



meant for houses; therefore, as of today directions of the Hon'ble Supreme Court of Pakistan will take precedence over any proceedings in the courts subordinate to it and it is important for applicant to intervene as plaintiff in order to assist the Court in deciding the pending application. In support of his contentions, learned counsel has relied on the case of *Nazar Gul v. Maymar Housing Services (Pvt.) Ltd.* **(2019 MLD 212)**.

On the other hand, learned counsel for the defendants No.1 to 5 while opposing this application has maintained that the applicant/intervenor has no *locus standi* for adding as co-plaintiff in this suit. He has further maintained that after completing all legal, codal and technical formalities the competent authorities granted approval of building plan for basement (Air Raid shelter & Parking) + Ground Floor (Recreation & Flats) + 1<sup>st</sup> floor to 4<sup>th</sup> Floors (Flats) vide letter dated 26.10.2016, much prior to the order of Hon'ble Supreme Court of Pakistan dated 22.1.2019. He has also maintained that the applicant/intervenor cannot have a better claim in respect of subject construction than the claim of the plaintiffs No.1 to 11 who are the residents of the locality and plaintiff No.11 Muslimabad Cooperative Housing Society; hence, the applicant/ intervenor is neither necessary nor proper party to join the suit.

Learned counsel for the plaintiff No.1 to 10 has filed a statement to the effect that they have no objection on joining of applicant/intervenor as co- plaintiff.

Heard the learned counsel for the parties and perused the material available on record.

The plaintiffs have filed this suit for declaration and injunction, impugning the construction of a four storey project of apartments

raising by the defendants No.1 to 5 on plot No. 46, Survey No. J.M. 9-77, Sheet No.11, measuring 1500 Sq.yds, situated in Muslimabad Cooperative Housing Society Limited, Jamshed Quarters, Karachi. The proposed building plan was approved by the then Dy. Director S.B.C.A. on 26.10.2016. It is the case of the plaintiff that in terms of the By-laws of the said Society, except ground +two, no such constructions of a four storey building is permissible. The applications filed by the plaintiffs for injunctive reliefs being C.M.As. No. 14630 & 14631 of 2016 were allowed by this Court to the extend defendants No.6 shall not permit raising construction on the suit plot over and above 50% foot print, with compulsory open space as provided in regulation 25-2 and FAR of 11:1.75 as provided in Clause 25-9.1.2. The defendants No, 1 to 5 preferred H.C.A No. 131 of 2017 against the said order, which was allowed by a Divisional Bench of this Court vide order dated 28.10.2019. Against that order, the plaintiff did not prefer any appeal before the Hon'able Supreme Court of Pakistan; hence the said order of Divisional Bench has attained finality.

So far the application in hand is concerned, it may be observed that under Order I, Rule 10(2), C.P.C. two classes of persons, namely, necessary parties and proper parties can be joined. The former consists of persons who ought to have been joined as parties and the later of persons without whose presence the question in the suit cannot be completely and effectually adjudicate upon. If a person/ intervenor does not fall in either of two these classes, that is to say he is neither a necessary nor a proper party, then the Court has no jurisdiction to add him as a party under this sub-rule. It may also be observed that addition of a party may be made in order to enable Court to adjudicate upon and settle effectually and completely all question involved therein. Therefore, the Court will not give leave to add a party where the result would be to introduce a new cause of

action which the plaintiff has not set forth in plaint or which may convert a suit of one character into a suit of a different character. It has been observed by this Court in the case of *Abdul Razzak Tabba and 2 others v. Jetpur Memon Relief Society through Honorary General Secretary and 3 others* (1999 CLC 2077) that where intervenors who sought to be impleaded in suit filed by the plaintiffs, were neither necessary nor proper party, but only wanted to introduce a fresh cause of action in the suit, the Courts in exercising their powers under Order 1, Rule 10, C.P.C. should not load the record by impleading such parties who have no interest in the suit and that the trial of the suit is not embarrassed by the simultaneous investigation of totally unconnected controversies.

For the foregoing facts and reasons, I am of the view that the applicant/intervenor is neither necessary nor proper party as it wants to introduce a fresh/new cause of action in this suit. Hence, this application (CMA No.6375 of 2020) is rejected. However, it would be open to the applicant/intervenor to file a separate suit provided they have any cause of action against the defendants.

1 to 6.           Adjourned to 03.09.2020

JUDGE