

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1940 of 2019

Date	Order with Signature of the Judge
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1. For hearing of CMA No. 6952 of 2023.
2. For hearing of CMA No.6826 of 2023.
3. For hearing of CMA No.6827 of 2023.
4. For hearing of CMA No.13171 of 2021.
5. For hearing of CMA No.15986 of 2019.

Date of Hearing. 21.06.2023

Date of order. .07.2023

Mr. Maaz Waheed, Advocate for the Plaintiff.

M/s. Muhammad Vawda and Taha Abdus Samad, Advocates for Defendant Nos.4 and 6.

M/s. Khalid Javed and Barrister Yousuf Makda, Advocates for the Defendant No. 5.

Ms. Saima Imdad, A.A.G Sindh a/w Aziz Chandio, SI Litigation, L.U. BOR, Aijaz-ul-Ahsan, Mukhtiarkar, Scheme-33, Karachi.

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1. Through instant Review application (CMA No. 6952 of 2023) filed under Order XLVII Rule 1 R/W Section 94 and 151 CPC, 1908, the defendant Nos. 4 and 6 i.e. Mubarak Ali son of Rajab Ali and M/s. Jiwani Builders respectively, seek Review of the order dated 05.05.2023 passed by this Court in the present Suit No. 1940 of 2019 on CMA No. 6826 of 2023 (under Order XXXIX Rule 1 & 2 CPC), whereby the Defendant Nos. 4 and 6 have been restrained from creating third party interest and raising construction over the suit land solely on the basis of the Report of the Defendant No.7 (Sub-Registrar-1, Gadap Town, Karachi) dated 03.11.2021, attached by the learned counsel for the plaintiff as annexure-E alongwith CMA No. 6826 of 2023), according to which the Conveyance Deed dated 12.04.1993 through which the Defendant Nos. 4 and 6 had allegedly purchased the subject land of the instant suit from the Plaintiff, Khair Muhammad does not exist in the revenue record.

2. The facts of the instant suit as narrated by the plaintiff in brevity are that 'the Plaintiff is a lawful owner of the subject land admeasuring 03.00 acres, situated in Sector 15-B, Scheme-33, Karachi, duly allotted after approval by the Chief Minister, Sindh in favour of the Plaintiff. On 25.07.1992 Secretary to Government of Sindh cancelled the subject land, but later on vide letter dated

07.09.1992, the land was restored to the Plaintiff and on 17.09.1992 after its lease, physical possession of the subject land was handed over to the Plaintiff by the Government of Sindh through Surveyor of Scheme 33, office of the Deputy Commissioner, Karachi East. The defendant NO. 3 (Char Minar Associate Builders) on **30.04.1991** had applied to Chief Minister, Government of Sindh for allotment of 5(five) acres land in Sector 15-A, KDA, Scheme-33 for housing project, accordingly it was processed and finally the defendant No.2 (D.C. East) without any order of the competent authority or approval of the Chief Minister wrongly allotted the land to defendant No.3 in Sector 15-B instead of Sector 15-A, vide letter dated **02.09.1991** as land admeasuring 03-00 acres in Sector 15-B was already allotted to the plaintiff. The defendant No. 3 paid challan on **27.04.1992** and **08.05.1992** in respect of the land admeasuring 03-00 acres in Sector 15-B; besides lease agreement, possession letter dated 10.06.1992 was issued in favour of the defendant No.3 with signature of Surveyor Scheme No.33; that the defendant No.4 Mubarak Ali by pretending himself as General Attorney of the plaintiff had applied in 2019 to defendant No.2 (D.C. East) for forwarding of revised layout plan to D.G. SBCA in respect of suit land while plaintiff had never executed any General Power of Attorney in favour of defendant No.4; in respect of letter of defendant No.4 Mukhtiarkar Gulzar-e-Hijri Scheme-33 confirmed that as per record subject land stands entered in the name of the plaintiff; plaintiff visited office of Mukhtiarkar and it came in his knowledge that land has been transferred to the defendant No.6 M/s. Jiwani Builders by the defendant No.5 Muhammad Amin by showing himself as sub-attorney of the plaintiff; the plaintiff obtained copy of said Conveyance Deed dated 12.4.1993 from Registration Authority, which shows that it was Registered by the defendant No.7 without appearance of the plaintiff and further its registration number was tempered being R.D. No. 1934 from 1935; that the defendant No.6 on the basis of fake and bogus Conveyance Deed dated 12.4.1993 executed Power of Attorney, vide R.D. No. 617 dated 5.5.2015 in favour of defendant No.4; that the plaintiff had already sold out the subject land to one Sikandar Laiq Ahmed through agreement of sale dated 8.2.1993 against sale consideration of Rs. 87,12,000/- and handed over its vacant possession to him without registration of Sale Deed in his name, hence still the plaintiff is a lawful owner of the land in question. The plaintiff prayed that he may be declared as owner of subject land; defendant No.3 may be declared as not entitled to claim as allottee of the said land and letter dated 2.9.1991 issued by the defendant No.2, subsequent letters by mentioning the Sector 15-B of the land instead of 15-A; agreement of lease dated 25.6.1992 and its possession letter dated 10.6.1992 and Conveyance Deed dated 12.4.1993,

