

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.1529 of 2009

Date	Order with signature of Judge.
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1. For hearing of CMA No.9809/09 (U/O 39 Rule 1 & 2)
2. For hearing of CMA No.4797/15 (U/O 6 Rule 17 CPC)

27-01-2016.

Mr. Mirza Sarfaraz Ahmed, Advocate for the plaintiff.
Mr. Shahzeb Akhtar, Advocate for the defendant.
Mr. Muhammad Idrees Alvi, Advocate for KMC.

1. Adjourned.
2. Through listed application filed Under Order VI Rule 17 CPC, the plaintiff seeks amendment in the plaint in the following terms:-

5-A That Plaintiff believed that Defendant No.1 is an Indian National and as per law she is an alien and under the law she cannot own possess, sale property situated in Pakistan but she with the collusion of his brother and sisters purchased the Trust property without seeking the permission from this Honorable Court and transferred the suit property at the name of Defendant No.1 to 15 such sale and transfer is ab-initio void, illegal having no legal effect and consequences.

5-B. That as per knowledge of the Plaintiff the Defendant No.1 to 15 are also involved in selling the Trust properties belonged to the Haji Istifa Khan Trust illegally by manipulating and fabricating documents thereby defeated the purpose of the Trust created by their late father.

In prayer clause after A and B new prayer clause "C" may kindly be added.

C. To cancel the transfer/mutation of suit property bearing No.CL-9/2/2, admeasuring 4400 sq. yds. Situated in Civil Lines, Karachi, at the name of Defendant No.1 to 15.

OR

Any registered document whether it is gift deed, transfer deed, conveyance deed or any documents conferred title upon Defendant No.1 to 15 in respect of suit property, be declared as ab-initio void and illegal and same be cancelled and delivered up.

The prayer clause C,D and E be amended as prayer clause D, E and F.

Counsel for the plaintiff submits that initially the Suit was filed against 9 defendants, whereafter, on an application Under Order 1 Rule 10 CPC; other defendants were arrayed by allowing such application. He further submits that now the plaintiff has come to know that Lease of the property in question has been renewed in the name of defendant No.1 vide Renewal Lease issued by KMC on 24.07.2014, whereas, the property in question at the time of filing of Suit was in the

name of Haji Muhammad Istafa Khan, who being a “Waqif” assigned such property to his four grown up sons and daughters, whereas, now the property has been transferred in the name of one of his sons Muhammad Zubair (defendant No.1).

On the other hand, Counsel for the defendant No.1 submits that the lease of the property has been renewed in the name of Muhammad Zubair as a “Mutawali” and sole survivor and amendment sought would not have any effect, therefore, the application may be dismissed.

I have heard both the Counsel and have perused the record. It appears that the property in question was in the name of Haji Muhammad Istafa Khan and he being the sole Waqif and absolute owner of the property in question, had assigned the same to his sons and daughters, out of whom the property in question has now been renewed in the name of defendant No.1 as an attorney/mutawali. Such lease has been renewed after filing of the suit in 2014 and therefore, the plaintiff seeks such amendment.

The plaintiff through instant has sought specific performance of the property in question, which he claims to have purchased from the defendants, whereas, the property in question now stands in the name of defendant No.1 and not in the name of either the Wakf or the Assignees. It further appears that even in the written statement the defendant No.1 had admitted that the property in question is a *Wakf* property, whereas, now it stands renewed in the name of defendant No.1.

The provision of Order VI Rule 17 governs amendment in pleadings and empowers the Court at any stage of the proceedings to allow either party to alter or amend his pleadings in such manner and on such terms as may be just and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. The Hon’ble Supreme Court in the case of ***Mst. Ghulam Bibi and Others Vs. Sarsa***

Khan and Others (PLD 1985 SC 345) has observed that in considering an application Under Order VI Rule 17 CPC, for amendment in pleadings, *a liberal view is to be taken in deciding such applications.* It has been further held that *genuine amendments of pleadings, if denied, provisions contained in Order 2 Rule 2 CPC, would create enormous difficulties for the applicant.* The Hon'ble Supreme Court has further observed that if the nature of Suit insofar as the cause of action is concerned, is not changed by the amendment then normally such amendment is to be allowed. In the instant matter since there would not be any material effect in the cause of action which is in respect of the property in question, whereas, the defendants by themselves during pendency of the Suit, have got the lease renewed in the name of defendant No.1, there does not seem to be any justifiable reason to refuse such amendment.

In the circumstances and on perusal of the pleadings and the amendment being sought, I am of the considered view that no substantial rights of the defendants would be prejudiced, as admittedly the defendants have got the lease of the property in question renewed in the name of defendant No.1, during pendency of this Suit, which entitles the plaintiff to seek the aforesaid amendment. Therefore, I feel it appropriate to grant the listed application for amendment in the pleadings.

In view of hereinabove circumstances, the listed application is allowed and the Counsel for the plaintiff is directed to file amended plaint within 30 days, whereafter, if the defendants so chose, they can also file amended written statement(s).

J U D G E