

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Justice Aamer Farooq
Justice Ali Baqir Najafi

Civil Petition No.3055 of 2023

*(Against judgment of the Lahore High Court dated 19.06.2023 in
W.P. No. 27395 of 2021)*

Kamila Aamir and others

...Petitioner(s)

Versus

Additional District and Sessions Judge and 10 others

...Respondent(s)

For Petitioner(s): Mr. Shahzad Shaukat, ASC

For Respondent(s): Mr. Usman Karimuddin, ASC

Assisted by: Barrister Zarrar Haider Bhatti, Law Clerk

Date of Hearing: 30.10.2025

JUDGMENT

Aamer Farooq J.: - Respondent No. 2 filed an application before the trial court under Order VII Rule 11 of the Civil Procedure Code (the 'CPC'), which was dismissed on 16.10.2020. However, upon revision, the Additional District Judge, on 31.03.2021, allowed the application and rejected the plaint of the petitioners' suit under Order II Rule 2. This decision was subsequently upheld by the Lahore High Court through its judgment dated 19.06.2023, whereby the writ petition filed by the petitioners was dismissed.

2. The essential facts for adjudication are that the parties to the suit are closely related and are in dispute over the estate left by their predecessor-in-interest, Mian Muhammad Sharif. Mst.

Naseem Akhtan and Shughfta Saleem, the mothers of the petitioners, were daughters of Mian Muhammad Sharif. The petitioners instituted a suit before the trial court seeking their mothers' share in the estate of Mian Muhammad Sharif and challenging the family settlement deed dated 03.08.1991 as well as the surrender deed dated 13.08.1999, through which the properties of Mian Muhammad Sharif were distributed among his legal heirs.

3. The first suit was filed on 12.05.2016 by petitioner No. 1 (**first suit**) challenging the surrender deed. During the *pendency* of the first suit, petitioner filed a second suit on 16.01.2020 (**second suit**) for declaration, possession and cancellation of documents i.e., deed of family settlement, surrender deed and Hibas.

4. The central issue for determination before this Court is whether, during the pendency of a first suit, a subsequent suit can be dismissed on the basis of Order II Rule 2 CPC, and whether the recording of evidence is a *sine qua non* for such a determination. We acknowledge with appreciation the valuable assistance rendered by the learned counsels, whose thorough research has brought to our attention that judicial precedents on these two issues are not uniform and appear to vary across different courts.

5. Learned counsel Mr. Shahzad Shaukat, ASC, appearing on behalf of the petitioners, contended that a suit cannot be dismissed under Order II Rule 2 CPC while the first suit is still pending adjudication. He further argued that even if such dismissal were to be considered, it could only be done after

framing a preliminary issue and recording of evidence. In support of his arguments, he relied upon various judgments of this Court¹. Conversely, learned counsel Mr. Usman Karimuddin, representing the respondents, opposed the stance taken by Mr. Shahzad Shaukat and argued that the second suit was rightly dismissed, asserting that the pendency of the first suit had no impact on the applicability of Order II Rule 2 in the present circumstances. He has also placed reliance upon various judgments during the course of his arguments².

a. Application of Order II Rule 2 CPC during pendency of the first suit:

6. Order II Rule 2 is reproduced hereinbelow for ease of reference:

2. Suit to include the whole claim (1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim. Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs. A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs ; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

¹ Jeewan Shah v. Muhammad Shah (PLD 2006 SC 202), Jewan v. Federation of Pakistan (1994 SCMR 826), Muhammad Ashfaq v. The State (2002 SCMR 308), QBE Insurance v. Jaffar Flour and Oil Mills (2008 SCMR 1037), Ghulam Ali v. Asmatullah (1990 SCMR 1630), Manzur Ahmed v. Abdul Khalid (1990 SCMR 1677), Muhammad Chuttal v. Atta Muhammad (2007 SCMR 373)

² Aziz Ahmed v. Hajran Bibi (1987 SCMR 527), Mst. Ghulam Bibi v. Sarsa Khan (PLD 1985 SC 345), Muhammad Tahir v. Abdul Latif (1990 SCMR 751), National Shipping Corporation v. Messers A.R Muhammad Sadik (1974 SCMR 131), Trading Corporation of Pakistan v. Devan Sugar Mills (PLD 2018 SC 828), Mir Mujib-ur-Rehman v. Returning Officer (PLD 2020 SC 718), Dr. Muhammad Amin v. Zarai Taraqiati Bank (2023 SCMR 1083), Haji Muhammad Saif v. The Federation of Pakistan (1989 SCMR 22)

Explanation. __ For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.