may be declared as fake, fabricated and bogus and cancel the said Conveyance Deed vide R.D. No.1934 dated 12.4.1993.

3. The learned counsel for the plaintiff alongwith the plaintiff has also filed an application under Order XXXIX Rule 1 and 2, R/W Section 151 CPC being CMA No. 15986 of 2019, praying therein that the defendant Nos.3 to 6 may be restrained from using the Conveyance Deed dated 12.4.1993 and Power of Attorney dated 15.5.2015 by posing themselves as owners of the subject land, from interfering in the possession of the land, defendant No.6 may also be restrained from creating third party interest and defendant No.7 from registering suit land in favour of anybody else unless plaintiff himself or his attorney do not appear before defendant No.7 personally.

4. Notice of CMA No. 15986 of 2019 was issued against the defendants. The learned counsel for defendant Nos. 4 and 6 on 26.01.2021 has submitted their Counter Affidavit to this application, but prior to that on 14.01.2021 the learned counsel for the plaintiff pleaded urgency and sought ad-interim restraining order on his CMA No. 15986 of 2019 against defendant No.6 on the ground that the defendant No.6 was doing construction over the adjacent land had threatened the plaintiff for dispossessing him and is attempting to extend their project to the suit land, this court issued fresh notices to the defendants on such application of the plaintiff and till next date of hearing restrained the defendants from creating third party interest over the suit land and all parties were restrained from raising construction thereon. However, the defendant Nos. 4 and 6 through filing HCA No. 14 of 2021 against the impugned restraining order of this Court dated 14.01.2021 got its modification in terms that said interim order would not be construed in such a manner as to cause prejudice to the land belongs to the defendant No.6.

5. On 30.8.2021 the learned counsel for the plaintiff again pleaded urgency and filed an application under Section 151 CPC (CMA No. 1317 of 2021), praying therein to get verification of genuineness of registered General Power of Attorney dated 01.10.1992 and Sale Deed, R.D. No. 1934 dated 12.4.1993, submitted by the defendant No. 4 and 6 alongwith their Counter Affidavit to the application filed by the plaintiff under Order XXXIX Rule 1&2 CPC (CMA No. 15986 of 2019) from the office of the Registrar Central Record Karachi with direction to submit report in respect of existence of these documents in the record of rights with its R.D numbers. This Court on the same date ordered to send these documents to defendant No.7 for verification of its genuineness or otherwise.

6. On 5.5.2023 the learned counsel for the plaintiff once again pleaded urgency and through filing another application under Order XXXIX Rule 1 and 2 R/W Section 151 CPC (CMA No. 6826 of 2023), praying therein to restrain the defendants from creating third party interest and raising construction on the suit land till pendency of the instant suit. In support of the contents of above mentioned application (CMA No. 6826 of 2023) the plaintiff Khair Muhammad has enclosed his own affidavit, wherein he has repeated his claim of ownership of the suit land and deposed that in compliance of the order of this Court dated 30.8.2021, defendant No.7 has submitted verification report of Power of Attorney and Conveyance Deed dated 12.4.1993, R.D. No. 1934, Book No.1, date of Registration 24.4.1993 does not exist in record, thus it is not genuine and General Power of Attorney although correct to the extent of the Registration Number, however, it does not concern with the suit land. This Court after going through the said verification report of defendant No.7, restrained the defendant Nos. 4 and 6 as per payers of the plaintiff till next date of hearing and also issued notice to the defendants. The plaintiff has enclosed copy of such verification report of documents being Reference No. 1506/SR-1/Gadap/2021, Karachi dated 3.11.2021 submitted by the defendant No.7, Sub-Registrar-1, Gadap Town, Karachi.

