

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No.791 of 2014

Date	Order with signature of Judge
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1. For orders on CMA No.10281/2016.
2. For hearing of CMA No.8720/2016.
3. For hearing of CMA No.8721/2016.

02-07-2016

Mr. Muhammed Umer Lakhani, Advocate for the plaintiffs.
Mr. S. Hasan Imam, Advocate for defendant No.3.

x-x-x-x-x-x-x-x

The matter was heard on 30.6.2016 and was reserved for orders.

This is an application under Section 151 CPC for demarcation of the suit properties. However, the suit properties are not mentioned in the application. The contents of the plaint are being considered for the subject properties. It is claimed by the plaintiff that these properties were attached earlier and now where a dispute about the wall has come up and the same needs demarcation. In this regard it is also stated that at the time of inspection some undesirable behavior was found. Learned counsel for the plaintiff, relying upon the contents of the application on account of the present position, requests for the demarcation in accordance with the lease issued by the KMC required in order to ascertain the areas allotted under lease available to the plaintiff.

The instant application is opposed by the learned counsel for the defendants on the grounds that:

- (1) No prayer of demarcation is made in the plaint and as such the same cannot be granted as an interlocutory relief.
- (2) That the plaintiff has not been able to establish his rights and according to the learned counsel as his title is under objection, inspection is not available.
- (3) That the plaintiff is not entitled to the inspection as the same comes after decree i.e. determination of rights.
- (4) The required demarcation usurps the rights of the defendants.

Learned counsel for the defendant was offered to get his properties also demarcated in order to avoid any prejudice to his

rights, however, for reasons best known to him, the offer was not accepted.

Having heard the learned counsels and gone through the record, it is to be observed that demarcation can be got made in order to facilitate the Court to come to the understanding of the actual situation at site. The same is not a determination of the rights and even the report coming forth is subject to hearing of any objections that may be available. Learned counsel for the defendants has not been able to show any ground whereby a demarcation may be denied to avoid the actual position present on site being brought on record. Another contention of the learned counsel for the defendant is, however, tenable that the inspection may not be conducted exclusively by KMC and the relevant office of City Survey is available.

The Nazir is appointed as Commissioner to demarcate the properties described in the plaint in coordination with the concerned officials of KMC, City Survey and the concerned Mukhtiarkar. In this regard, the S.H.O concerned is directed to ensure the safety and maintenance of law and order for the same. A tentative fees of Rs.80,000/- be deposited by the plaintiff to the office of the Nazir in this regard and the inspection be conducted within two (2) weeks and report submitted in the Court accordingly. The demarcation shall be without prejudice to the rights of the parties.

JUDGE

Asif