicata, Order II Rule 2 and every other legally available maintainability objection for determination on the relevant record. paragraph 11.

Did the judgment establish Naqvi's leasehold title?

No. Restoring the suit enabled adjudication; it did not grant a declaration of title, decide the alleged dispossession or finally determine the parties' substantive rights. paragraphs 11–12.

When must the parties appear, and how soon should the suit finish?

The parties were directed to appear before the concerned District Judge on 16 November 2026 without further notice. The trial court should endeavour to decide the suit preferably within six months of their first appearance pursuant to the order. paragraph 12.