7. It is pertinent to mention here that the plaintiff was already enjoying the benefit of the order dated 14.1.2021, passed by this Court on his previous application CMA No. 15986 of 2019 filed under same provision of law i.e. XXXIX Rule 1 and 2 CPC, wherein he had prayed for the similar relief of restraining the defendants from creating third party interest in the suit land and raising construction thereon and after submission of verification report of Sale Deed dated 12.4.1993 by the defendant No.7 in compliance of court's order dated 30.8.2021 passed on plaintiff's application being CMA No. 13171 of 2021, the plaintiff once again approached to this Court kept out of sight the order dated 14.01.2021 and shown urgency in getting restraining order of this Court, which order was already in the field in favour of the plaintiff. The attitude of the plaintiff towards this case who also astonishing as in existence of earlier restraining order of similar nature in his favour in respect of similar relief, why by concealing the facts of the case and on the basis of the report of defendant No.7 dated 3.11.2021 again obtained similar restraining order from this Court on 5.5.2023 in same suit, while such report should have been pressed for confirmation of ad-interim status quo order earlier passed by this Court on 14-01-2021 in favour of the plaintiff.

8. The learned counsel for the defendant Nos. 4 and 6 after having knowledge of second restraining order dated 5.5.2023 of similar nature, approached to this Court and filed an application under Order XLVII Rule 1 R/W Section 94 and 151 CPC being CMA No. 6952 of 2023, praying therein that the order dated 5.5.2023 may be reviewed and recalled as the same has been passed on account of mistake and there is an error apparent on the face of the record. The defendant No.4 being duly authorized attorney of the defendant No.6 has enclosed his affidavit alongwith instant application, wherein he has submitted that the plaintiff has obtained second restraining order dated 5.5.2023 on the basis of report of defendant No.7 dated 3.11.2021, while the Sub-Registrar, Central Record Karachi, vide letter dated 01.03.2023 has confirmed that the Conveyance Deed dated 12.4.1993 is genuine and authentic as such the previous letter dated **3.11.2021** is no more in field (copy enclosed). I have gone through the contents of the said letter dated 1.3.2023, which provide details of two Registered Conveyance Deeds i.e. 1934 and 1918. Per Sub-Registrar Central Record City Court, Karachi in previous letter dated 13.12.2022 office had wrongly mentioned Registered No. 1934 dated 12.4.1993 at pages 49-54 in volume No. 704 of Book No.1 instead of correct Registered No. 1918, due to rush of work, as according to the record Sale Deed Registered No. 1918 was executed by one Mst. Farida Sultana wife of Abdul Majeed Khan in favour of Sheikh Nisar Ahmed in respect of the Plot No. C249, Sector No.1, measuring 600 square yards situated in Ahsan Abad Cooperative Housing Society Limited, Karachi, while Conveyance Deed vide Registered No. 1934 at page Nos. 44 to 48 in Volume No. 704, Book No.1 Addl. dated 24.4.1993 was executed by Khair Muhammad son of Taj Muhammad (plaintiff) through his sub-attorney Muhammad amin in favour of defendant No. 6 in respect of suit land.

9. The learned counsel for defendant No.5 (Muhammad Amin) has also submitted counter affidavit of the defendant No.5 to the application (CMA No. 6826 of 2023) filed by the plaintiff under Order XXXIX Rule 1 and 2 CPC, wherein he has specifically stated that the plaintiff had executed an irrevocable General Power of Attorney dated 01.10.1992 in his favour, which has duly been registered vide Registration No. 2017, Book No. IV, dated 01.10.1992 by the Sub-Registrar T-Division, Karachi. He further submitted that through said General Power of Attorney the plaintiff had empowered him to perform all acts, things and Deed in respect of Suit Property including the Power to Sell, Convey Sub-Lease e.t.c. He however pointed out that the plaintiff has approached this Court after about 27 years of execution of General Power of Attorney dated 01.10.1992 and

Conveyance Deed dated 12.04.1993, therefore, the suit of the plaintiff is extremely time barred and on this ground alone it is liable to be rejected.