7. The underlying purpose of this provision of law is to avoid multiplicity of proceedings and to ensure that all claims or reliefs arising from the same cause of action are brought within a single suit, unless the court grants leave under Order II Rule 2(3). This rule operates as a mandatory and prohibitory provision, imposing upon every plaintiff the duty to include the entire claim against the defendant in one comprehensive action. Its objective is to prevent a party from being vexed by multiple suits based on the same cause. In light of this intent, the provision does not preclude the court from dismissing a suit that is still pending adjudication. There is no valid justification for interpreting Order II Rule 2 to mean that a second suit should remain pending merely because the first suit is yet to be decided. Such an interpretation would result in a misuse of judicial process and a waste of judicial time, compelling courts to await the outcome of the first suit only to later dismiss the second on grounds that could have been addressed summarily at the outset.

8. The recent judgment of the Supreme Court of India in *Cuddalore Powergen Corporation Ltd. v. Chemplast Cuddalore Vinyls Limited & Others*³ reinforces this very principle. The Court held that the status or stage of the first suit at the time of filing the second suit is wholly immaterial for the purposes of Order II Rule 2. To hold otherwise would effectively permit a party to institute multiple suits under the pretext of the pendency of earlier proceedings, thereby undermining the intent of the provision. Such an interpretation would reduce the court to a mere spectator, compelled to await the outcome of the first suit before addressing the fate of second suit, resulting in unnecessary procedural delay and an abuse of the judicial process. Justice Pardiwala elaborated on the issue as follows:

³ *Cuddalore Powergen Corporation Ltd. v. Chemplast Cuddalore Vinyls Limited & Others*, AIR 2025 SC 849. (Per Pardiwala J.)

48. A careful perusal of Order II Rule 2 would indicate that it does not impose any restriction on the applicability of the principles therein based on the stage or status of the first suit. In other words, there is no clear requirement that the first suit either be pending or disposed of in order to make a plea of bar under Order II Rule 2 as regards the second or subsequent suit. It is conspicuous by the absence of such a stipulation that the law makers thought fit that the bar under this provision would apply if there is an identity in the causes of action of both suits and irrespective of whether the first suit is disposed or not.

49. Furthermore, the laudable object behind this provision is to prevent the multiplicity of suits and the splitting of claims. If it is held that it is a necessary condition for the first suit to be disposed of, for a plea under Order II Rule 2 to be maintainable, parties would still be able to file multiple suits with the excuse that the first suit is pending. Declaring so would not serve to further the object of Order II Rule 2 in any manner whatsoever. On the contrary, this would run counter to the objective behind the enactment of the provision and only serve to continuously vex the defendants. Therefore, reading such a qualification into the rule which is clearly absent in the letter of the provision would be unjustified.

50. In light of the aforementioned, it is re-affirmed that the stage at which the first suit is, would not be a material consideration in deciding the applicability of the bar under Order II Rule 2. What needs to be looked into is whether the cause of action in both suits is one and the same in substance, and whether the plaintiff is agitating the second suit for claiming a relief which was very well available to him at the time of filing the first suit. Therefore, the fact that the first suit i.e., O.S. No. 28 of 2008 is still pending before the concerned court would have no material impact in deciding whether the subsequent suit filed as O.S. No. 122 of 2008 is barred by the principles under Order II Rule 2.

9. Order II Rule 2 inherently encapsulates the "doctrine of election". When a cause of action accrues in favour of a party, that party may have access to multiple remedies arising from the same cause. Once an election is made, the party cannot subsequently "hop over and shop for one remedy after another"

(see *Trading Corporation of Pakistan v. Devan Sugar Mills*⁴) among the coexistent options available. Order II Rule 2 embodies a similar principle. Sub-rule (1), which mandates that “*every suit shall include the whole of the claim,*” imposes upon the plaintiff an obligation to elect from among the various remedies or reliefs that may be available at the time of filing. Once such an election is exercised, the plaintiff cannot thereafter institute a separate suit to pursue additional or alternative reliefs that could and ought to have been claimed in the first suit, unless leave of the court has been expressly obtained under sub-rule (3).

10. In light of the foregoing discussion, the first suit filed by the petitioner could and ought to have included the reliefs subsequently sought in the second suit. Both registered instruments, the *Deed of Family Settlement* and the *Surrender Deed*, were in existence and available at the time of the institution of the first suit. The plaintiff, therefore, had the full opportunity to elect and pursue all possible remedies in that initial proceeding. However, having failed to do so, the plaintiff instituted a second suit seeking cancellation of those very documents (see *para 3 above*). The right to challenge the *Surrender Deed* and to seek cancellation of the relevant documents arose from a single cause of action, namely, the death of Mian Muhammad Sharif. Consequently, these claims could have been properly advanced within one comprehensive suit i.e., the first one instead of multiplying them. The filing of a separate, subsequent suit was thus clearly barred by the operation of Order II Rule 2 CPC. The learned Additional District Judge, therefore, rightly concluded that the second suit was hit by the said provision, notwithstanding the pendency of the first suit as law does not require adjudication of the first suit in order to apply Order II Rule 2 on the subsequent suit(s).

b. Is it mandatory to record evidence before rejecting a plaint under Order VII Rule 11 of the CPC, when the conditions specified under Order II Rule 2 are fulfilled?

