

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
 Suit No.867 of 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of CMA Nos:-

1. 2387/11 (U/O VI Rule 17 C.P.C)
2. 10140/12 (U/O 11 Rule 18 CPC.)
3. 464/13 (U/A 76 QSO)
4. 9729/13 (U/O 39 Rule 1 & 2 CPC.)
5. 11209/13 (U/O VI Rule 17 C.P.C)

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27.03.2017

Mr. Mian Mushtaq Ahmed, Advocate for Plaintiff.  
 Mr. Aga Zafar, Advocate for defendants.

1 & 5. Through these two applications filed under Order VI Rule 17 C.P.C, the plaintiff seeks amendment in certain paragraphs of the Plaintiff as well as prayer clause. Learned Counsel for the plaintiffs submits that the amendment being sought through these two applications are necessary for the proper adjudication of this case, as defendant No.1 while misusing the authority of the plaintiffs given through a Power of Attorney has fraudulently transferred the shares of Defendant No.19 in his own name and in the names of his close fiduciary relatives, who are also defendants in this matter. Insofar as CMA No.11209/2013 is concerned per learned Counsel after passing of Order dated 20.3.2012 in HCA No.148/2010. The said amendment is also necessary, hence both these applications be allowed.

On the other hand, learned Counsel for the defendants submits that through these two applications, the plaintiffs intend to seek enlargement of time as their claim is hopelessly time barred. Whereas, all these alleged facts, which are now being averred through proposed amendments were very much in their knowledge at the time

of filing of this Suit, therefore, per learned Counsel these applications are liable to be dismissed.

I have heard both the learned Counsel and perused the record. Instant Suit has been filed for Declaration, Possession, Recovery of Mesne Profit, Rendition of Accounts, Permanent and Mandatory Injunction and the case of the plaintiffs is that defendant No.1 on the basis of a Power of Attorney given by the plaintiffs for a limited purpose has fraudulently and without their knowledge transferred shares of Defendant No.19 in his favour and other defendants, which he was not lawfully entitled to do so. According to the plaintiffs' case, the defendant No.1 was to act only as an attorney to manage the shares of Late S.M. Asim, who is their uncle and from whom they purportedly inherited shares in defendant No.19 Company. On perusal of the plaint, it appears that the plaintiffs have time and again averred that they being legal heirs of Late S.M. Asim are real beneficiaries of the shares of Defendant No.19, whereas, the defendant No.1 fraudulently while acting as their attorney has transferred the shares in his name and in the name of other defendants. They have also alleged that the defendant No.1 has additionally repurchased the shares of Defendant No.19 out of the sale proceeds of the Textile Export Quota, Stock Machinery and Spares, which were also inherited by the plaintiff from late S.M. Asim. These averments in the plaint clearly reflect that the plaintiffs while filing this Suit have alleged fraud and misrepresentation on the part of defendant No.1 while acting as their attorney. Once they allege that the attorney had acted fraudulently in transferring their shares, the plaintiffs ought to have claimed the entire relief in their original plaint. Alongwith the plaint, they themselves have filed Form-A issued by SECP in respect of Defendant No.19 in which the transfer

of such shares is reflected. Once it came in their knowledge that shares were transferred whether rightly or wrongly, they were required to seek all relief(s) at the time of filing of original plaint. The amendments now being sought do not seem to be justified inasmuch as in the original prayer clause, a declaration was sought to the extent of transfer of shares of Defendant No.19 left by Late S.M Asim being owned by them as legal heirs and defendant No.1, 6 & 11 by acting as attorney(s) had repurchased certain shares out of the sale proceeds as stated hereinabove. This clearly reflects that the plaintiff's case was known to them vis-a-vis defendant No.1 and his alleged conduct. If the permission being sought through both these applications is granted then the same would be hit by the provisions of Order II Rule 2 CPC as the plaintiffs ought to have claimed the entire relief in their original plaint and not subsequently. The plaintiffs' Counsel has been unable to convince the Court as to how these amendments can now be allowed as nothing has been pleaded in both these applications specifically as of any subsequent information, which has been received by the plaintiffs.

Moreover, though it is settled law that the provisions of Order VI Rule 17 CPC is there to enable a party to seek amendments in the pleadings, and is to be applied liberally to meet the ends of justice. But at the same time such amendments cannot be allowed, which are mala fide, or will change the whole nature or character of the suit to the prejudice of the opposite party. (***Dr. Hasan Mahfuz Jalisi v Khawaja Moinuddin- PLD 2006 Karachi 98***). Amendments were to be allowed if the same were necessary for accurate determination of a dispute between the parties and at any stage if the same did not change the complexion of the suit altogether or introduced a new cause of action and it did not prejudice to the other party. Amendments to a plaint could not be allowed on ground of findings

made by another tribunal in respect of same subject matter. And rights accrued in favor of one party could not be allowed to be snatched away by allowing amendment in a casual manner unless it qualified the test based on the established principles. (***See Karachi Electric Supply Corporation v Muhammad Shahnawaz-PLD 2017 Sindh 23***)

The plaintiffs case does not overcome the aforesaid tests, therefore, in view of hereinabove facts and circumstances of the case, I see no reason to grant both these applications for amending the plaint and accordingly they are dismissed.

2,3 & 4. Adjourned.

J U D G E

Ayaz P.S.