

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

Suit No. 1676 of 2016

Plaintiff : Manzoor Ahmed Soomro, through
Mr. S. Shahid Mushtaque,
Advocate.

Defendant No.1 : Hameed Ahmed, through Mr.
Mukhtair Ali,, Advocate.

Defendant No.2 : Arif Latif, through Mr. Muhammad
Haseeb Jamali, Advocate.

Dates of hearing : 16.10.2019, 24.10.2019,
15.11.2019 and 06.12.2019

ORDER

YOUSUF ALI SAYEED, J – Possession of the immoveable property that is the subject of the Suit, being a plot of land measuring 05-39 acres/ghuntas out of Survey No.244, Jiryan No.1612 and measuring 05-39, acres/ghutas out of Survey No.245 Jiryan No.1613 both situated at Deh Drigh, Tapo Malir, District Malir, Karachi (the “**Suit Property**”) was taken over by the Nazir in pursuance of the Order made on 14.10.2013 in Suit No. 400/2013 that had been filed by the present Defendant No.1, seeking specific performance of a sale agreement between him and the present Defendant No.2.

2. Suit No. 400/2013 was then unconditionally withdrawn on 01.08.2016, with an Order then being made on 29.08.2016 that possession of the Suit Property be returned to the Defendant No.1. However, such Order was then modified on a Review Application filed by the Defendant No.2, with it being clarified vide Order dated 10.05.2018 that possession was not be handed over, but was to remain with the Nazir in view of the pendency of another Suit, which per learned is the present Suit, and the Parties being left at liberty to agitate their plea accordingly.

3. Subsequently this Suit was also unconditionally withdrawn on 05.03.2019, following which CMA No. 4044/2019 has been filed for possession of the Suit Property to be returned to the Defendant No.2. The Application has been supported by the Plaintiff, but has been opposed by the Defendant No.1, who has filed CMA No. 4745/2019 seeking that possession of the Suit Property not be handed over to the Defendant No.2 till final decision of another Suit subsequently instituted by the Defendant No.1, being Suit No. Nil (-1163) of 2018, titled "Hameed Ahmed v. Arif Latif and others."

4. On the preceding date, it had accordingly been ordered that such subsequent Suit of the Defendant No.1 be tagged with this matter and learned counsel for the Defendants No.1 and 2, who are the only contesting parties, have accordingly been heard on pending CMA Nos.4044/2019 and 4745/2019 in this Suit as well as the question of maintainability arising in Suit No. Nil (-1163) of 2018 with reference to the unconditional withdrawal of Suit No.400 of 2013, on which score an Objection had been raised by the Office upon presentation of the plaint.

5. Learned counsel for the Defendant No.1 sought to contend that the Order of 10.05.2018 made in Suit No. 400/2013 afforded a cause of action to the Defendant No.1 to reassert his claim to specific performance of the agreement of sale in respect of the Suit Property and impugn any subsequent transactions in relation thereto which were in derogation of his entitlement under such agreement, hence the Suit subsequently filed in that regard was maintainable, and in view of the pendency thereof, possession of the Suit Property ought not to be handed over to the Defendant No.2.

6. On the other hand, learned counsel for the Defendant No.2 submitted that Suit No. 400/2013 had been filed seeking specific performance of a sale agreement and upon unconditional withdrawal of that suit the Plaintiff had voluntarily abandoned his claim under that sale agreement and was estopped from espousing any further right to possession of the Suit Property on that basis. He submitted that in view of such unconditional withdrawal, the subsequent Suit of the Defendant No.1 was barred and the Defendant No.1 could not once again advance a prayer for specific performance of that same agreement. That being so, and since he otherwise had no interest in the property, he had no locus standi to assail any further transaction as may have been entered into by the Defendant No.2 with any third party in respect of the Suit Property or otherwise object to possession thereof being handed over to the Defendant No.2.

7. Having considered the arguments advanced and examined the record of Suit No.400 of 2013, it is apparent that the claim of the Defendant No.1 in relation to the Suit Property was confined to and advanced on the basis of the sale agreement said to have been executed between him and the Defendant No.2, which itself is an acknowledgment of the latter's title. Needless to say, even if it is asserted that the Defendant No.1 was in possession of the Suit Property at the time when the same was taken over by the Nazir, such possession could at best have been in pursuance of the sale agreement in respect of which Suit No. 400 of 2013 had been filed. Upon the unconditional withdrawal of that suit, the Defendant No.1 stood disentitled from thereafter asserting his right to specific performance of such sale agreement and cannot therefore seek possession of the Suit Property or assail any transaction as may have ensued in respect thereof. As

such, the subsequent Suit titled “Hameed Ahmed v. Arif Latif and others”, bearing No. Nil (-1163) of 2018 does not afford any ground to the Defendant No.1 to resist the handover of possession of the Suit Property to the Defendant No.2 and it is apparent that such Suit is barred by virtue of Order 23, Rule 1(2) CPC, with an Order being separately recorded in that matter in that regard. That being so, CMA No.4044/2019 is hereby allowed, whereas CMA No. 4745/2019 is dismissed. Accordingly, the Nazir is directed to hand over possession of the Suit Property to the Defendant No.2 or his duly authorized representative, upon proper identification and fulfilment of codal formalities.

JUDGE

Karachi
Dated _____