

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D – 1501 of 2023

Date	Order with signature of Judge
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FRESH CASE

1. For hearing of Main Case.
2. For orders on Misc. No. 7464/2023.

05.04.2023:

Qazi Hifz ur Rehman, advocate for the petitioner.

1&2. Through instant petition, petitioner has sought restraining order against respondent No. 3, who according to learned counsel for the petitioner, is encroaching upon the subject Plot bearing No. ZC-2, measuring 200 square yards, Sector 8/F, KDA Scheme 35, Gulshan-e-Zahoor, Lines Area, Karachi, which according to learned counsel for the petitioner, is owned by the petitioner. However, after hearing the learned counsel for the petitioner at some length and from perusal of the record, it appears that in respect of same subject plot, a declaratory suit being No.1426/2007 between the parties is already pending before learned Single Judge of this Court relating to right, title and possession over the subject plot, therefore, learned counsel for petitioner was directed to place on record copy of pleadings and the restraining order, if any passed therein, however, in response, the learned counsel has only placed on record copy of plaint, whereas, instance of the official respondents or restraining order, if any, passed therein, has not been placed on record.

Learned counsel for the petitioner was also confronted to satisfy this Court as to maintainability of instant petition, whereby, inspite of the fact that a civil suit is already pending before the competent Court of civil

jurisdiction regarding right, title and possession over the subject plot, wherein, petitioner can obtain appropriate order(s) to secure his lawful possession or restraining orders against encroachment by any third party. In response to such query, learned counsel for the petitioner submits that since respondent No.3 is now attempting to encroach upon the subject plot, who is not a party, therefore, instant petition has been filed. Such response of the learned counsel for the petitioner is not reasonable as restraining order against any party, who attempts to interfere with any right, title or possession of legal owner, an aggrieved party in any such proceedings, if already pending before competent Court, can file appropriate application by impleading that party and can obtain appropriate restraining orders, therefore, any order in the instant petition, would amount to duplication of proceedings, and may result any conflicting order in separate proceedings. Moreover, if it is a case of encroachment over plot of the petitioner having no nexus whatsoever with the suit proceedings, petitioner can lodge an FIR or file proceeding before relevant forum/Court provided under the law.

Accordingly, instant petition being misconceived, which is dismissed in limine alongwith listed application. However, petitioner will be at liberty to seek remedy in accordance with law.

JUDGE

JUDGE

A.S.