

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No. 1884 of 2015

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of CMA No.14296/15. (U/O 39 Rule 1 & 2 CPC.)

20.03.2017

M/s. Muhammad Hanif Chattari and Taqdir Ali Khan, Advocates for Plaintiffs.

Mr. Mirza Sarfaraz Ahmed, Advocate for Defendant No.1.

Mr. Iqbal M. Khurram, Advocate for Defendant No.9.

Mr. Sharafuddin Mangi, State Counsel.

Mr. Ghulam Abbas, Advocate for Board of Revenue.

This is an application under Order 39 Rule 1 & 2 CPC seeking restraining order against the defendants regarding creating any third party interests in respect of the Suit Property i.e. Agricultural land bearing Survey Nos.265 (3 Acres 1 Ghunta), 266 (2 Acres 39 Ghuntas) & 267 (2 Acres), totally admeasuring 8 Acres, Deh Malh, Tapo Konkar, Tehsil and District, Karachi.

Learned Counsel for the plaintiff submits that the property was allotted to the Predecessor-in-interest of the plaintiffs vide Order dated 09.01.1978, whereafter, relevant bank charges were deposited and transfer was also affected in the Khatooni Records of Board of Revenue. He submits that thereafter it transpired somewhere in 2013 that the property is owned by defendant No.1 on the basis of some Conveyance Deed, which is a forged document, hence instant Suit. He prays that pending final adjudication, the defendant No.1 be restrained from creating any third party interest.

On the other hand, learned Counsel for Defendant No.1 submits that the Plaintiffs' claim to be legal heirs of one Major (Retd.) Haq Dad Khan, who has no concern with the property in question as the same was admittedly to allotted Sarwary Begum, who through her attorney Abdul Majid sold out the same to Defendant No.2 through Conveyance Deed dated 15.01.1977. He submits that defendant No.1 has thereafter acquired the property from the said Defendant No.2, whereas, the claim of the plaintiff is hopelessly time barred as they seek cancellation of a registered instrument. He further submits that the plaintiff in Para-14 has admitted that third party has already

been created by defendant No.1, whereas, alternatively they have also claimed money compensation, therefore, application be dismissed.

Learned Counsel for defendant No.9 submits that they have acted in accordance with law by issuing necessary permissions and approvals to defendant No.1 after due verification of ownership from the concerned Mukhtiarkar.

I have heard both the learned Counsel and perused the record. Insofar as instant Suit is concerned, the same seeks cancellation of a Conveyance Deed dated 15.01.1977 and the relevant entries thereto in the Revenue Record and so also mesne profits and compensation in terms of money. The learned Counsel for the plaintiff was confronted as to why instant Suit has been filed in the year 2015, whereas, the Conveyance Deed dates back 1977 and their father Haq Dad Khan was also contesting the matter before the Revenue Authorities and some orders were passed by the Revenue Authorities in the year 1987 and as to how the Suit has been filed so belatedly. The learned Counsel could not satisfactorily respond. Since pursuant to the Conveyance Deed dated 15.01.1977, the entries in the Revenue Records have also been mutated in the name of subsequent buyers, I do not seem it appropriate to pass any restraining orders as merely a challenge to such registered instrument does not create any prima facie case in favour of the plaintiff nor the balance of convenience lies in their favour. On the contrary, irreparable loss would be caused to the defendants, if any injunctive order is passed. Accordingly, the listed application is dismissed.

J U D G E

Ayaz P.S.