

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.907 of 2015

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Date	Order with signature of Judge
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1. For orders on maintainability of CMA No.9268/16 (U/S 3 and 4 contempt)
2. For hearing of CMA No.17501/15 (U/O 39 Rule 1 & 2 CPC.)
3. For hearing of CMA No.13183/15 (U/O 1 Rule 10 C.P.C)
4. For hearing of CMA No.8636/15 (U/O 39 Rule 1 & 2 CPC.)
5. For hearing of CMA No.14234/15 (U/S 24 CPC)
6. For hearing of CMA No.14235/15 (U/O 39 Rule 1 & 2 CPC.)
7. For hearing of CMA No.15496/15 (U/S 2 & 3)

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21.12.2016

Mr. Allah Warayo Khan, Advocate for Plaintiff.  
Mr. Khawaja Shamsul Islam, Advocate for Defendant No.1.  
Mr. M. Islam Leghari, Advocate for Intervenor.  
Ms. Leelae Kalpana, A.A.G.  
Mr. Ghulam Abbas, Advocate for Board of Revenue.

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1. Counsel for the applicant/intervener does not press this application, which is accordingly dismissed as not pressed.

4. Through this application, the plaintiff seeks a restraining order against defendant No.1 from creating third party interest over the Suit land. Learned Counsel for the plaintiff submits that the plaintiff by virtue of inheritance is co-owner of property bearing Survey Nos.143(area 1-30), 144 (area 2-29) and 155 (area 0-3), total 4 acres 22 ghuntas situated at Deh Dozan Tapo Ghujro, Scheme No.33, Taluka and District Karachi on the basis of Revenue Record of Rights through Form-VII. Learned Counsel submits that somewhere in April, 2015 it transpired that defendant No.1 is raising construction on certain portion of the plaintiff's property i.e. 35 ghuntaz out of total area as aforesaid and therefore, instant Suit was filed and after inspection of the property through Nazir of this Court, on 16.09.2015, defendant

No.1 was directed not to create third party interest. Per learned Counsel during pendency of these proceedings it came to the knowledge of the plaintiff that certain proceedings have been initiated in the Board of Revenue at the behest of defendant No.1 and allegedly the plaintiff's entry in Form-VII has been cancelled against which a review application is pending, wherein, the proceedings have been suspended by the Authority in view of present Suit. In the circumstances, learned Counsel has prayed that interim order passed on 16.09.2015 be confirmed on the same terms and conditions.

On the other hand learned Counsel for defendant No.1 submits that in the title of the Plaint it is stated that the plaintiff is son of Muhammad Moosa, whereas, in Para-1 the plaintiff's father name has been disclosed as Usman, therefore, the plaintiff has no locus standi to claim any right in the property on the basis of inheritance. Learned Counsel further submits that pursuant to MLR-115 vide Order dated 13.11.1979, the land was resumed in favour of Government and thereafter it has been allotted to the predecessor-in-interest of the plaintiff from whom the same has been purchased by the plaintiff through a proper Conveyance Deed duly registered. He submits that plaintiff's claim is only in respect of a portion of area in Survey No.144 and not in the entire property of the plaintiff. Learned Counsel has referred to Order dated 19.05.2016 and submits that pursuant to such order, the concerned Commissioner has submitted Compliance Report, which reflects that that the entry (ies) in the name of the plaintiff's predecessor-in-interest were cancelled long ago and subsequently, one Deputy Commissioner reviewed such order of which no record is available with Revenue Authorities, therefore, the plaintiff has

no title in his favour. Learned Counsel has also referred to property and title documents of defendant No.1 and submits that currently the defendant No.1 is the owner of the entire four acres and 22 ghuntaz, therefore, listed application be dismissed.

