



co-owners with the defendants in respect of the suit property in accordance with the ratio of balance payment/ compensation. It is claim of the plaintiff that the defendants No. 1 & 2 failed to fulfill Clause 4- B & C of the Agreement and defaulted in payment of Rs. 32,50,000/= to his deceased brother, namely, Abdul Ghani Danawala and his two partners; hence, as per Clause -8 of the Agreement they hold 50% share in the suit property and in this regard defendant No.2 on 10.04.1991 issued Letter of Confirmation (**Annexure "P-4"**) that said deceased brother of the plaintiff and his two partners were 50% share holders in the suit property. It is further claim of the plaintiff that his said deceased brother in his life time released the share of his said two partners, vide Annexure "P-3" and became the sole and absolute owner of 50% share in the suit property. It is also claim of the plaintiff that his said deceased brother willed his 50% share in the partnership deed to him along with the suit property, vide "WILL" dated 11.01.2011 (**Annexure "P"**). It is case of the plaintiff that the defendants No. 1 & 2 while committing fraud with his deceased brother made a false Sale Agreement dated 30.06.1990. Hence, the plaintiff has filed this suit with the following prayers:

- a. Declare me as co-owner according to letter of confirmation dated 10.04.1991. Annexure "P4", "P2".
- b. To grant the permanent injunction against the defendants their agents, subordinate, their men, savant working under them or anybody else acting through or their behalf from constructing building over the suit property i.e. plot No. ID-A-30, G/1, R.B.3/10 at Cambell Rod, D' Melo Rod, Ram Bag, Pakistan Chowk, Karachi, in any manner, without due course of law and further restrain them from creating harassment and extending threats to the plaintiff in any manner whatsoever in nature.

Learend counsel for the plaintiff submits that the plaintiff is the lawful owner of 50% share of the suit property by virtue of WILL executed in his favour by his deceased brother being owner thereof, which fact has also been admitted by the defendant No.2 vide Letter of Confirmation dated 10.04.1991 and since there is an apprehension that the defendant may dispose of the suit property, the instant application has been filed. She also submits that the plaintiff in his pleadings has made out prima facie good case for the grant of injunction and the balance of

convenience also lies in his favour and in case interim injunctive order is not granted, the plaintiff shall suffer irreparable loss.

On the other hand, learned counsel for the defendants No. 1 & 2 vehemently opposes this application and maintains that the suit is itself not maintainable under law being barred by Sections 42 & 56 of Specific Relief Act. He further maintains that plaintiff processed on forged and fictitious documents including Letter of Confirmation, dated 10.04.1991 and since there is no written contract between the plaintiff and the defendants No.1 & 2, the suit is also barred by the relevant provisions of Contract Act. He further maintains that plaintiff has not obtained any Letter of Probate in respect of alleged WILL. He further maintains that defendants are the lawful owners of the suit property by virtue of a registered deed; hence, the plaintiff has failed to make out prima facie arguable case in his favour for the grant of injunctive relief and the balance of convenience also does not lie in favour of plaintiff but in favour of defendants and it is the defendants who shall suffer irreparable loss in case interim injunction is granted.

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

Injunction, by its nature, is a preventive remedy for the purpose of preserving the status quo of the matter of suit pending the determination of suit. By use of words "status quo" all that can be implied is that same status in regard to title or possession of immovable property as existed on date of filing of suit is to be maintained. For issuance or refusal of interim injunction what the Court has to see is that a good prima facie arguable case is made out in favour of the plaintiff and if the plaintiff succeeds in establishing a good prima facie arguable case then, other two ingredients, irreparable loss and balance of convenience would be looked into. The Court has to make only a tentative assessment of plaintiff's case for enabling itself to see whether above mentioned three prerequisites for grant of injunction exist in favour of plaintiff or not. While dilating upon the merits of a case on these

parameters, the Courts may tentatively examine the pleadings, affidavits, counter affidavits, rejoinder, if any, and the documents annexed thereto.

In the instant case, it is an admitted position that title of the suit property was transferred in favour of defendants No.1 and 2 by virtue of conveyance deed, registered on 13.10.1990 at No. 3832 with Sub-Registrar T. Div. I, Karachi, while the alleged Letter of Confirmation was issued by the defendant No.2 on 10.04.1991 and Will was allegedly executed on 11.01.2011 by the deceased brother of the plaintiff. As such, at the relevant time when alleged Letter of Confirmation and Will were issued/ executed, the defendants No.1 and 2 were the owners of the suit property under title. Neither the deceased brother of the plaintiff in his life time nor even the plaintiff has challenged alleged registered conveyance deed. So far as alleged Will is concerned, it is also an admitted position that the plaintiff never obtained Letter of Probate from competent Court of Law.

For the foregoing facts and reasons, I am of the view that the plaintiff has failed to make out a prima facie case for the grant of injunction. The balance of convenience also does not lie in favour of plaintiff but in favour defendants No.1 and 2, who are lawful owner of the suit property under registered conveyance deed/title, which has never been challenged by the deceased brother of the plaintiff in his life time and even by the plaintiff in the instant suit by seeking its cancellation. As such, I am not inclined to grant discretionary relief of injunction and, therefore, this application (C.M.A. No.8866/2017) is dismissed, with no order as to cost.

2. By means of this application (C.M.A. No. 10107/2018), filed under Order I, rule 10, C.P.C., the plaintiff seeks addition of Sub-Registrar-II, Saddar Town, Karachi, having office at 10, Block-5, Khayaban-e-Roomi, Block 5, Clifton, Karachi, City Sindh and Sindh Building Control Authorities (SBCA) Civic Centre, Karachi as defendants in the suit.

Learned counsel for the plaintiff states that the proposed defendants are necessary party to be joined as defendants No. 4 and 5 in the suit in order to

completely and effectually to adjudicate upon and settle all questions involved in the suit.

On the other hand learned counsel for the defendants 1 & 2 maintains that neither any relief has been claimed by the plaintiff against the said proposed defendants nor even they are relevant party for adjudication of alleged Letter of Confirmation, dated 10.04.1991, which is an unregistered document; hence, the proposed defendants are neither necessary nor proper party to join the suit under Order 1 Rule 10 (2) C.P.C.

The plaintiff has to satisfy the Court for impleadment of proposed defendants as party that their impleading is necessary or proper for an effective and complete adjudication of all questions involved in the suit. A necessary party is one without whom no order can be made effectively while the proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision of the question involved in the suit. In the case of *Islamic Republic of Pakistan v. Abdul Wali Khan* **PLD 1975 SC 463**, it has been observed by the Apex Court as under:

*“Now a proper party is a party whose presence before the Court is necessary to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the proceedings. The term “questions involved” include all matters, material to a proper decision of the case but the object of making such persons parties is to prevent multiplicity of proceedings. The person must, therefore, be a person whose interest is likely to be effected even though no relief is claimed against him. This does not, therefore extend to persons who have no interest which is likely to be effected by the proceedings nor does it embrace persons only generally interested in common with other nor can persons be added as parties so as to set up a new cause of action which does not concern the original parties.”*

The question whether proposed defendants may be necessary or proper party has to be essentially decided on frame of suit. It appears from the scanning of the prayer clause that the question involved in the plaintiff's suit relates to his alleged claim of co-ownership according to Letter of confirmation, dated 10.04.1991

(Annexure-P/4), which is an un-registered document. He has not sought cancellation of any of the title documents of the defendants No. 1 and 2. It is not the case of the plaintiff that the proposed defendants are directly and legally interested in the answers to the questions involved in the suit. Hence, the C.M.A. under reference is dismissed being devoid of merit with no order as to costs.

**JUDGE**

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