

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Suit No.541 of 2007

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DATE                      ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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For hearing of CMA No.16074/2014

11.12.2014

Mr. Munawar Ali, advocate for the Plaintiff.  
Mr. Irfan Hassan, advocate KMC/CDGK.

. . . . .

It is indeed very unfortunate that previous counsel for the Plaintiff moved an application for withdrawal of the suit on 11.2.2014 supported by his own affidavit and persuaded me to dismiss the suit as withdrawn. Now this application for recalling of the said order of dismissal as withdrawn has been moved by the Plaintiffs with their supporting affidavits.

Plaintiffs No.2 & 4 are present in Court and they were asked to step into witness box for examination on oath. The statement of Plaintiffs No.2 & 4 as follows:-

Plaintiff No.2 Mst. Bushra w/o Aftab Ahmed

I do hereby solemnly affirm on oath as under:-

I say on oath that my previous counsel for the last four years calling me on different dates in Court and informing after 2/3 hours that learned Judge is not available and case has been adjourned. It happened several times. Whenever I came to attend the Court, I came with one of the sisters who are also Plaintiffs with me. Today Mst. Kulsoom who is Plaintiff No.4 is with me and earlier on many dates I came with other sisters Safia, Plaintiff No.3 and Amtul Fatima, Plaintiff No.1 before she left for Canada. I say on oath that we have never instructed our counsel to withdraw the suit.

Plaintiff No.4 Mst. Kulsoom w/o Arshad Ali

I do hereby solemnly affirm on oath as under:-

I do hereby affirms that whatever stated by Plaintiff No.2 in Court in my presence is true and correct and I also reiterate the allegations against my previous advocate who after four years of this proceeding has withdrawn the case without our permission as there had never been any compromise with the Defendants.

Since I have examined Plaintiffs No.2 & 4 in open Court on oath, and they have confirmed misconduct of their counsel and even otherwise the application for withdrawal of suit on compromise should have been supported with an affidavit of at least one of the Plaintiffs out of four, therefore, this application is allowed. Suit is restored to its original position as it was on the date of withdrawal.

Record shows that a preliminary decree was prepared in this case on 27.4.2010. Apparently service was held good on Defendants No.1 to 4 on 22.8.2008 and the case was repeatedly listed for written statement. The evidence was ordered to be recorded by the Nazir of this Court and the Plaintiff had filed affidavit-in-evidence on **15.6.2011** but as stated by the Plaintiffs in Court on oath that their counsel kept on dodging them until he got the suit withdrawn by filing his personal affidavit.

In view of the above facts and circumstances, Nazir of this Court is directed to immediately visit all the properties mentioned in the preliminary decree and obtain rent agreements and the particular of the tenants and direct them to deposit future monthly rent with the Nazir w.e.f **01.01.2015**. Put up all the properties for auction through publication after notice to the Defendants so that the properties should be sold within 45 days from today unless the Defendant come forward and submit their claim otherwise. Nazir should inspect these properties and prepare inventory within one week and file report in Court on **23.12.2014**. Nazir fee will be determined subsequently.

I cannot close this order without noting that learned counsel who was appearing on behalf of the Plaintiffs and filed his own affidavit for withdrawal of the suit has definitely violated the provisions of Bar Council Act, 1973. Therefore, before Nazir could take any step in furtherance of the order passed hereinabove, counsel present today in Court should get relevant documents from the office of Sindh Bar Council for filing complaint against the previous counsel of Plaintiff and the two Plaintiffs present should be the complainant and submit their affidavit alongwith detailed complaint within three days in Bar Council Office and place all the documents regarding complaint in court file. No excuse should be entertained for not complying with this order by the Plaintiffs or their counsel.

Defendant No.5 CDGK is not necessary party in a suit for administration, therefore, office is directed to delete name of the Defendant No.5 from the array of the Defendants. Plaintiff is directed to file amended title before the next date.

Send copy of this order alongwith copy of preliminary decree to the Nazir for immediate compliance of this order.

Adjourned to 23.12.2014.

JUDGE