I have heard both the learned Counsel and perused the record. Insofar as the plaintiff's case on the basis of Form-VII annexed with the plaint is concerned, it would be advantageous to refer to Order dated 19.05.2016 passed by this Court, wherein, the relevant portion reads as under:-

“Since plaintiff has claimed that Survey No.144(area of 2 Acres and 29 Ghuntas) and defendant is claiming 144/1 area as 1.26. It is matter of fact that demarcation was carried out and whereby survey Superintendent contended that subject matter property in question is same where project of defendant is announced. However, to resolve this controversy with regard to these two surveys numbers judicial proprietary demands appearance of Assistant Commissioner, Scheme No.33 (Revenue), alongwith complete record as he shall submit report whether aforesaid land is located on same place, and submit complete number of acres of survey No.144; as well survey No.144 and 144/1 are same, or different.”

It appears that pursuant to such directions a compliance report has been filed before this Court by the Assistant Commissioner, Gulzar-e-Hijri, Scheme-33, Karachi East, wherein, it has been stated that pursuant to Order dated 13.11.1979 passed by the Board of Revenue, the Assistant Commissioner, Karachi East resumed the undivided area in question from the Khatas of private owners under MLR-115 in certain survey numbers of Deh Dozan and transferred it to Government Khatas through separate and compact blocks. Such order was complied with in letter and spirit and the separate compact pieces were ordered and partitioned including Survey No.144 having an area of 2-29 acres and entries were recorded in the Revenue Record of VF-VII vide Entry No. 49 dated 28.02.1980. As per report in view of such proceedings said survey number including 144 was declared to be Na-Qabooli survey numbers/Government Land. It

has been further stated in the report that the Deputy Land Commissioner, in excess of his jurisdiction, unlawfully passed an Order dated 12-10-1985, by reviewing the orders of his predecessor (**which is not available in record**) and the said Survey Numbers were ordered to be transferred once again in favour of Khatedar Hoat S/o Haji Ilyas Jokhio (predecessor in interest of Plaintiff) under MLR 115 and thereafter in compliance of such a void ab-initio order, subsequently entries were recorded in Form-VII. It is further stated that the resumption order passed under MLR-115 was never challenged, whereas learned Deputy Land Commissioner could not have reviewed the same. It is further stated that in such report insofar as the ownership of defendant No.1 is concerned, the same appears to be correct and genuine as 4 acres' land was originally allotted to Ghulam Hyder S/o Abdul Aziz by the Board of Revenue in Na-Class 21 Deh Dozan and the land was subsequently regularized under Ordinance III of 2001, whereafter various entries were recorded and location of Survey No.144(1-03) and 144/1(1-26) is different. It is pertinent to observe that till date no objection has been filed on such report by the plaintiff.

It appears that insofar as the plaintiff is concerned, he has relied upon Entry in Form-VII, which has been entered into, pursuant to the aforesaid order of the Deputy Land Commissioner, which according to the Revenue Authorities was passed without any jurisdiction and of which no record is available in the office of Board of Revenue. It further appears that subsequently pursuant to an application moved by one Mudasir Mian Khan, seeking cancellation of Entries No.77 and 92 in Form-VII, the Member Land Utilization Department, Government of

Sindh has passed an order on 15.03.2016, whereby, It has been held that the entries in favour of the plaintiff and others are manipulated, bogus and have been managed, therefore, the said entries alongwith all subsequent entries have been cancelled. After passing of this Order it appears that the plaintiff has filed a review application, which is pending and no further proceedings have been taken place for the reason that instant Suit is pending.

Therefore in all fairness as of today, it appears that the entries in favour of the plaintiff in Form-VII on the basis of which instant Suit has been filed and interim order has been obtained no more exists, therefore, the plaintiff has no prima-facie case nor balance of convenience is in its favour and no irreparable loss would be caused, if the injunction is refused. Whereas, on the other hand if the ad-interim order is confirmed against defendant No.1, serious prejudice would be caused as they have already launched a Project on the said premises.

In view of hereinabove facts and circumstances of the case, the listed application is dismissed. Resultantly, the interim orders passed earlier are hereby vacated. However, observations made hereinabove shall not prejudice the case of the plaintiff before the Revenue Authorities, wherein, his review application is pending against cancellation of the entries, and subsequently, if the entries are restored, plaintiff is at liberty to file a fresh application in accordance with law.

2,3,5,6 & 7.           Adjourned.

JUDGE