10. The learned AAG has submitted Counter Affidavit of the Mukhtiarkar Scheme-33, Karachi East, wherein he has supported the version of the defendant Nos. 4 and 6 to the extent of the suit land in the name of the defendant No.6 through attorney Muhammad Amin on the basis of Sale Deed. He enclosed copies of such record of rights alongwith his Counter Affidavit. He also submitted a letter of verification of documents bearing office letter No. 948/SR/CR/2023 dated 01.03.2023 sent by the Sub-Registrar Central Record, City Court, Karachi to "The Mukhtiarkar, Gulzar-e-Hijri, Scheme-33 Karachi. The contents of that letter also supported the version of the Defendant Nos. 4 and 6. The contents of the said letter dated 01.03.2023 are being reproduced **here under** for the sake of convenience:-

#### **VERIFICATION OF DOCUMENTS.**

*In continuation to this office letter No. 1217/SR/CR/2022 dated 13.12.2022, on the subject noted above.*

*It is to inform you that this office has wrongly mentioned registered No. 1934, 12-04-1993 instead of correct registered No. 1918 due to mistake and rush of work and typing mistake.*

*It is therefore, kindly the above registered No. 1934 may kindly be treated as 1918, i.e. Sale Deed Rs. 144,000/- was Executed by Mst. Farida Sultana w/o Abdul Mojeeb Khan in Favour of Sheikh Nisar Ahmed s/o Sheikh Fayyaz Ahmed, in respect of property bearing Plot No. C-249, Sector No.1, measuring 600 square yards situated in Ahsanabad Cooperative Housing Society Ltd, Karachi, registered in the office of Sub Registrar T. Div.XII Karachi, vide Registered No. 1918 at Pages 44 to 48 in Volume No. 704 of Book No.1 Addl. Dated 24-04-1993 and Deed of Conveyance Rs. 32,00,000/- Executed by Khair Muhammad s/o Taj Muhammad through his Sub Attorney Muhammad Amin s/o Noor Muhammad in favour of M/s. Jiwani Builders, through their Partners (1) Jawed s/o Sadruddin, (2) Pervaiz s/o Sadruddin (3) Sadruddin s/o Jiwa (4) Aslam s/o Sadruddin (5) Mst. Noor Bano w/o Sadruddin and (6) Irfan s/o Sadruddin, in respect of Land measuring 3 Acres, in Sector No. 15-B, situated in KDA Scheme No.33, Karachi, registered in the office of Sub Registrar T.Div.XII Karachi, vide Registered No. 1934 at Pages No.49 to 54 in Volume No. 704 of Book No.1 Addl. Dated 24-04-1993."*

11. Record shows that this Court on the request of the learned counsel for the plaintiff ordered to send the power of attorney dated 01.10.1992 and Conveyance Deed dated 24.4.1993 to defendant No.7 (Sub-Registrar Gadap Town, Karachi) for verification of genuineness of these documents produced by the defendant Nos. 4 and 6 alongwith their counter affidavit

and after submission of contradictory reports of these documents while hearing the matter this Court in order to ascertain veracity and genuineness of these documents vide order dated 01.06.2023 issued directions to the concerned officials of Revenue Department to appear in person alongwith original record of such documents. On 19.6.2023 Sub-Registrar Central Record, City Court, Karachi appeared in person and produced original record i.e. "Register of Thumb Impression (T.I. Register) No. 158 of 'T' Division, Karachi, and Index-II, Book-1, Scheme-33, Register of 'T' Division-XII, Karachi of 1993. Copies of said original record were obtained by this Court for keeping it on record and also provided its copies to the learned counsel for the plaintiff and defendants. The purpose of calling original record of general power of attorney dated 01.10.1992 and Conveyance Deed of the defendant No. 6 dated 24.4.1993 was to verify genuineness of these documents and while going through the original record with due care and caution it revealed that the plaintiff in 'T.I. Register' No. 158, 'T' Division-V at Entry Book and Serial No. '6809' placed his signature and thumb impression on 01.10.1992 when he executed general power of attorney in favour of defendant No. 5, Muhammad Amin.

