

2023]

Kamila Aamir v. Additional District Judge  
(Shams Mehmood Mirza, J)

Lahore 601

P L D 2023 Lahore 601

*Before Shams Mehmood Mirza, J*

KAMILA AAMIR and another---Petitioners

versus

ADDITIONAL DISTRICT AND SESSIONS JUDGE  
and others---Respondents

Writ Petition No. 27395 of 2021, decided on 19th June, 2023.

**(a) Civil Procedure Code (V of 1908)---**

*---O. II, R.2---Cause of action---Scope---Cause of action comprises material facts constituting right and its infringement which entitles a person to sue the wrongdoer or anyone liable for it---Cause of action must include a set of primary or operative facts that represent a legally recognized wrong that creates right to sue which gives rise to a claim enforceable in court---Each cause of action consists of points the plaintiff must prove, and all such elements must be satisfied before Court can take action---Such broad categorization of O. II, R. 2, C.P.C. is in accord with the scheme of Civil Procedure Code, 1908. [p. 608] A*

Stone v. Cass 34 Okla. 5, 124 P. 960 and Om Prakash Srivastava v. Union of India and another 2006 6 SCC 207 rel.

**(b) Civil Procedure Code (V of 1908)---**

*---O. II, R. 2---Whole claim, including of---Splitting of claim, bar against---Bar contained in O. II, R. 2, C.P.C., is against splitting claim in respect of cause of action and not the cause of action itself---Cause of action is simply technical and legal name representing the facts which give rise to a claim enforceable in Court---Term claim is generally used interchangeably with cause of action, its use within the confines of O. II, R. 2, C.P.C. refers to a right which would be enforceable if decreed by Court---Cause of action signifies and provides pivotal ingredients for establishing basis for legal claim and is also relevant for other purposes such as computation of limitation period, determination of proper forum for filing of claim (jurisdiction) and locus standi etc.---Cause of action broadly speaking is the factual matrix forming basis of claim and also identifies legal nature of those claims, which is the technical meaning of a cause of action. [p. 609] B & C*

1309489 Ontario Inc. (formerly known as Xincon Technology (Canada) Inc.) v. BMO Bank of Montreal et al. 2011 ONSC 5505 rel.

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**(c) Civil Procedure Code (V of 1908)---**

---O. II, R.2---Terms "claim" and "cause of action"---Distinction---  
Claim must be distinguished from relief which relates to form of  
remedy a person seeks from Court---Relief or remedy is the means  
through which cause of action is effectuated and the wrong is  
redressed. [p. 610] D

Balbir Singh v. Atma Ram AIR 1977 Allahabad 211 rel.

**(d) Civil Procedure Code (V of 1908)---**

---O. II, R.2---Whole claim---Inclusion in plaint---Object, purpose and  
scope---Plaintiff is prevented under O. II, R. 2, C.P.C. from splitting  
claims and reliefs which are based on same cause of action with the  
aim that a single cause should not be segregated among several suits---  
Objective is to safeguard against defendant being vexed twice in respect  
of same cause of action underpinning the claim---In case of omission  
to sue or intentional relinquishment of a claim, O. II, R. 2, C.P.C.  
places a bar on bringing subsequent action in regard thereto---Plaintiff  
is compelled under O. II, R. 2, C.P.C. to sue for all reliefs arising  
from same cause of action---In case of omission of plaintiff to do so,  
he is barred from such relief in a subsequent suit except where he took  
leave from Court. [p. 610] E

Hashim Khan v. National Bank of Pakistan PLD 2001 SC 325;  
Virgo Industries (Eng.) (P) Ltd. v. Venturetech Solutions (P) Ltd. 2013  
(1) SCC 625; V. Kalyanswamy (D) By Lrs. and others v. L.  
Bakthavatsalam (D) By Lrs. and others 2020(3) RCR (Civil) 404; Scorr  
v. Sturgis 16 N. Y. 548; Barrow v. Bankside Agency Ltd. [1996] 1  
W.L.R. 257; Mian Muhammad Iqbal v. Mir Mukhtar Hussain and others  
1996 SCMR 1047; Mohammad Khalil v. Mahbub Ali AIR 1949 PC 78;  
Joinder and Splitting of Causes of Action [Michigan Law Review, Vol.  
25, No. 4 (Feb., 1927) and Abdul Hakim and 2 others v. Saadullah  
Khan and others PLD 1970 SC 63 rel.

**(e) Civil Procedure Code (V of 1908)---**

---O. II, R. 2 & O. VII, R.11---Specific Relief Act (I of 1877), Ss. 39,  
42 & 54---Rejecting of plaint---Omission of claim---Splitting of claim,  
bar against---Petitioners/plaintiffs filed two suits; in the first one they  
claimed shares of their mothers in the estate of deceased owner and  
had challenged Registered Deed of Family Settlement and Surrender  
Deed through which suit properties were distributed amongst legal  
representatives of deceased owner---While the first suit was pending,  
petitioners/plaintiffs instituted the second suit for declaration,  
possession and cancellation of documents---Respondents/defendant

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Lahore 459; A  
Ltd. v. Messrs  
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Springs Ranch  
2002; Katz v  
Servs. Inc., 1  
others v. A  
SC 511 rel.

