

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Suit No. 14 of 2017

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DATE                      ORDER WITH SIGNATURES OF JUDGE(S)  
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1. For orders on CMA No.112/2017
2. For orders on CMA No.113/2017

06.01.2017

Mr. Muhammad Mustafa Hussain, Advocate for the plaintiff  
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1. Urgency application is granted.
2. Through the instant application, the plaintiff has sought order restraining defendant Nos. 1 to 3 from selling Bungalow No. 49, 23<sup>rd</sup> Lane, measuring 1008 square yards, Phase VII, DHA, Karachi (the property) or creating third party interest thereon till the final decision of the above suit.

Apprising grounds of the instant application and the present suit, the counsel appearing for the plaintiff submitted that the plaintiff is a Real Estate Agent operating under the name and style of Shaukat Ali Enterprises as property dealer and was interested in purchasing the aforesaid property (probably for some of his clients), which per counsel, was available for sale in the sum of Rs.97 million and he contends that on 10.12.2016, the plaintiff received a SMS from Mobile Number 0333-3323231 purporting to be one of the representative of the owner, where the sender wrote him as under:-

“Final Price 970 and one is condition kindly do payment before 24 December 2016, and you will get 1% percent, And you should best try to make convince him for 975, Thanks S M Umar.”

Whereupon some of his clients (not even made a party) responded by a SMS saying the he is willing to make the payment by 24.12.2016. However, per counsel, they were shocked when they saw a public notice in the newspaper dated 16.12.2016,

where a notification of this intended sale of the aforesaid property was advertised. Per counsel, against this, they immediately sent a legal notice to the owner, as well as, the respective property agent and thereafter published a notice in the newspaper daily "Dawn" on 21.12.2016 alleging that third parties be refrained from entering into any agreement with the owner of the above property since the defendant's clients have already agreed to sell the said property to his clients.

Not only that the plaintiff published the said newspaper, his counsel also sent a letter to the Sub-Registrar of Clifton Town, Karachi contending that his client is filing a suit for Specific Performance before the High Court of Sindh against the owner/sellers of the aforesaid property and that they are intending to join the Registrar as defendant No.4 and the summons would be served upon him and all other parties in due course. This notice is reproduced as Annexure-E to the instant Suit, which has been filed for specific performance, injunction and alternatively damages for breach of contract.

When posed with the question as to whether the parties ever entered into any written agreement or any token for advance or any money has been paid by the intending buyer to the seller, the counsel said that neither any such agreement was signed nor any payment has been made. As it is in the common knowledge that to succeed any suit for Specific Performance, the following three ingredients to be present (a) a valid agreement for sale entered into by defendant in plaintiff's favour giving the terms thereof; (b) the defendant committed breach of the contract; and (c) that the plaintiff is ready and willing to perform his part of the obligation in terms of the contract, notwithstanding therewith pursuant to Section 12 of the Specific Relief Act, 1877 discretion of the Court can only be enforced in the circumstances enumerated in the

aforesaid section. This also being the fact that the power available to the Court while dealing with the suit for Specific Performance is even otherwise discretionary and there is no mandate that the Court must decree such a suit.

The case at hand appears to be most vicious with no legal foundation, no agreement at hand, no contract having been made and no evidence being submitted as to any cause of action having been arisen. It seemingly has been filed to prejudice the constitutional rights of the owner of the aforesaid property and to infest the property with the objective of hampering its market value and forcing the defendants to sell the property to the plaintiff only. Such frivolous litigation while at one hand builds pressure on the justice dispensation system and at the same time distorts image of the courts creating ill-will. Courts time and again have cautioned the institution of such frivolous, meritless and vicious litigation and have directed that such litigation should be nipped in the bud at the initial state.

In the given circumstances, the instant suit being unnecessary and frivolous litigation taxing the justice delivery system, and in the light of pronouncement made as 2015 CLC 34, 2014 CLC 110, 2007 PTD 1195 (Supreme Court), 2007 SCMR 140, 2007 PLD SC 386, 2007 PLD Lahore 274, 2006 SCMR 830, 2005 CLC 1223, 2005 MLD 1940, 1994 CLC 2443, 1993 MLD 486, 1993 MLD 310 and 1986 MLD 1961 not only the instant application is dismissed with the cost of Rs.10,000/- payable to the Library of the High Court, the instant plaint is also rejected under Order VII Rule 11(a) C.P.C 1908.

JUDGE