

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.D-5050 of 2024

Date	Order With Signature Of Judge
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- 1.For hg of CMA No.22413/24
 - 2.For hg of CMA No.22414/24
 - 3.For hg of main case
- 21.02.2025.

Mr. Muhammad Vawda, advocate for petitioners.
Mr. Khalil Ahmed, advocate for respondent No. 5.
Mr. Manzoor Hussain Abro, advocate for SBCA.
Mr. Mubarak Ali Shah, advocate for KDA.

MUHAMMAD IQBAL KALHORO, J:- Petitioners have filed this petition against alleged illegal conversion of a plot measuring 2684.4 sq. yds. titled as Public Building situated in petitioner society by the previous management through a revised layout plan. It was initially divided into two plots, one titled as amenity plot of 2400.00 sq. yds., which was further divided into two plots and converted as commercial ones bearing Plot No.22 measuring 1075 sq. yds. and Plot No.15 measuring 1075 sq. yds. Then from the original plot was further created a new commercial Plot No.866 measuring 866.66 sq. yds. The case of the petitioners is that this conversion of amenity plot into commercial plots is illegal and against the ratio laid down by Supreme Court in the case of *Province of Sindh through Chief Secretary v. Syed Kabir Bukhari (2016 SCMR 101)*.

2. Be that as it may, during course of arguments, it has transpired that petitioner society viz. M/s. Madras Cooperative Housing Society Limited had filed a Suit No.433 of 2022 before the Karachi-West Special Court for Cooperative Societies seeking, amongst others, cancellation of the illegal allotment of the commercial Plot No.866 to respondent No. 5, Al Qasar Builders & Developers. As a counter measure, respondent No. 5 filed a Suit No.562 of 2023 seeking declaration of title in respect of the

same plot before the same Court. Vide judgment dated 21.09.2024 and decree drawn on the same date, the suit of the petitioner society was dismissed, whereas, the suit filed by respondent No. 5 was decreed.

Petitioner No. 2, the society in the suit, had made following prayers:-

i. To declare that the commercial Plot No.866, Madras Cooperative Housing Society, Sector 17-a, KDA Scheme 33, Karachi belongs to the plaintiff society;

ii. To declare that the previous management of the society with malafide intention and ulterior motives bypass the rules of commercial plots and allotted the plots illegally;

iii. To declare that the previous management/ has / had no lawful authority to allot commercial plot of the society to Defendant No.1 and subsequent to all Defendants till Defendant No. 5;

iv. To cancel the Sale Deed dated 29.09.2021, Letter dated 18.02.2021, Conveyance Deed dated September, 2013, Lease Deed dated 22.06.2012, Acknowledgement of Possession Letter dated 08.01.2021, Payment Receipt dated 08.01.2021, NOC Letter dated 08.01.2021, Transfer of Membership Letter dated 05.01.2021, Transfer of Transfer/Mutation Order dated 05.01.2021, Payment Receipt dated 04.01.2021, Proposed Building Plan Letter dated 24.08.2016, Acknowledgment of Possession Letter dated 20.07.2016, Transfer/Mutation Letter dated 23.05.2016, Transfer of Membership Letter dated 23.05.2016, NOC for Sale Letter dated 09.03.2016, Transfer/Mutation Order dated 01.03.2016, Transfer of Membership Letter dated 01.03.2016, Transfer of Membership Letter dated 17.05.2012, Transfer/Mutation Order dated 17.05.2012, Payment Receipt dated 14.05.2012, NOC for sale dated 10.05.2012, Letter of Allotment dated 19.04.2012, Payment Receipt dated 13.04.2012, Membership dated 20.02.1985, Dues Receipts dated 05.08.2008, 08.01.2008, 14.01.2008, 07.12.2007, 17.10.2006, 17.10.2005, 21.08.2006, 08.05.2004 and 06.05.2004 (annexures D to E/27) executed/issued in respect of said plot in respect of said property i.e. Commercial Plot No.866, Madras Cooperative Housing Society, Sector 17-A, KDA Scheme-33, Karachi being null & void and ab-initio;

v. To direct the Defendant No.8 to enter all the cancel registered documents in his register which he maintains regarding cancellation of documents;

vi. To direct the Defendant No.5 to handover the peaceful vacant possession of the suit plot i.e. Commercial Plot No.866, Madras Cooperative Housing Society, Sector 17-A, KDA Scheme-33, Karachi to the Plaintiff forthwith;

vii. To pass an order and direct /restrain permanently the Defendants, their agents, workers, employees, person or

persons acting on their behalf not to create any third party interest in respect of said plot i. e. Commercial Plot No.866, Madras Cooperative Housing Society, Sector 17-A, KDA Scheme-33, Karachi;

viii. To pass an order and direct /restrain permanently the Defendants, their agents, workers, employees, person or persons acting on their behalf not to raise. any construction over said the plot i.e. Commercial Plot No.866, Madras Cooperative Housing Society, Sector 17-A, KDA Scheme-33, Karachi till final disposal of instant suit;

ix. Any other relief which this Honourable Court may deem fit and proper under the circumstances of the case;

x. Cost of the suit.

3. As is obvious from above prayers, petitioner No. 2 in the said suit had not challenged status of the said plot as commercial, nor had challenged its alleged conversion from amenity to commercial one. On the contrary, the society had contested its claim of ownership over the said plot, on as it is basis, and had further sought cancellation of allotment of the said plot to respondent No. 5 by the previous management of the society. When aforesaid suit was filed by the society, it seems, the plot had already been converted into commercial one but the petitioners preferred to omit a mention thereof or seek the relief challenging its purported conversion from amenity plot to commercial one. This petition has been filed post judgment and decree only when the petitioner society failed to get relief as prayed by it in the suit.

4. Order II Rule 2 (2) CPC lays down that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. It is further clarified in the same provision that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue

for any relief so omitted. This provision of law makes it very clear that a plaintiff cannot sue for any portion of his claim which he has either omitted to sue for or relinquished in the earlier suit. He thereafter does not reserve the right to sue for such claim.

5. Nonetheless, at the same time, it can be easily understood that there is nothing in the said provision to prevent the plaintiff from amending a plaint with permission of the Court so as to include a claim not originally sued for. Seen in this context, we have serious reservations to maintainability of this petition, seeking the relief which was available to the petitioner society earlier but it preferred to omit it. When confronted with the reality that petitioners have filed this petition only after failing to succeed in the suit; and that in case the suit had been decreed, the petitioners would not have filed the petition and rather availed the fruits of its decree, learned counsel has no words to rebut it or raise a ground rooted in altruism.

6. During arguments, it has also transpired that against the judgment and decree of the Cooperative Court, the petitioners have filed the appeals which are pending before this Court. It is a settled proposition of law that appeal is a continuation of the trial and any defect which can be cured by amending the plaint or prayer clause can also be taken care of in the appeal with permission of the Court by seeking a necessary amendment. Hence, instead of pressing this petition and agitating the question over conversion of the subject plot, purportedly from amenity to commercial, the ownership of which, the petitioners are also contesting, the petitioners may approach the Appellate Court and seek a necessary amendment including the relief which the petitioners have sought in this petition. As far as this petition is concerned, it is not only hit by Order II Rule 2 CPC, but there is a serious question to bona fide of the petitioners to institute it after failing to get the relief in the suit before the Cooperative Court.

7. As a result, we do not find any merit in this petition, and dismiss it. The petition is accordingly disposed of in above terms.

JUDGE

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JUDGE