12. Original Sale Deed valued at Rs. 1,44,000/- dated 12.4.1993 executed between Mst. Farida Sultana wife of Abdul Mojeeb Khan (one part) and Mr. Sheikh Nisar Ahmed (other part) was registered in respect of plot No. C-249, Sector No.1, measuring 600.00 Square yards, situated in Ahsan Abad Co-operative Housing Society Limited, Karachi, registered No. **1918** at page Nos. 44-48 in the office of Sub-Registrar 'T' Division-XII Karachi. The original subject Deed of Conveyance valued at Rs. 32,00,000/-dated 12.4.1993 was executed between **Mr. Khair Muhammad son of Mr. Taj Muhammad**, through his duly constituted sub-attorney Mr. Muhammad Amin son of Mr. Noor Muhammad (one part) and M/s. Jiwani Builders, through their partners (1) Jawed son of Sadaruddin, (2) Pervaiz son of Saddaruddin, (3) Saddaruddin son of Jiwa, (4) Aslam son of Saddaruddin (other part) in respect of piece and parcel of land measuring 03-00 acres, in Sector No. 15-B, KDA, Scheme-33, Karachi and Registered at Registration No. **1934** dated 24.4.1993 at page Nos. 49-54.

13. The original Register, Index-II, Book-1, Scheme-33, 'T' Division-XII was also produced before this Court and above mentioned two entries of Sale Deed Plot No. C-249 of Mst. Fareeda Sultana i.e. **1918** and Deed of Conveyance of M/s. Jiwani Builders (defendant No.6) of 03-00 acres land in Sector 15-B, Scheme-33, Registered No. **1934** are available.

14. The learned counsel for the plaintiff, defendant Nos. 4, 5 and 6 and learned A.A.G Sindh have argued their case at length on the points discussed above and official of Revenue Department made compliance of the order of this Court by producing original record of the subject land.

15. Mr. Muhammad Vawda, Advocate for defendant Nos. 4 and 6, while arguing his Review Application has diverted my attention towards the para-29 of the plaint of this suit, the contents of which reflect that 'the subject land of this suit had already been sold out by the plaintiff to one Sikandar Laiq Ahmed through agreement of sale against consideration amount of Rs. 87,12,000/- and physical vacant possession of said land was also delivered to said purchaser Sikandar. He further stated in same para 29 that the said Sikandar is still in possession of the subject land but due to some reasons such land could not be transferred to him by registered Sale Deed; therefore, the plaintiff is still lawful and exclusive owner of the subject land. When the learned counsel for the plaintiff was asked by this Court that why the plaintiff could not have transferred the subject land in the name of the said purchaser namely Sikandar inspite of completion of all formalities of transaction of Sale including handing over possession of the subject land to him, the learned counsel for the plaintiff was unable to answer the satisfactory reply to this Court except to say that the said purchaser Sikandar himself had never tried to get the transaction complete either on his own or through Court.

16. The learned counsel Mr. Khalid Jawed, Advocate appearing for the defendant No.5, the alleged attorney of the plaintiff argued that the plaintiff had executed a Registered Power of Attorney in his favour, wherein, he duly empowered the attorney to do several acts on his behalf mentioned therein including sell of subject property. The learned counsel for the plaintiff although has denied execution of such Power of Attorney by the plaintiff in favour of defendant No.5, but on producing original record of the subject documents on his own request he was unable to deny it. Besides, the learned counsel for the plaintiff has denied Conveyance Deed of the defendant No.6 dated 24.4.1992 but on production of original Conveyance Deed with its correct R.D No. **1918** the learned counsel for the plaintiff could not refute it. On 5.5.2023 when the matter was not fixed before this Court the learned counsel for the plaintiff pleaded urgency and on the basis of a fabricated report dated 03.11.2021 of defendant No.7 (Sub-Registrar-1, Gadap Town), wherein he reported that the Sale Deed of subject land was sent to the office of the Sub-Registrar, Central Record, City Court Karachi for verification, who vide his letter No. 696/SR/CR/2021 dated 05.10.2021, informed that such transaction, vide registration No. 1934 of Book No.1, dated 12.4.1993, Sub-Registrar T Division-XII, Karachi, does not exist in the record, as such by taking benefit of the report, the learned counsel for the

plaintiff while showing great apprehension of creation third party interest by the defendant Nos. 4&6 in subject land and raising construction thereon, prayed for issuing restraining order against the defendants, while the similar order was already in field in his favour. The learned counsel for the plaintiff has also put much emphases on the point that the defendant Nos.4 and 6 have produced fake, fabricated and tempered Conveyance Deed of subject land by tempering its R.D Number.

