

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO. 593 / 2010

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For hearing of CMA No. 3865/2010.
- 2) For hearing of CMA No. 1967/2011.
- 3) For hearing of CMA No. 1970/2011.
- 4) For hearing of CMA No. 7673/2011.
- 5) For hearing of CMA No. 2178/2012.
- 6) For hearing of CMA No. 3568/2012.
- 7) For hearing of CMA No. 12583/2012.
- 8) For hearing of CMA No. 1896/2013.
- 9) For hearing of CMA No. 1719/2011.
- 10) For orders on Nazir report dated 19.1.2013.
- 11) For hearing of CMA No. 11896/2013.

27.9.2016.

Mr. Amir Asher Azeem Advocate for Plaintiff.

Mr. M. Nazeer Tanoli Advocate for defendant Nos. 1 to 3.

Mr. Muhammad Nishat Warsi Advocate for defendant Nos. 5 & 6.

1, 2 & 3. This is a Suit for recovery of Rs.83,80,000/- alongwith damages and through application listed at Serial No.1 bearing CMA No.3865/2010, the plaintiff has sought attachment of immovable properties of defendants No.1 to 3 bearing shop No.A-4, A-5, A-6, A-7 of Gulshan-e-Ali, Block-7, Aisha Manzil, F.B Area, Karachi, House No.841, Azizabad, F.B. Area, Karachi and House No.R-22, Block-15, F.B. Area, Karachi, whereas through Applications listed at Serial No.2 & 3 bearing CMA Nos.1967/2011 and 1970/2011, the subsequently impleaded defendants No. 5 & 6 have sought detachment of their shops bearing Nos. A-4 and A-5, Gulshan-e-Ali, Block-7, Aisha Manzil, F.B Area, Karachi.

Upon filing of this Suit on 20.12.2010 an interim order was passed by this Court, whereby, Shop No.A-4, A-5, A-6, A-7 of Gulshan-e-Ali, Block-7, Aisha Manzil, F.B Area, Karachi alongwith other properties mentioned in the application listed at Serial No.1 were attached. Thereafter the defendants No.1 to 3 as well as defendants No.4 to 6 have contested the listed application as according to the case of defendants No.4 to 6, the properties in question belong to them and not to defendants No.1,2 & 3.

Counsel for the plaintiff submits that the plaintiff had invested Rs.40,00,000/- on the basis of three different Partnership Agreement entered into with Madani Medical Centre owned by defendant No.1 and others and upon failure of defendant No.1 in repayment of the profits as well as the principal amount, instant Suit has been filed for the recovery of the said amount. Counsel has read out the Order dated 20.12.2010 and submits that the properties in question belong to defendants No.1 to 3 as they have subsequently entered into an agreement of purchase with other defendants in respect of said properties and therefore they were appropriately attached as an interim measure by this Court. Counsel has also referred to an Order dated 28.02.2011 as well as the Nazir's Report in respect of the said properties.

On the other hand, Counsel for defendants No.1 to 3 submits that insofar as agreements in questions are concerned the same were not signed by defendants No.2 & 3 and therefore no cause of action accrues against them. He further submits that the agreements in question are neither registered nor duly signed by all the defendants, whereas, some postdated cheques were also issued to the plaintiff, which were dishonoured, whereafter criminal proceedings were initiated, which

have been decided in favour of defendants No.1 to 3, and an appeal preferred in this regard is pending without any substantial proceedings, therefore, per counsel no case for attachment is made out, whereas, the defendants No.1 to 3 are very much available within the territorial jurisdiction of this Court and are vehemently contesting instant Suit.

Counsel for defendants No.5 & 6 submits that the shops bearing No.A-4 and A-5 belong to Muhammad Yaseen (Defendant No.6) and Raheem Ali (Defendant No.5), respectively, whereas, in order to suppress material facts, they were not arrayed initially as defendants in this matter and upon their application they were joined as defendants. Counsel submits that insofar as Shop No.A-4 is concerned, same stands in the name of defendant No.5 on the basis of Sale Deed dated 09.07.1986, duly registered, whereas, defendant No.1 is the tenant in respect of Shop No.A-4. He further submits that insofar as Shop No.A-5 is concerned, the same belongs to defendant No.6 vide Sale Deed dated 28.02.1987 duly registered, whereas, defendant No.1 is a tenant in respect of property in question, and per Counsel interim order for attachment has seriously prejudiced the defendants No.5 & 6, therefore, the same may be recalled. He has further submitted that without prejudice to his case on merits that defendants No.5 & 6 have no concern with the plaintiff insofar as the recovery proceedings are concerned, instant Suit has been filed against an unregistered partnership, which is in violation of Section 69 of the Partnership Act.

I have heard all the learned Counsel and perused the record with their assistance. It appears that insofar as the property bearing Shop No.A-6 is concerned, the same is being claimed by defendant No.4 on the basis of a Conveyance Deed, which was registered after passing of attachment as well as injunctive orders, which were served upon the

Registrar. Accordingly this Court vide Order dated 28.02.2011 was pleased to dismiss such application for release of the property filed on behalf of defendant No.4. Insofar as Shops No.A-4 and A-5 are concerned, the defendants No.5 & 6 have placed on record their respective Sale Deeds, which were executed much before passing of the attachment order, which clearly reflects that the shops were never owned by defendants No.1 to 3. Moreover, the plaintiff has failed to bring on record any material or document, which could reflect that both these shops were ever owned by defendants No.1 to 3. It is pertinent to observe that insofar as attachment before judgment in terms of Order 38 Rule 5 CPC is concerned, it provides that *where, at any stage of a Suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of **his property**, the Court may attach the property.* This provision clearly provides that such order could only be passed in respect of the properties, which are owned by the defaulting party. The record placed before this Court clearly reflects that insofar as Shop Nos.A-4 and A-5 are concerned, the defendants No.1 to 3 were merely tenants and never owned these shops, therefore, the attachment of these shops does not seem to be justified. Whereas, the plaintiff has failed to bring anything before this Court so as to suggest that these shops were owned by defendants No.1 to 3. On the contrary the defendants No. 5 & 6 have shown sufficient cause to the Court for passing order for withdrawing the interim order of attachment.

In view of hereinabove facts and circumstances of this case, the aforesaid applications are disposed of by confirming the order of attachment dated 20.12.2010 in respect of properties bearing Shop No.A-6 and A-7, Gulshan-e-Ali, Block-7, Aisha Manzil, F.B Area,

Karachi and other properties mentioned in CMA No.3865/2010. The applications filed by defendants No.5 & 6 for release/detachment of their shops bearing No.A-4 and A-5, Gulshan-e-Ali, Block-7, Aisha Manzil, F.B Area, Karachi are hereby allowed and the order of attachment stands withdrawn accordingly to the extent of aforesaid shops.

4 to 11. Adjourned.

J U D G E

Ayaz P.S.