

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Suit No. 127 of 2011**

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**DATE:** **ORDER WITH SIGNATURE(S) OF JUDGE(S).**

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1. For hearing of CMA No.2555/18
2. For Examination of Parties/Settlement of Issues.

**04.10.2018.**

Ms. Nausheen, Advocate for the Plaintiff.  
Mr. Meetha Ram, Advocate for the Defendant No. 1.

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1] This is an application filed under Order VII Rule 11 CPC, that the  
plaint of the present suit be rejected.

Learned counsel for Defendant No. 1 has argued that two properties are the subject matter of the proceedings viz. (i) Quarter / House No. 19, Block No. 30, Sector 11-F, New Karachi, Karachi measuring 120 square yards and (ii) House No. 20, Block No. 30, Sector 11-F, New Karachi, Karachi, measuring 120 square yards, about the second property, there is no dispute that it was purchased by Defendant No. 1 in auction proceedings through a judicial sale and Defendant No. 1 has paid off the respective shares in inheritance to Plaintiff and other Defendants. However, with regard to the first property, it is stated that it was already in the name of deceased husband of Defendant No.1 (namely Hayat Muhammad Ghor). Learned counsel for Defendant No.1 has referred to the registered Lease Deed appended with application as Annexure 'P-4' and the Transfer Order as Annexure 'P-5' to further substantiate his arguments that the property in question was subsequently transferred in the name of the present Defendant No.1. In these circumstances, he submits that no cause of action has accrued to the Plaintiff for maintaining the present suit.

Learned counsel for the Plaintiff has controverted the above arguments and has referred to the earlier order of 14.03.2016, under which

an earlier application being C.M.A. No. 6325 of 2015, filed by the same Defendant No.1 in respect of the same property, was dismissed vide order dated 14.03.2016, which order was never appealed against and is still holding the field. In the said order, certain observations have been made, which cannot be over looked at this stage.

Arguments heard record perused.

The important aspect highlighted in the above order is the transfer of the first property/Quarter No. 19 in the name of the deceased husband of Defendant No.1. It was further observed and rightly so, that when allegations of fraud are leveled against Defendant No.1, it would not be appropriate to decide such issues at this stage without a proper trial. Secondly, after the above order, filing the application on the same ground in respect of the same property, is not permissible. Principle of *res judicata* as envisaged under Section 11 of C.P.C. is also applicable to the interlocutory applications of the nature. If such applications are allowed to be entertained regarding which orders have already been passed, which have also attained finality, then a proceeding will not come to an end rather it will keep on prolonging.

A reported case of this Court – 2016 Y L R Note-133 (Sindh) [*Mrs. Zareena v. Islamuddin and 3 others*] has earlier decided the above proposition.

In view of the above, application [C.M.A. No. 2555 of 2018] is dismissed.

2] Deferred.

Adjourned to a date in office.

**Judge**