

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
II Appeal No.125 of 2018

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Date                      Order with signature(s) of Judge(s)  
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1. For orders on CMA No.1947/2021
  2. For orders on office objection as at "A"
  3. For hearing of CMA No.8401/2018
  4. For hearing of main case
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**06.04.2021**

Mr. Khawaja Naveed Ahmed a/w Muhammad Faisal Khan,  
advocates for appellants  
Mr. Muhamamd Shahzad, advocate for respondents 4 to 6

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The appellant filed suit for declaration and permanent injunction  
with the following prayers:

- (i) To declare that the plaintiffs are the owners of the plot bearing No.1-A(PROV) measuring 950.03 square yards, Frere Town, Clifton, Karachi as per lease deed dated 21.01.2012.
- (ii) To declare that the plaintiffs are legal and lawful owner of the property in question and no one has any right or whatsoever right on the property in question.
- (iii) To declare that the proposed building plan which have been submitted by the plaintiffs through KMC are proper and in order and the SBCA is duly bound to pass the proposed building plan as per law and rules.
- (iv) To direct the S.B.C.A. to approve the proposed building plan of the plot in question without fail.
- (v) To restrain the defendants its office working or their persons deputed not to disturb the plaintiffs, not to take any action, not to cancel or demolish any construction on the plot in question and further restrain for illegal interference, to demand any illegal amount for approving the proposed building plan.
- (vi) To restrain the defendants above named their officers/officials, agents, nominee, person or anybody else claiming to them from interfering, disturbing in any manner to the plaintiffs from legal rights, use the plot in question and to raise construction as per law and rules.

- (vii) To direct the S.B.C.A and their agent, representative or any other person on their behalf to approve the building plan as per law and allow the plaintiffs to raise construction on the plot in question.
- (viii) To declare that the plaintiffs are lawful, genuine and bonafide owner collectively in respect of Plot No.1-A(PROV), measuring 950 sq. yds, situated at Feer Town quarters Karachi having purchased the same from the previous owner /legal heirs.
- (ix) To grant permanent injunction restraining the defendants, their employees, representative, agents or anyone clamming on their behalf including but not beneficiary or beneficiaries for demolishing, interfering into the possession of the plaintiffs over suit land as well as not to cancel, reverse or change entries made in favour of the plaintiffs as well as not to allot or lease out the same in favour of the anyone as the plot has already been leased out in favour of the plaintiffs.
- (x) Consequential relief which this Honourable Court may deem fit and proper under the circumstances of the case may kindly be passed.
- (xi) Any other relief and or relieves as this Honourable Court may deem fit under the circumstances of the case in the interest of justice.
- (xii) Cost of the suit.

The primary relief as claimed, in my understanding, was whether the plaintiff was the lawful owner of the plot and whether it was a lawfully carved out plot measuring 950 square yards. The Senior Civil Judge, Karachi South in the aforesaid Suit No.686 of 2014 framed the following issues:

1. Whether the plaintiff has submitted building plan for construction of the plot in question to the KMC?
2. Whether the KMC has prepared the layout plan of the plot in question and forwarded the building plan to the SBCA. After completing all the formalities as required by the law?
3. Whether the plaintiff has started construction on the plot in question without approval plan of the SBCA?
4. Whether the SBCA is duty bound to approve the building plan as per law?
5. What should the decree be?

The two material issues i.e. whether it was a lawfully carved out plot and whether the appellant acquired proprietary rights over the plot in question were not framed. While deciding, the trial court commented as to the entitlement of appellant in terms of issue No.2 whereas there has to be independent finding of the trial court as well as the appellate court after framing of the issues as to whether the appellant has acquired any proprietary rights over the plot in question and as to whether the plot in question was lawfully carved out plot.

Learned counsel appearing for SBCA has not seriously raised any point in this regard as to whether it was lawfully decided by the two forums below, however, submits that it was the KMC to defend the appeal.

Be that as it may, since the material questions and issues have been left unattended, we deem it appropriate to remand the case to the trial court with direction to frame the two issues and if required, additional evidence be recorded as to the entitlement of the appellant and carving out of the subject plot. The process should not take more than three months to decide, even if the additional evidence is required as desired by the parties.

With the above observations, since a limited question is involved, the case is remanded to the trial court to decide the controversy afresh within three months' time. The appeal is allowed and the judgments of the two forums below are set aside. Let the R and Ps be sent back to the trial court.

JUDGE

*Gulsher/PS*