

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No. 231 of 2023

Nasir Zahoor
Versus
Shakeel Raza Khan & another

Dated	Order with signature of Judge
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Present:
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Omar Sial

Hearing Case (Priority)

1. For orders on office objection a/w reply at A
2. For hearing of Main Case
3. For hearing of CMA No. 2220/2023

Dated 12.01.2024

Mr. Zayyed Khan Abbasi Advocate for the Appellant
Mr. Muhammad Arif Advocate for the Respondent No.1

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Muhammad Shafi Siddiqui, J.- Mr. Muhabbat Ali Ujjan, Advocate files Vakalatnama on behalf of Respondent No.2 which is taken on record.

2. We have heard the learned counsel for the parties and perused the material available on record.

3. The brief facts are that Suit No. 522 of 2018 was filed for specific performance by the Respondent No.1 against the Respondent No.2. While the suit was pending, an application under Order I Rule 10 C.P.C. was filed by the Appellant to be impleaded in the proceedings on the premise that prior to filing of the suit, the Respondent No.2 being builder has already leased out the subject apartment to the appellant, hence no decree of a performance in respect of an apartment could be passed in favour of the Respondent No.1 by the Respondent No.2. No title could be passed in favour of the Respondent No.1 by the Respondent No.2 in presence of an already executed sub-lease in favour of Respondent No.2, hence in terms of Order I Rule 10 (2) C.P.C. the appellant is a necessary party and without him being impleaded no effective decree of performance could be passed in favour of Respondent No.1.

4. Though when the facts came to the knowledge of Respondent No.1 he has already filed a suit for cancellation of such sub-lease, but a suit for performance cannot be left to be proceeded in absence of a necessary party. When a suit for cancellation was felt to be necessary, Respondent must in the same way realized that a decree will not be effective.

5. Mr. Arif, learned counsel appearing for the Respondent No.1 submits that it is a collusive execution of title document and such facts were not disclosed in the reply made by the Respondent No.2 in a suit filed by the Respondent No.1.

6. It was not necessary for him to disclose such facts in the first instance. However, even if it were collusive proceedings, Section 27 of the Specific Relief Act, would come for the rescue of the Respondent No.1, however, the burden would be upon the Respondent No.1 to establish that it was a collusive exercise of executing sub-lease and knowingly and intentionally both Appellant and Respondent No.2 entered into such transaction which ended up as sub-lease of the property.

6. With such understanding the appeal is allowed. The appellant is allowed to be impleaded as a party and be proceeded accordingly.

JUDGE

JUDGE

Amjad PS