

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No. 2615 of 2016

| Date | Order with signature of Judge |
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For hearing of CMA No. 4861 of 2017.

30.03.2017.

Ms. Nahl Chamdia, associate of Mr. Arshad Tayabaly, Advocate for plaintiff.

Mr. Rehman Aziz Malilk, Advocate for Defendants No. 1 to 4.

Mr. Ejaz Mubarak Khattak, Advocate for DHA.

At the outset, learned counsel for the defendants No. 1 to 4 contends that he has filed CMA No.4861 of 2017, wherein it is contended that defendants No. 1 to 4 are ready to discharge their liabilities and this suit may be disposed of with directions to the plaintiff for depositing of remaining sale consideration i.e. Rs.77,850,000/- (Rupees Seven Crore Seventy Eight Lacs Fifty Thousand only) with the Nazir of this Court within a period of seven days. Whereas, associate of Mr. Arshad Tayyabaly, advocate contends that subject matter property is mortgaged and is not free from encumbrances and yet formalities are to be completed in their favour with regard to mutation. On this plea counsel for the defendants No. 1 to 4 contends that defendant No.1 is an old lady, she is seriously ill and residing in USA but for this purpose and disposal of her properties she is here.

It would be conducive to refer the contents of CMA No. 4861 of 2017 as well I have examined the plaint, paragraph No.1 of the plaint is that:

“That the Defendants No.1 to 4 agreed to sell, and the Plaintiff agreed to purchase, leasehold residential plot with construction of double storey bungalow thereon bearing Plot No. 104/1, measuring 666 square yards, 25th Street, situated at Phase VI, Pakistan Defense Officers Housing Society Authority Karachi

("Subject Property") vide Agreement dated 16.03.2016 ("Agreement to Sell") for a total sale consideration of Rs.86,500,000/- ("Sale Consideration").

Since agreement and balance sale consideration is not disputed but counsel for the plaintiff has taken plea of mutation and loan facility availed by the defendants, which is issue of non transfer of the subject matter property. Under these circumstances, for the convenience of the parties, judicial propriety demands disposal of this suit on following terms:

- 1. Plaintiff shall deposit balance sale consideration with the Nazir of this Court within 15 days.*
- 2. Defendants shall submit complete details of loan and other liabilities with statement before the Nazir, thereafter, Nazir shall release the amount for clearance bank facility availed by the defendants and ensure that subject matter property is transferred in the name of plaintiff.*
- 3. Defendants No. 1 to 4 would be liable to clear all outstanding on the subject matter property and clear title shall be given to the plaintiff. In case of failure, defendants No. 1 to 4 would be liable for damages of Rs.10 Million. In case of non-deposit of balance consideration by the plaintiff suit would liable to be dismissed.*

Sajid

JUDGE