⁴ *Trading Corporation of Pakistan v. Devan Sugar Mills*, PLD 2018 SC 828 (Per Mushir Alam J.)

11. One of the submissions made by the petitioners was that when grounds under Order II Rule 2 apply, then consequences envisaged in Order VII Rule 11 are triggered and, therefore, evidence ought to be recorded in such a situation.

12. We cannot bring ourselves in reconciliation of the same. Although the judgments quoted by the learned counsel for the petitioners do provide recording of evidence in such situations but the same do not seem to capture the true essence of the law, as to how it should be. As Sindh High Court in *M/s Pakistan Telecommunication Corporation v. Abdus Sattar* which states that:

The use of word "shall" in Sub-rules (1) and (2) of Order II (2), C.P.C. seems to be in the nature of exception involving right of a party. Therefore, law requires to construe the same strictly and has not to be lightly inferred. PLD 1985 Kar. 481. But this exceptionalism of construing the same strictly or not inferring lightly would not entail any Court to defeat the spirit of any other provision of the Code or depart from the established principles laid down by the superior Courts to deal with all such matters cautiously.

By keeping in hand the beacon of caution as radiated in the above-lines, I would like first to touch the sub-rules in issue with reference to a term "cause of action". This term has its own import in the C.P.C. And importance with reference to Order VII, rule 11, C.P.C. And Order II, rule 2, C.P.C. Because both these Orders with their respective rules are closely linked with the binding force of this term being common between the two Orders and inter-related for its application to decide the fate of any suit. On account of this proposition, it is evident that if a plaint is sought to be rejected on the strength of clause (d) of Order VII, rule 11, C.P.C. Read with Order II, rule 2, C.P.C., then clause (d) cannot be detached from clause (a) of Order VII, rule II, C.P.C. On account of the term "cause of action".

The term "cause of action" relates to the facts or allegations which give rise to a claim or right or infringement of right of any plaintiff against certain defendants to enable a Court to grant relief 1991 SCMR 2030. Sub-rules (1) and (2) of rule 2 of Order II, C.P.C. would be attracted to hit any suit when omission or relinquishment of relief or reliefs flow out of

the same cause of action by virtue of section 20 C.P.C. To find out whether the cause of action in different suits is the same or different, the concerned Courts are required to look into the proposed evidence appearing from the contents of plaints of the suits. If it appears that same evidence would be sufficient for deciding all the suits, then cause of action might be the same and if the proposed evidence in support of relief/reliefs in different suits is different, then cause of action would also be different PLD 1966 Kar. 126 and PLD 1948 PC 131. I have used the words "proposed evidence" in the above lines, which can be easily assessed from the contents of the plaints. Hence it is not necessary to record evidence in Courts to find out whether cause of action is the same or different because the proposed evidence reflected by the contents of suits in disputes, in most of the cases, would be sufficient to decide the nature of "cause of action". The object or purpose of putting bar on filing a fresh suit on the same cause of action by implementation or "imposition" of such provision seems nothing but to avoid splitting of claims and to prevent multiplicity of suits to save the defendants from being vexed for more than once for the same cause of action on the basis of maxims "nemo debet bis vexari pro una et eadem causa". Reference in this regard can be made to the cases reported in 1983 CLC 482, 1987 CLC 1332, PLD 1983 SC 344, AIR 1931 PC 229, AIR 1947 Lah. 210, AIR 1947 Lah.102. (Emphasis supplied)

13. Order II Rule 2 does not obligate courts to record evidence whenever a factual dispute arises. When considering an application under this provision, the primary question for the court is whether the causes of action in the two suits are the same or distinct. If they are found to be the same, the subsequent suit must be barred under Order II Rule 2, and no further proceedings are necessary. This determination should be made by examining the contents of both plaints rather than by recording evidence, as was appropriately done by the Additional District Judge and the Lahore High Court. The procedure under Order II Rule 2 is intended to be summary in nature, leading to the rejection of the plaint under Order VII Rule 11 without requiring the recording of evidence.

14. Learned counsel for the petitioner placed reliance on *Jewan Shah v. Muhammad Shah*⁵ that states:

Para 7. We are also of the considered view that the provisions as contained in Order 2, Rule 2, C.P.C. Cannot be made applicable without having gone through the entire evidence and peculiar circumstances of the case which was never done.... (Emphasis supplied)

In principle, it is correct that before advertiring to Order II Rule 2 CPC, plaint and record ought to be seen, however, the same need not always requires recording evidence. Therefore, it seems that the referred exercise was duly undertaken by the Additional District Judge and the Lahore High Court in detail, which we are not inclined to interfere with at this stage.

c. **Conclusion:**

15. Accordingly, the present petition is dismissed and leave is declined. The impugned judgment is affirmed. There is no order regarding costs.

Judge

Judge

Announced in open court on 14.11.2025

Islamabad
Zawar
APPROVED FOR REPORTING

Judge

⁵ *Jewan Shah v. Muhammad Shah*, PLD 2006 SC 202