**(f) Civil Pr**

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**(g) Civil**

---O. II,

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*sought rejection of second suit under O. VII, R. 11, C.P.C. which application was dismissed by Trial Court but Lower Appellate Court in exercise of revisional jurisdiction allowed the same and rejected the plaint---Validity---Principle embodied in O. II, R. 2, C.P.C. directs that plaintiff has no right to maintain two separate actions involving same subject matter in same court and against same defendant---Provision of O. II, R. 2, C.P.C. puts bar on a party from bringing claims arising from same set of facts in successive suits---Party cannot split up the claim and bring only a portion thereof before court on which relief is sought and leave the rest to be prosecuted in a subsequent suit---Petitioners/plaintiffs violated mandatory rule and thus the bar on the second suit by terms of O. II, R. 2, C.P.C. was applicable to the present case---High Court declined to interfere in the order passed by Lower Appellate Court which rightly held that second suit instituted by petitioners/plaintiffs was hit by bar contained in O. II, R. 2, C.P.C.---Constitutional petition was dismissed accordingly. [pp. 616, 621] F & I*

Rasul Khan v. Qalandar Din and 4 others 1988 CLC 323; Mahndi v. Muhammad Ramzan and 3 others 1994 MLD 686; AIR 1925 Lahore 459; AIR 1930 Lahore 634; Messrs Virgo Industries (Eng.) Pvt. Ltd. v. Messrs Venturtech Solutions Pvt. Ltd. (2013) SC 290; Adams v. California Dep't of Health Servs. 487 F.3d 684, 688- 689; Hartsel Springs Ranch of Colorado, Inc. v. Bluegreen, 296 F.3d 982 (10th Cir. 2002; Katz v. Gerardi 655 F.3d 1212, 1219; Vanover v. NCO Fin. Servs. Inc., 857 F.3d 833, 840 n.3 and Muhammad Saleem Ullah and others v. Additional District Judge, Gujranwala and others PLD 2005 SC 511 rel.

**(f) Civil Procedure Code (V of 1908)---**

*----S.11 & O.II, R.2---Principle of res judicata and bar against splitting of claim---Scope and distinction---Principle of res judicata states that where there is a judgment inter parties a fresh suit on the same subject matter is barred---Principle contained in O. II, R. 2, C.P.C., by contrast simply bars second suit in case plaintiff omitted or relinquished any claim/relief that he could seek in the first suit---Where Civil Procedure Code, 1908, required, as in S. 11, C.P.C., it expressly stated its intention of having a final decision in prior proceedings---There is a marked difference between the two principles---Rule of claim/relief splitting in its exposition and despite its subtleties does not admit of a construction requiring mandatorily a final decision on merits in the first suit. [p. 619] G*

**(g) Civil Procedure Code (V of 1908)---**

*----O.II, R.2 & O.VII, R.11---Splitting of claim, bar against---Effect---*

*Determination that a suit is barred under O. II, R. 2, C.P.C. can only translate into rejection of plaint under the provisions contained in O. VII, R. 11, C.P.C. [p. 620] H*

Jewan and others v. Federation of Pakistan and others 1994 SCMR 826 rel.

Azhar Maqbool Shah for Petitioner No. 1.

Muhammad Shahzad Shaukat for Petitioner No.2.

Sh. Usman Karim ud Din for Respondent No.2.

Mian Kashif Ashfaq for Respondents Nos:3 to 8.

Khalid Ishaq, Faizan Ahmad, Ahmer Waseem Malik, **Usman Nair Awan**, Adeel Shahid Kareem, Ahmad Saeed, Abid Sial and Wajahat Ali for Respondent No.10.

Date of hearing: 2nd June, 2023.

#### JUDGMENT

SHAMS MEHMOOD MIRZA, J.---The orders passed by the courts below are at variance on an application filed by respondents No.2 under Order VII Rule 11 of the Code of Civil Procedure 1908 (the Code). The trial court dismissed the application on 16.10.2020 whereas the additional district judge while accepting the revision of respondent No.2 on 31.03.2021 allowed the application and rejected the plaint of the suit of the petitioners in terms of Order II, Rule 2 of the Code.

2. The relevant facts necessary for the decision on the issue involved in this petition may be stated as follows. The parties who are closely related with each other are litigating over the estate left by Mian Muhammad Sharif, their predecessor-in-interest. Mst. Naseem Akhtan and Shughfta Saleem, the mothers of the petitioners, were the daughters of Mian Muhammad Sharif. The petitioners in the two suits filed by them claimed share of their mothers in the estate of Mian Muhammad Sharif and challenged the Deed of Family Settlement registered on 03.08.1991 (deed of family settlement) and Surrender Deed registered on 13.08.1999 (surrender deed) through which the properties left behind by Mian Muhammad Sharif were distributed amongst his legal representatives.

3. The first suit was filed on 12.05.2016 by petitioner No.1 (first suit) in which petitioner No.2 was cited as defendant No. 10. She was subsequently transposed as co-plaintiff. This suit made a challenge to the surrender deed.

4. While the first suit was pending, the petitioners instituted the

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