

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No. 1106 of 2022

Order with signature of Judge(s)

1. For orders on CMA No.11224/2022 (Urgent Application)
2. For orders on CMA No.11225/2022 (U/O XXXIX Rules 1 & 2 CPC)
3. For orders on CMA No.11226/2022 (U/O XVIII Rule 18 CPC)

10.08.2022

Mr. Haider Waheed, Advocate for the plaintiffs

1. Urgency granted.

2&3. Learned counsel for the plaintiffs submits that the plaintiff No.1 is a wedded wife of defendant No.1 and out of the said wedlock plaintiff No.2 namely Muhammad Sahib Nadeem Sulemani was born, whereas plaintiff Nos.3 to 5 are daughters of plaintiff No.1 through her first husband, who died naturally on 15.04.2016. Counsel states that the defendant No.1 also had an earlier wife namely Sameena and he is cohabiting with her in a separate house away from the Bungalow No.115/III, 22nd Street, Phase VI, DHA, Karachi (“the suit property”). Counsel contends that the parties had cordial relationship to the extent that the plaintiffs were sent out on vacations recently, however, when she returned from vacations alongwith her children on 08.08.2022 she was not permitted to enter into the suit property, nor any of the children were permitted to reside therein, alleging that the plaintiff (defendant No.1 in the earlier suit) on the basis of an order passed on 06.07.2022 in Suit No.1014 of 2022 has been restrained from creating thirty party interests in the suit property. Counsel contends that while the dispute with regard to the said property is *sub judice* in that suit, however that order does not prohibit the plaintiff and her minor children to be dispossessed from the suit property, where she has been living with the four children, particularly when the defendant No.2 was born in the said house even.

Counsel contends that under section 9 of the Specific Relief Act, 1877 a plaintiff is entitled to recover possession of any immovable property as long as he could establish that he had earlier possession thereof. Counsel draws Court’s attention to the Sale Deed dated 04.09.2020 available at pages 241, where the plaintiff No.1 is shown to be the owner of the suit property. Counsel contends that in the earlier suit the defendant i.e. her husband has taken the stance that the suit

property is a *Benami* property and while the matter is *sub judice* it however does not entitle defendant No.1 to dispossess the plaintiff No.1 as well as her minor children from the suit property. The plaintiff No.1 is present alongwith her four minor children and states that she has been peacefully residing in the suit property since her marriage with defendant No.1, though has now moved a Khula application before the competent Court.

Learned counsel also draws Court's attention to pages 435 viz. Nazir report of the inspection conducted in compliance of the earlier suit, where it is evident that the plaintiff has been residing at the suit property. Learned counsel has placed reliance on the case law reported as **2018 MLD 617** to show that section 9 of the Specific Relief Act, 1877 empowers a person for restoration of the possession as long as he could demonstrate that he has been in possession thereof within the last six months. Learned counsel states that even the law does not require that person to be owner of the property in question.

Contentions raised by the learned counsel for the plaintiffs merit considerations. Issue notice to the defendants for 25.08.2022. In the meanwhile, possession of the suit property bearing Bungalow No.115/III, 22nd Street, Phase VI, DHA, Karachi be tentatively restored upon the plaintiff No.1 and her minors with the help from the Nazir of this Court, who would be at liberty to seek police help if needed, and file compliance report forthwith.

Let this suit be tagged alongwith Suit No.1014 of 2022 and to come up therewith.

JUDGE