

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

Civil Appeal No. 66/2018.  
Date of Institution. 29.06.2018.  
Date of Decision. 24.05.2022.

Muhammad Zaman son of Muhammad Faazal Jatt by Caste resident of Dhabki presently residing at Dhabki House Ward no.3 D.C Road Tehsil and District Bhimber, Azad Jammu and Kashmir,  
(Appellant)

**VERSUS**

1. Muhammad Ilyas Kareem son of Muhammad Kareem Jatt by caste R/o Mohra Sadha Tehsil and District Bhimber,
2. Muhammad Shafique S/o Muhammad Yar Jatt by Caste R/o Mera Ghazi Tehsil and District Bhimber, through attorney Kh. Muhammad Iqbal Butt, R/o Ward no.3 Tehsil and District Bhimber, Azad Jammu and Kashmir,  
(Respondents)

**APPEAL AGAINST THE JUDGMENT AND DECREE OF DISTRICT JUDGE BHIMBER DATED 10.05.2018.**

**Before:— Justice Mian Arif Hussain, J.**

**PRESENT:**

Kh. Amir Rasool Butt, Advocate for Appellant.  
Raja Shahid Iqbal, Advocate for Respondent no.1.

**JUDGMENT:**

The captioned appeal has been preferred against the judgment and decree dated 10.05.2018 recorded and passed by District Judge Bhimber, whereby, while allowing the application of the respondent no.1 herein preferred under Order 7 Rule 11 CPC learned Trial Judge has rejected the suit of the appellant herein.

Succinctly, facts giving rise to appeal in hand are that appellant herein preferred a pre-emption suit in the Court of District Judge Bhimber claiming therein that a piece of land measuring 10 marlas comprising survey nos. 1005 /1608 and 2115 situated at Village Bhimber Khas was within ownership and possession of Muhammad Shafique, defendant no.2 who has alienated the same in favour of Muhammad Ilyas defendant no.1 in consideration of Rs. 10,00,000/- on 24.07.2017 through a sale deed. It is claimed that plaintiff being *Shafi-e-Shareek* and *Shafi-e-Khaleet* has a prior right to purchase the said piece of land whereas, defendant no.1 (Vendee) has no right regarding suit property, hence, the suit be decreed in favour of the plaintiff/appellant herein accordingly.

During proceedings of summoning of defendants, plaintiff-appellant preferred an application seeking amendment in the plaint to the effect that "defendant no.1 (vendee), after having knowledge of filing of suit has further alienated the suit land through sale deed in favour of one Attique-ur-Rehman on 25.09.2018, so, by allowing the amendment, the said vendee Attique ur Rehman be allowed to be impleaded as party in the line of defendants".

In respect of said application, defendant no.1 / respondent herein submitted objections, wherein, it is claimed that before institution of suit, the suit property was alienated in favour of one Attique-ur-Rehman, hence, at the time of institution of suit, sale deed in question did not exist, therefore, application for amendment is liable to be rejected.

Subsequently, on behalf of defendant no.1, an application Under Order 7 Rule 11 CPC was also preferred. After inviting objections from the other side, while allowing the said application, the learned District Judge rejected the suit under Order 7 Rule 11 CPC. Hence, the instant appeal.

The learned counsel representing the appellant herein after narrating the facts of the case submitted that application for amendment in plaint was preferred with the claim that after having knowledge of the institution of pre-emption suit in order to defeat the same, defendant no.1 (Vendee) has further alienated the suit land in favour of one Attique-ur-Rehman, so, said sale deed being malafidely stands liable to be challenged. It is claimed that the trial Judge, though in different paragraphs of the judgment impugned herein has enumerated the contents of application of amendment but ultimately, no findings have been recorded in respect

of said application, hence, without attending the said application observation recorded in terms of Order 7 Rule 11 CPC stands tantamount to miscarriage of justice, therefore, judgment and decree impugned herein being violative of legal norms of justice is liable to be quashed, hence, by accepting the appeal in hand, file of the case be remanded to the trial Court with the direction to decide a lis in accordance with law.

Conversely, the learned counsel representing the respondent no.1 herein contended that it is an admitted fact that prior to the institution of suit, the suit land had been alienated by defendant no.1 in favour of one Attique-ur- Rehman, so, sale deed under challenge being non-existence could not be challenged and it will be a futile practice to eternize the proceedings in the lis, hence, the learned trial Judge was quite justified to accept the application preferred under Order 7 Rule 11 CPC.

After having heard the arguments of the learned counsel for both sides, I have also gone through the record available at the file.

From the perusal of judgment impugned herein, it depicts that prior to institution of application under Order 7 Rule 11 CPC, appellant herein had moved an application for amendment in the plaint with the claim

that as soon as defendant got the knowledge of institution of suit, he, without any delay alienated the suit land in favour of one Attique-ur-Rehman, so, in view of said development, amendment in the plaint stands essential.

Objections regarding the said application appear to be placed on the file and the claim of both the parties regarding amendment application also appears to be discussed in different paragraphs of the judgment impugned herein, but no findings regarding the said application have been recorded by the learned trial Court and straightaway by allowing the application preferred under Order 7 Rule 11 CPC the suit has been rejected.

It is celebrated precept of law that prior to recording the verdict through which a lis is going to be disposed of finally each and every claim and every application pending adjudication before the Court must be attended and it will bear in mind that each and every aspect of the claim taken in the application or otherwise may have its consequences, so, in view of aforementioned circumstances, in my estimation, application regarding amendment in the plaint was needed to be attended before disposing of the application preferred under Order 7 Rule 11 CPC but as it has earlier been observed that said application has not been

attended and no findings have been recorded in respect of amendment application, hence, the judgment and decree impugned herein being defective is liable to be quashed.

Resultantly, by allowing the appeal in hand judgment and decree dated 10.05.2018 impugned herein is set at naught and file of the case is remanded to the trial Court with the direction to decide the lis in accordance with law. The parties shall bear the costs at their own.

Mirpur.  
24.05.2022.

-Sd-  
JUDGE

Judgment has been written and duly signed. The Deputy Registrar (Judicial) Headquarter is directed to transmit the file forthwith to circuit Mirpur. The Deputy Registrar circuit Mirpur, shall intimate the learned counsel for parties through notices.

-Sd-  
JUDGE