17. It was pointed out by the learned counsel for defendant Nos. 4, 5 and 6 that the plaintiff prior to this suit had filed C.P No. D-744 of 2016, before this Court on 04.02.2016 against Province of Sindh and others, seeking relief regarding some deficit area and adjustment of land in Sector 15-B, Scheme-33, Karachi and in para-7 of the memo of petition the petitioner/plaintiff has categorically pleaded on Oath that he being the original allottee had sold out 03-00 acres of land (subject property of this suit) to M/s. Jiwani Builders (defendant No.6). The learned counsel for the plaintiff has denied the claims of the defendant No.5, mentioned above, by filing his affidavit in rejoinder and enclosed the copy of said petition No. D-744 of 2016 but once again denied filing of this petition through attorney by saying that he neither appointed attorney for filing this petition nor he filed the same, however, the plaintiff has not stated in his rejoinder that what action he had taken against the person, who acted as his attorney and filed Constitution Petition before this Court on his behalf.

18. After visiting entire case file and perusal of original record of all relevant documents of the subject land, I have come to the conclusion that the plaintiff has filed the instant suit on baseless frivolous and fabricated grounds, he had no cause of action against the defendants, he managed fake reports through corrupt officials, who are present in several departments and for illegal favours facilitating those people, who want to get undue and illegitimate benefits from them. Although I have heard arguments on Review Application of the defendant Nos. 4 and 6 but while proceedings of this matter lot of things came on record, which were discussed in detail by the learned counsel for the parties on factual and legal aspect of the case. The officials of Revenue Department, who produced original record of all relevant documents have provided an opportunity to this Court to better understand the contents of the plaint, its backdrop and the documents relied upon by the plaintiff. After presentation of the original record of the relevant documents it is clear that the plaintiff through filing instant suit was trying to get undue declaration of his ownership of the subject land, which he admittedly, sold out to one Sikandar for about 27 years back against Sale Consideration and handed over its possession to

him and now instead to make performance the said Sale Agreement with alleged Sikandar trying to get back the property in question from the present owners of this suit i.e. defendant No.6. It is settled law that it is also a duty of the Court to see whether the allegations made in the plaint give rise to a cause of action or not and the Court should reject the plaint at any stage of the proceeding, if after perusal of the plaint, Court is of the opinion that no cause of action is made out or accrued on the allegations narrated in the plaint. In instant matter while hearing arguments on Review Application filed by the defendant Nos. 4 and 6 this Court having chance to peruse the contents of the plaint and its documents and after perusal and hearing arguments of both sides, I am of the view that the plaint of the plaintiff is hopelessly time barred for more than 27 years and no application under Section 5 of the Limitation Act has been filed by the plaintiff in order to agitate/seek condonation of delay in filing instant suit. Besides, the plaintiff admittedly is no more owner of the subject land according to the record of right, which could not be denied by the plaintiff after presentation of original record of the relevant documents of the subject land before this Court. The plaintiff in his previous petition No. D-744 of 2016 admitted that he had sold out the subject land to the defendant No.6, therefore, law of estoppel is also binding on him to bring a fresh suit on same cause of action. Although the plaintiff has denied filing of said petition No. D-744 of 2016 by him and submitted that it was filed by his alleged attorney to whom he never authorized to file the same, but his simple denial would not be helpful to him as it was duly filed before this Court and mere its denial is not sufficient without any action against such person, who according to him was personating as his attorney by filing Petition on false grounds before the highest judicial forum of the Province. The plaintiff seems habitual of denying things, which he had done previously. I find no reason to continue such proceedings further which are frivolous and cause wastage of precious time of Court. I, therefore, allow Review Application of the defendant Nos. 4 and 6 as prayed and simultaneously reject the plaint of the plaintiff under Order VII Rule 11 CPC being barred by law of limitation and disclosed no cause of action against the defendants. All pending applications are also dismissed. There shall be no order as to cost.

J U D G E