

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
 Suit No.373 of 2014

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DATE ORDER WITH SIGNATURE OF JUDGE

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For hearing of CMA No.10712/17  
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09.02.2018

Mr. Ghulam Akbar Lashari, Advocate for Plaintiff.  
 Mr. Raja Sikandar Khan Yasir, Advocate for Intervener.  
 Mr. Suneel Kumar Talreja, AAG.

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This is an Application under Order 1 Rule 10 CPC filed on behalf of Intervener requesting the Court to join him as a Defendant in this matter. Learned Counsel for the Intervener submits that the predecessor in interest of Intervener was admitted as a Member of Defendant No.2 (Architects & Engineers Employees Co-operative Housing Society Limited) on 03.09.1972, whereafter the Suit Plot was allotted on 01.01.1983 and Possession Order was issued on 17.12.1983 to him, whereas, the same plot is now being claimed by the Plaintiff, hence instant Application. He further submits that the Suit plot was then purchased by the Intervener on 04.08.1999, whereas, the transfer was affected before Defendant No.2 on 26.08.1999 and Agreement and Power of Attorney were executed on 06.01.2005 and 23.05.2006, respectively, which leads to the conclusion that the Intervener is lawful owner of the Suit Plot. He further submits that the report furnished by the Ex-Chairman of the Society is not based on true documents, whereas, the ownership and title of the Plaintiff itself is doubtful, therefore, the Intervener be joined as a Defendant to lead evidence and prove his case. In support he has relied upon **1991 SCMR 1656** (*Bashir Ahmad and others v. Ghulam Ali and others*).

On the other hand, learned Counsel for the Plaintiff submits that the Plaintiff is lawful owner of the property on the basis of a Lease Deed executed on 10.06.1989, whereas, due to dispute amongst the allottees an order was passed in C.P No.795/1993 by this Court, whereby, Nazir was appointed as Administrator and the Membership of the Plaintiff stands verified, therefore, there cannot be any exception to the Plaintiff's claim. He submits that the Defendant No.1 had encroached upon and forcefully taken over the possession and through Order dated 29.03.2017, the possession was taken over by the Nazir of this Court. Per learned Counsel the same applicant/Intervener had earlier filed CMA No.6544/2017 through another Counsel, which was dismissed for non-prosecution on 29.05.2017 and now without any lawful

justification, the same party has filed instant application which is liable to be dismissed.

I have heard both the learned Counsel and perused the record. This is a Suit, wherein, the Plaintiff claims title to the Suit Property on the basis of an Allotment and Lease duly executed in his favour, whereas, the Defendant No.2 Society had various disputes and therefore this Court through an order passed in CP No.795/1993 appointed the Nazir as Administrator of the Society with directions to compile a list of valid members of the Society. The relevant portion of the list has been placed on record, which reflects that the Plaintiff was a member of the Society at the relevant time and was allotted a plot against which there are no adverse remarks of the then Administrator. Learned Counsel for the Intervener was confronted as to what happened to his status in the said exercise carried out by the learned Administrator to which the learned Counsel had no answer. If the Intervener claims ownership of the Suit Plot being purchased from a bonafide member of the Society way back from 1972 then how come there is no mention of the membership status of the predecessor-in-interest of the Intervener as the said member ought to have approached the learned Administrator or the Court as to genuineness of his membership. Time and again learned Counsel for the Intervener was confronted to this issue. He, however, submits that the ownership and title documents of the Plaintiff are forged, therefore, the Intervener may be joined as a Defendant to lead his evidence. However, I am not inclined to accept such contention for the simple reason that an Intervener cannot be joined as party by pointing out any defect in the alleged ownership of the Plaintiff, whereas, it is incumbent upon the intervenor to establish his case on its own documents. The documents annexed with this application reflect that the applicant purportedly purchased the plot/allotment order of the predecessor-in-interest on consideration, whereas subsequently firstly it was transferred in the name of one Abdul Samad by the original allottee namely Syed Qaiser Kamran, from whom the applicant has purchased the same on the basis of an agreement. However, instead of a transfer by the Society he has been given a Power of Attorney, which he claims to be a registered document. At the very outset, I may observe that it is very strange that a registered Power of Attorney has been executed in respect of an Allotment Order, which by itself is not a title document or a registered document. If the plot was purchased by the Intervener then he ought to have only obtained a Transfer Order in his favour, whereas, apparently no registered instrument could have been executed merely in lieu of an Allotment Order. Moreover, by that time the affairs of the Society were already taken over by the Administrator appointed by the Court and perhaps for this reason, the applicant has no transfer order in his name from the office of the Society and or Administrator. This creates serious doubts as to the claim of Intervener in this Suit.

Notwithstanding this, it further appears that earlier CMA No.6544/2017 was filed by the same applicant namely Liaquat Ali through an Attorney and the same documents were relied upon as annexed with this application and when notice was ordered on this application, no one turned up to get the notices issued and thereafter this application was dismissed for non-prosecution on 19.05.2017 and while confronted learned Counsel submits that perhaps that application was not properly drafted, whereas, instant application has now been filed by the original allottee of the plot. Firstly, after dismissal of an application for non-prosecution, no fresh application ought to have been filed by the same applicant. Moreover, listed application as well as the earlier one, both were filed by Liaquat Ali himself and it is only a juggling of words in the title of the application, whereby, an impression has been created that this application has been filed by the original owner, which is not the case. Even otherwise since according to the Intervener he has purchased the plot and a registered Power of Attorney has been executed, therefore, insofar as the original allottee is concerned, he is not an owner nor he claims any right or title in the said plot, therefore, on this account also this application appears to be misconceived as well as not maintainable in view of the dismissal of the earlier application. Accordingly, by means of a short order, instant application was dismissed in the earlier part of the day by imposing cost of Rs.5000/- to be deposited in the Account of High Court Clinic and these are reasons thereof.

Judge

Ayaz