

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 48 of 2012.

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No.365/2012.
2. For hearing of CMA No.366/2012.

09.02.2016.

M/s. Shumaila Shaikh and Bushra Rehman, Advocates along with the plaintiff.

Mr. Saadat Hassan, Advocate alongwith defendant No.1.

1-2. Through Application Under Order 40 Rule 1 C.P.C., listed at Serial No.2, the plaintiff seeks appointment of Nazir of this Court as “Receiver” in respect of property bearing House No.G-56, Sector-3, Metroville, Site, Karachi. Counsel for defendant No.1 has filed counter affidavit to both the listed applications and submits that the defendants have been declared ex-parte; however, he will be filing proper application before the Office Under Order IX Rule 9 CPC for recalling of such ex-parte order. Be that as it may, since these applications have been filed on which notices have been issued and the Counsel for defendant No.1 has affected appearance, therefore, same have been taken up for hearing.

Counsel for the plaintiff submits that the property in question has been constructed on a plot, which has been transferred vide Order dated 20-01-2001 by KDA in the joint name of the plaintiff as well as defendant No.1, who are real brothers, whereas, defendant No.1 has usurped the said plot and is presently claiming ownership of the same and is also collecting the rent from the tenants amounting to approximately Rs.65,000/= per month. Counsel submits that pending final adjudication of this Suit for the time being, the Nazir be appointed as “Receiver” to receive the future rent and to prepare accounts of the rent already received by Defendant No.1.

On the other hand, Counsel for defendant No.1 has opposed the application for appointment of “Receiver” and submits that though the plot was transferred jointly in the names of plaintiff and defendant

No.1, however, after a family settlement, the plaintiff has been paid his share, whereas, the entire construction has been carried out by the plaintiff from his own sources. Counsel further submits that the conduct of the plaintiff does not entitle him for any relief from this Court as the plaintiff, after having failed to get any favorable orders in the instant Suit, had also filed another Suit in the Court of 1st Senior Civil Judge, West at Karachi bearing No.599 of 2015 in respect of the same cause of action, and after objections through written statement on behalf of the defendants to this effect, the Suit has been withdrawn, whereas, the plaintiff did not disclose before the Senior Civil Judge, West at Karachi with regard to filing of instant Suit before this Court. Per Counsel such conduct of the plaintiff amounts to fraud and misrepresentation and therefore, he is not entitled for any relief.

I have heard both the Counsel and perused the record. At the very outset, the Counsel for the plaintiff was put to notice as to how after filing of instant Suit in 2012 before this Court another Suit in respect of same dispute was filed before the Senior Civil Judge, West at Karachi in the year 2015 without even disclosing the filing of instant Suit. Counsel, under the instructions from the plaintiff, who is present in Court, submits that this was perhaps on a wrong advice by the previous Counsel. I am afraid such conduct and plea of the plaintiff cannot be accepted by this Court, whereas, it is between the Plaintiff and his Counsel to sort out such issue that as to whether he was so advised or not. This Suit is pending since 2012 and on the very first date i.e. 17-01-2012, parties were directed to maintain status-quo, whereafter, the matter is pending for final decision on the stay application as well as application for appointment of Receiver. Perusal of the order sheet reflects that this application has not been diligently pursued on behalf of the Plaintiff since 2012 and for the first time an urgent application was moved on 16.10.2015. In the circumstances it appears that the Plaintiff was initially not interested in pursuing his application for appointment of Receiver, which under normal circumstances is to be pressed from its inception, as the very purpose of such an application is to protect the property from either being alienated or mismanaged.

Needless to state that insofar as the appointment of Receiver is concerned, though in peculiar circumstances, the Court can appoint Receiver after having been satisfied in the matter, however, such relief

being discretionary in nature, has to be exercised by the Court on appreciating the facts of each case independently and judicially and keeping in view the attending circumstances of the case. In the instant case, the conduct of the plaintiff does not seem to be appropriate as after having filed instant Suit and obtaining status-quo order, there was no reason for the plaintiff to file another Suit in the Court of Senior Civil Judge, West at Karachi even without disclosing that a Suit has already been filed in the High Court, which is still pending and has not been withdrawn. Such conduct on the part of the plaintiff appears to be an attempt of misrepresentation and misleading the Court, if not fraud.

In the circumstances, I am of the view that the plaintiff has failed to make out a case for appointment of a "Receiver". Consequently, application listed at Serial No.2 (CMA No.366/2012) is hereby dismissed while hearing of application listed at serial No.1 (CMA No.365/2012) is adjourned. Interim Order passed earlier, to continue till the next date of hearing.

J U D G E

Ayaz