

## ORDER SHEET

**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 389 of 2013

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No.7678/2013 (U/O 39 Rule 4)
2. For hearing of CMA No.7300/2017 (U/O 7 Rule 11)
3. For hearing of CMA No.7301/2017 (U/S 151)

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23.11.2017.

None present for Plaintiff.

Dr. Farogh Naseem Advocate for Defendant No.3

1) In view of the order passed on 18.11.2016 whereby, the injunction application was dismissed; this application has become infructuous and is accordingly dismissed as infructuous.

2) This is an application under Order VII Rule 11 CPC filed on behalf of Defendant No. 3 on the ground that the Suit is barred in law and so also is without any cause of action. Learned Counsel for Defendant No. 3 submits that initially this Suit was filed against Defendants No. 1 and 2 and thereafter, on an application of the present Defendant as an Intervener he was joined as Defendant No. 3. He submits that Defendant No. 3 is the actual and current owner of the property in question whereas, the Suit filed by the Plaintiff is collusive in nature as according to the Plaintiff the Defendant No. 1 was his employee and the Suit plot was purchased in his name as a Benami owner. Per learned Counsel the said purchase was admittedly made in the year 2005 after which the Suit property has been transferred in the name of various persons and instant Suit has been filed in the year 2013 which is hopelessly time barred. He further submits that neither there is any privity of contract between Plaintiff

and Defendant No. 3 nor there is any cause of action in respect of the property in question which could be agitated in this Suit. Per learned Counsel because of pendency of this Suit the Defendant No. 3 is unable to sell his property as DHA has put a caution which is seriously prejudicing the interest of Defendant No. 3 who in fact is the lawful and bonafide owner of the property in question.

I have heard the learned Counsel for Defendant No. 3 and perused the record. None is in attendance on behalf of the Plaintiff and perusal of the record reflects that the Plaintiff had lastly appeared before the Court on 8.10.2015 and had requested for time to engage a new Counsel but admittedly no Counsel has been subsequently engaged whereas, from that date onwards none has been present before the Court. In view of such position, on 18.11.2016 the injunction application was dismissed for non-prosecution.

Insofar as the Plaintiff's case is concerned, in the plaint in Para 3, it has been stated that the property in question i.e. Plot bearing No. 41-C, Sahil Commercial, Street 17, Phase VIII, E-8, DHA, Karachi (Subsequently adjusted as Plot No.47-C, Khayaban-e-Usman, Phase VIII-E-8) was transferred in the name of Defendant No. 1 on 31.1.2005. It is further stated that in December, 2012 the Plaintiff requested Defendant No. 1 to transfer the property in his name and upon failure instant Suit has been filed and a restraining order was obtained. Perusal of the record reflects that Plaintiff itself admits that the Suit property was transferred in the name of Defendant No. 1 in 2005 and it is only in 2012 when he approached Defendant No. 1 for transferring the same in his name. In the plaint, it has not been explained that what action was taken between 2005 and 2012 and there is no justification for such delay on the part of the Plaintiff. The Plaintiff has failed to disclose the actual cause of action and has jumped over to the year 2012 so as to cover the bar of limitation. It has come on record through written statement of Defence Housing Authority that the property was

transferred in the name of Defendant No. 1 on 13.1.2005 who then transferred it in favour of Mst. Kausar Aman on 9.9.2006 who thereafter transferred the same in favour of Mr. Haider Sarfaraz Abidi on 6.8.2007 and who thereafter transferred the said plot in the name of Muhammad Rafiq / Defendant No. 3 on 8.4.2013. Since 2005 the property has been transferred to at least three persons and the Plaintiff never bothered to inquire or to seek any information regarding status of his alleged Benami property. In these circumstances, the Suit of the Plaintiff appears to be hopelessly time barred coupled with the fact that there is no cause of action left in respect of the said property at least. If the Plaintiff's case was of any recovery again the same is barred by limitation. In view of such position, I am of the view that no useful purpose would be served if this Suit is kept pending, wherein, even otherwise, Plaintiff appears to have lost interest in proceeding. Accordingly, the application under Order VII Rule 11 CPC is allowed and the plaint is hereby rejected being barred in law.

3) In view of the order passed as above whereby, the plaint stands rejected no further orders are required to be passed on this application as Defendant No. 2 is supposed to act in accordance with law and considering the fact that no lis is now pending before the Court.

**J U D G E**

ARSHAD/