

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**SUIT NO.259/2007**

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Date    Order with signature of Judge  
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1. For hearing of CMA No.1727/2015
2. For hearing of CMA No.1726/2015
3. For evidence.

**15.04.2015**

Mr. Muhammad Ahmed advocate for plaintiff.  
Mr. Arif Khan advocate for defendant.

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1.                          Through instant application (CMA No.1727/2015) plaintiff seeks adding of five issues as proposed. Order Sheet dated 18.12.2014 reflects that none was present on behalf of plaintiff and issues submitted by defendants No.1 to 3 and 10 were adopted *ifso facto*. Learned counsel for plaintiff has argued that no opportunity was provided to the plaintiff for submission of proposed issues. However this is pure domain of this Court to settle the issues and requirement of filing proposed issues is merely for convenience of the parties. He further contends that issues were adopted by this Court and for complete adjudication proposed issues are very material and relevant. In support of his contention he has relied upon PLD 2008 Karachi page 109.

2.                          Conversely, learned counsel for defendants contends that proposed issues are already covered in issues framed on aforesaid date and issues submitted by plaintiff are filed unnecessarily.

3.                          Perusal of record reflects that issues submitted by defendants were adopted. There is no cavil in proposition that it is the duty of the Court to frame the issues from the pleadings, albeit for the convenience of parties this practice is adopted by the Courts,

but that is not mandatory requirement. Application is not filed belatedly. It would be worth to refer the issues as adopted :-

- (i) Whether the plaintiff has any cause of action against the defendants?
- (ii) Whether the plaintiff has come with clean hands?
- (iii) Whether the plaintiff had purchased 1/3<sup>rd</sup> undivided share in the suit property for ulterior and/or malafide reasons ?
- (iv) Whether the plaintiff is entitled to receive rent in lieu of the plaintiff waiving his right to receive rent in terms of agreement of sale dated 28.10.2005?
- (v) Whether the suit property is in occupation/possession of defendants or their tenants?
- (vi) Whether the suit property can be partitioned by metes and bounds?
- (vii) Whether the plaintiff is entitled to any damages?
- (viii) What should the decree be?

In juxtaposition for the sake of brevity, issues proposed by plaintiff are as under:-

- (i) Whether the plaintiff is entitled to possession of the undivided suit property as per his share in the property?
- (ii) Whether the defendants/co-owners are liable to account to the plaintiff for share in the rentals received by them for the suit property?
- (iii) Whether the plaintiff is entitled to mesne profit from the defendants and if so, to what amount?
- (iv) Whether the defendants could lawfully create third party interest or make any change in the property without consent of the plaintiff/co-owner?
- (v) Whether Receiver should be appointed for the suit property?

From the perusal of pleadings, it appears that issues framed on aforesaid date require modification and that would serve

the purpose for complete adjudication of disputes between the parties. Further it appears that proposes issues are strictly from the pleadings hence with modification, following issues are framed:-

- (i) Whether the plaintiff is entitled to receive rent in lieu of the plaintiff waiving his right to receive rent in terms of agreement of sale dated 28.10.2005?
- (ii) Whether the suit property is in occupation/possession of defendants or their tenants?
- (iii) Whether the defendants/co-owners are liable to account to the plaintiff for share in the rentals received by them for the suit property?
- (iv) Whether the plaintiff is entitled to possession of the undivided suit property as per his share in the property?
- (v) Whether the plaintiff is entitled to mesne profit from the defendants and if so, to what amount?
- (vi) Whether the plaintiff is entitled to any damages?
- (vii) What should the decree be?

List of witnesses and documents within stipulated time.

Imran/PA

**J U D G E**