

**SUPREME COURT OF AZAD JAMMU & KASHMIR**  
[Appellate Jurisdiction]

**PRESENT:**

*Ch. Muhammad Ibrahim Zia, CJ.*  
*Raja Saeed Akram Khan, J.*

Civil Appeal No.100 of 2017  
(PLA filed 25.3.2017)

Abdul Qayyum s/o Abdul Qadir, caste Gakhar  
Kiani, r/o village Garthama, Tehsil & District  
Hattian Bala.

.... APPELLANT

**VERSUS**

1. Muhammad Rafique s/o Khani Zaman,
2. Ali Akbar s/o Shah Wali, caste Gakhar r/o  
village Garthama, Tehsil & District Hattian  
Bala.
3. Tehsildar Hattian Bala.
4. Naib Tehsildar Hattian Bala.
5. Girdawar circle Garthama/Kathai.
6. Patwari constituency Garthama, district  
Hattian Bala.

..... RESPONDENTS

(On appeal from the judgment of the High Court dated 15.03.2017 in revision petition No.169 of 2016)

FOR THE APPELLANT: Sheikh Muhammad Saleem, Advocate.

FOR THE RESPONDENTS: Ch. Shaukat Aziz, Advocate.

*Date of hearing:* 09.11.2017

**JUDGMENT:**

**Raja Saeed Akram Khan, J.**—The titled appeal by leave of the Court has been filed against the judgment of the High Court dated 15.03.2017, whereby while dismissing the revision petition filed by the appellant, herein, the learned High Court also rejected the plaint, filed by him, under Order VII, rule 11, CPC.

2. Precise facts of the case are that the plaintiff-appellant filed a suit for pre-emption in the Court of Civil Judge, Hattian Bala, against the defendant-respondents on

06.01.2016, in respect of the land comprising *khewat* No.69, survey No.483, measuring 7 *marla*. The claim of the plaintiff was that defendant No.2, transferred the suit land through sale-deed dated 09.11.2015 and agreement-to-sell dated 28.12.2015, to defendant No.1. The plaintiff has a right of prior purchase as the land of the plaintiff is adjacent to the land sold. It was stated that the consideration amount of the land has also been mentioned arbitrarily in order to defeat the right of pre-emption of the plaintiff. It was prayed that the sale-deed dated 09.11.2015, and agreement-to-sell dated 28.12.2015, may be cancelled. An application for interim injunction was also filed along with the suit. The trial Court issued the stay-order on 06.01.2016, subject to the objections by the other side. The defendants appeared before the trial Court and filed written statement in

which they refuted the claim of the plaintiff and also filed objections on the application filed by the plaintiff for issuance of stay order. The learned trial Court after necessary proceedings, maintained the status quo order, subject to furnishing an undertaking that the defendants will not claim the cost/expenses incurred upon the construction raised on the suit land if ultimately the suit is decreed in favour of the plaintiff. Both the parties feeling dissatisfied from the order passed by the trial Court filed separate appeals in the Court of District Judge, Hattian Bala. The learned District Judge vide judgment dated 29.04.2016, accepted the appeal filed by respondents, herein, and struck down the condition of furnishing the undertaking, whereas, dismissed the appeal filed by the appellant, herein. The appellant filed a revision petition before the High Court challenging the

judgment passed by the District Judge. The learned High Court through the impugned judgment dated 15.03.2017, while dismissing the revision petition also rejected the plaint under Order VII, rule 11, CPC, hence this appeal by leave of the Court.

3. The learned counsel for the parties although advanced the lengthy arguments, however, keeping in view the proposition involved in the matter for the sake of brevity we incorporate in the judgment only the arguments relating to the proposition before us.

4. Sheikh Muhammad Saleem, Advocate, the learned counsel for the appellant argued that the impugned judgment is against law which is not maintainable. He contended that only the matter relating to the interim injunction was challenged and argued

before the High Court. The learned High Court instead of deciding the point agitated before it rejected the plaint pending before the trial Court under Order VII, rule 11 CPC. In this way, the appellant has been condemned unheard. He contended that the learned High Court while exercising the revisional jurisdiction was not competent to reject the plaint.

5. On the other hand, Chaudhary Shoukat Aziz, Advocate, the learned counsel for the respondents strongly controverted the arguments advanced by the learned counsel for the appellant. He submitted that the impugned judgment is perfect and legal which is not open for interference by this Court. He contended that the suit filed by the appellant was barred by law, therefore, the learned High Court was fully justified to reject the plaint under Order VII, rule 11 CPC.

6. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. This Court in the present case has granted leave to consider the point; whether the learned High Court was justified to reject the plaint under Order VII, rule 11 CPC., while deciding the matter relating to issuance or refusal of interim injunction. To resolve the point, we have examined the record of the case and the law on the subject. The perusal of the record shows that the appellant filed a suit for declaration and possession of the suit land on the basis of right of prior purchase with the prayer of cancellation of sale-deed and agreement-to-sell. The appellant also filed an application for grant of temporary injunction. The respondents filed written statement and also filed objections on the application filed by the appellant for grant of

interim injunction. The trial Court after hearing the parties decided the matter of interim injunction vide order dated 22.03.2016. Both the parties against the said order of the trial Court filed appeals before the District Judge. The learned District Judge also heard the parties on the point of interim injunction and passed the order dated 29.04.2016. The order of the District Judge was challenged by way of revision petition by the appellant before the High Court and the learned High Court while dismissing the revision petition also rejected the plaint under Order VII, rule 11 CPC. Thus, keeping in view the background of the case in hand it is clear that the matter only to the extent of interim injunction was challenged/argued before the High Court. In our estimation, the learned High Court had to consider the only point; whether the plaintiff was entitled for the temporary injunction as



prayed for by him or not. The learned High Court could not reject the plaint while hearing the revision against the order passed by the Courts below regarding interim injunction as it was not seized with the main suit. It has been held in a number of pronouncements that once a suit commences and the plaint is not rejected at the primary stage the Court has then to provide an opportunity to the plaintiff to explain that way the plaint should not be rejected, whereas, in the instant case no opportunity of hearing has been provided to the plaintiff on the point of maintainability of the suit. In such state of affairs, the learned counsel for the appellant has rightly argued that the appellant has been condemned unheard. Therefore, it can safely be concluded that the impugned judgment is against the principle of natural justice which cannot be upheld. Our this view finds supports from the

case law reported as *Mushtaq Hussain v. Province of Punjab through Collector Jehlum and 6 others* [2003 MLD 109], wherein, it has been held that:

“10. But once a suit commences and the plaint is not rejected at the initial stage, the Court has then to provide an opportunity to the plaintiff to explain why the plaint should not be rejected and the Court has to wait for a reply and may then proceed to reject the plaint if the circumstances so demand.

11. But when a plaint is rejected after the commencement of the suit while deciding an application under Order XXXIX, Rules 1 and 2, C.P.C., the Court acts at the back of the plaintiff. Because the case is then fix for passing of an interlocutory order and not for determination of the question pertaining to the maintainability of the suit.

12. Such a rejection as the present one brings a surprise and sometime a shock as it happens in the case of an unexpected happening. This is neither fair nor proper nor a judicial act and it cannot be appreciated on the touchstone of the fairness while it certainly is an arbitrary order.”

Similarly, in another case reported as *Nishan Ali v. Sher Muhammad and 3 others* [2004 MLD 1909] while dealing with the proposition it has been held that:-

“4. Admittedly, the respondents filed an appeal against order dated 07.11.2002, whereby appellant’s application for the grant of temporary injunction was allowed and the learned Appellate Court, while hearing the appeal against the interim order, rejected the plaint in purported exercise of power under Order VII, rule 11, C.P.C. After hearing the learned counsel of the

parties and examining the record of the case, I find that the real question, involved in the present case, is as to whether the First Appellate Court was competent in law to reject the plaint, while hearing the appeal against grant of temporary injunction by the learned trial Court. To my mind, the learned Appellate Court could not reject the plaint while hearing the appeal against interim order, as he was not seized of the main suit. The scope of appeal before the learned Appellate Court was as to whether the appellant was entitled for the temporary injunction, as prayed for by him in his injunction application and the impugned order dated 7-11-2002 was in accordance with law or not. The learned Appellate Court could not have rejected the plaint, as at that point of time the lis was pending before the learned Civil Judge, who, in his discretion, had already framed issues and set

down the case for recording the evidence of the parties. This Court in a case reported as Zafar Ahmed Ansari v. Auqaf Department through Chief Administrator, Punjab, Lahore and 4 others (1996 CLC 892), while dilating upon the similar controversy, has held that the First Appellate Court was not legally competent to reject the plaint while hearing the appeal against the grant of temporary injunction by the learned trial Court and the judgment of the First Appellate Court was set aside on the ground that subject-matter of appeal before the First Appellate Court was only to grant or refusal of temporary injunction. It is settled law that Court is not justified to reject the plaint or dismiss the suit while dismissing the injunction application.”

After going through the controversy involved in the matter in hand and keeping in view the

principle of law enunciated in the referred reports, we are of the considered view that the learned High Court was not justified to reject the plaint while deciding the revision on the point of interim injunction. As the learned High Court has not decided the real issue agitated before it, i.e. grant or refusal of interim injunction, therefore, to get the wisdom of the High Court at first, we deem it proper to remand the case.

In view of the above while accepting this appeal the impugned judgment is hereby set aside. The case is remanded to the High Court to decide the same afresh after hearing the parties and taking into consideration the observations made by this Court in the preceding paragraph within a period of one month from the communication of the judgment of this Court. The interim injunction already granted by this Court vide order dated

27.03.2017, shall remain in force till the decision of revision petition by the High Court.

Mirpur,

**JUDGE**

**CHIEF JUSTICE**

\_\_\_\_.11.2017

