

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
**Suit No.925 of 1997**

Date	Order with signature of Judge
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Plaintiff : Qurban Ali  
None present for the plaintiff.

Defendant No.1 : The Trustees of the Port of Karachi  
through Mr. Khaleeq Ahmed, advocate.

Defendant No.2 : Begum Samad Khan  
None present for defendant No.2.

Defendant No.3 : M/s. Pakistan State Oil  
through Mr. Shahid Qadeer, advocate.

Date of hearing : 08.03.2018

Decided on : 08.03.2018

**JUDGEMENT**

**Nazar Akbar.J,-** Plaintiff has filed this suit for specific performance, permanent injunction and damages for Rs.10.5 Million. The claim of the plaintiff in the suit is that he is successor-in-interest of ex-dealer of defendant No.3 and he has made huge investment in the business. Defendant No.1 is owner of plot of land measuring 697 sq. meters at Agha Khan Road and defendant No.2 is leasee of said plot for petrol pump. The plaintiff also by an application under Order 1 Rule 10(2) CPC impleaded PSO (defendant No.3). Defendant No.1 had asked defendant No.3 by letter dated **07.4.1997** to shift the premises where originally a petrol pump by name and style of Standard Vaccum Oil Company, was in operation. The land belongs to KPT (defendant No.1) and the plaintiff from the said letter between defendants No.1 & 3, has shown his cause of action and file the present suit for specific performance of agreement between the parties and alternately damages to the tune of Rs.10.5 Million.

2. The defendants in their respective written statements have disputed the claim of the plaintiff and denied the contents of the plaint in

toto. The defendants have taken specific plea of lack of privity of contract between the plaintiff and defendants No.1 & 3 as well as cause of action.

3. The Court from the pleadings has framed the following issues on **16.08.1999**.

- i. Whether the plaintiff had no privity of contract with the defendant No.1 and 2? If so, what is the effect?
- ii. Whether the plaintiff failed to serve on the defendant No.1 notice under Section 87 of KPT Act? If so, what is the effect?
- iii. Whether the plaintiff has no cause of action against defendant No.2?
- iv. What should the decree be?

4. Evidence was recorded through commission and it was taken on record by order dated **31.1.2011**. Since then the case has been listed for final arguments. Except on one or two occasions, the plaintiff counsel has never come forward to make his submission. He is again absent. However, I have heard learned counsel for defendants No.1 & 3 and examined the evidence.

5. My findings on the above issues with reasons are as follows:-

6. The record and evidence, I have examined, clearly indicate that the plaintiff has not produced any document to spell out any contract or agreement between the plaintiff and any of the defendants. The cause of action said to have been accrued to the plaintiff as shown in the plaint is based on correspondence between defendants No.1 & 3 (Ex.P/3 & P/4). None of these documents refers to any rights of the plaintiff. There is a definite issue regarding service of notice under **Section 87** of the KPT Act, 1886 and record shows that the plaintiff has not even filed a bogus copy of notice. May be after evidence as discussed above, the absence of the plaintiff counsel from the Court was quite justified since the plaintiff has no privity of contract nor he has sent notice under **Section 87** of the KPT Act 1886 before filing of this suit. Therefore, Plaintiff had no cause of action to institute the instant suit.

7. In view of the above discussion, all the issues are decided in the affirmative and the suit is dismissed with no order as to cost.

JUDGE

SM