

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

C.P. No.D-3821 of 2013

Date	Order with Signature(s) of Judge(s)	
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Present

Mr. Justice Muhammad Ali Mazhar
Mr. Justice Abdul Maalik Gaddi

Dr. Muhammad Arif Memon Petitioner

V E R S U S

Province of Sindh & others Respondents

1. For hearing of CMA No.29228/2015.

02.3.2017

Mr. M. Yousuf Nasim, Advocate for the Petitioner

Mr. Farooq H. Naek, Advocate for the Intervenor

Mr. Sibtain Mehmood, AAG

Muhammad Ali Mazhar J. The intervenor Rao Muhammad Shakir has filed Misc. Application No.29228/2015 under Order 1 Rule 10 CPC for impleading him as respondent in this petition. Though Mr. Khalid Anwar, learned counsel for petitioner is stated to be on general adjournment, but his associate Mr. M. Yousuf Nasim informed us that he is also advocate for the petitioner and agreed to argue on this application.

2. The learned counsel for the intervenor argued that the name of intervenor has been mentioned by the petitioner in the memo of petition at-least 27 times at different places with serious allegations. Almost in each and every paragraph allegations by some means have been leveled against the intervenor. It was also contended that for the

most part of the documents attached with the petition are somehow or the other related to the intervenor. He further argued that one Civil Suit No.64/2012 has also been filed by the petitioner against the intervenor in the Court of Ist Senior Civil Judge, Sukkur, which is pending while another Suit No.105/2012 is also pending in the Court of Ist Senior Civil Judge, Sukkur, which was also filed by the petitioner against some other persons including the intervenor. Whereas, the intervener's own Suit No.48/2012 against the petitioner and some other persons is also pending in the court of Ist Senior Civil Judge, Sukkur. It was further averred that the petitioner has intentionally avoided to implead the intervenor to get the relief behind his back. The contents of memo of petition unequivocally show that the intervenor is proper and necessary party and it is his fundamental right to defend the allegations mentioned in the petition against him.

3. On the contrary, the learned counsel for the petitioner argued that the intervenor is accused in FIR Nos.13, 15 and 16 of 2014 on different charges. He further argued that the intervenor has filed application through Attorney which is not maintainable for the simple reason that he is absconder who cannot approach this court through Attorney as held by the superior courts. He further argued that the applicant has no role in the proceedings and neither he is necessary nor proper party. However, in the counter affidavit, the factum of pendency of three civil suits have not been denied rather the learned counsel submits that these facts have already been disclosed in the memo of petition.

4. We have also examined the memo of petition and noted that almost in each and every paragraph, a number of allegations have been directed against the intervenor that the official respondents in collusion with the intervenor

have acted unlawfully and it is further stated that Ali Akbar, former Incharge Micro Filming absconded with the land Register, who entered thousands of fraudulent transfer entries to fabricate the land records at the behest of intervenor, who is a property developer. Some more allegations have been leveled in which the intervenor is said to be instrumental for changing the land record for his own benefit. The factum of pending civil suits are also admitted by the petitioner and intervenor both. In one of the civil suits No.64/2012, the petitioner has prayed for the restraining order against the intervenor not to interfere in the business of the partnership firm. Some allegations have been leveled that the intervenor obtained fraudulent duplicate sale certificates prior to the registration of the documents, which he subsequently sold out to third parties. It is further stated that the intervenor influenced his position on the Assistant Commissioner for cancellation of some sale certificates. It is further stated that the intervenor co-opted and colluded with numerous revenue officials, including Assistant Commissioner, two Mukhtiarkars, a Tapedar, the supervising Tapedar and the Sub-Registrar, for Sukkur to commit some fraudulent actions and the Chief Secretary ordered an enquiry.

5. The learned counsel for the petitioner argued that since the intervenor has approached through Attorney, therefore, his application is liable to be dismissed. Nothing has been placed on record to show that the intervenor has been declared absconder by any competent court. On the contrary, the counsel for the intervenor submits that the intervenor is on bail in all three cases and the counsel for the petitioner admitted that according to his information at least in two cases the intervenor is on bail but he has no information for the third case. Even otherwise, there is no bar for filing application in civil matter through attorney.

6. It is well settled proposition of law that a necessary party is a person who ought to have been joined as a party and in whose absence no effective order/decreed could be passed at all by the court whereas a proper party is a party who, though not a necessary party but is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute though he need not be a person in favour of or against whom the order/decreed is to be made. In view of the series of allegation mentioned in the memo of petition, we feel it without any hesitation that the intervenor is proper and necessary party. Now the right of fair trial is a fundamental right of every citizen so the intervenor is entitled to be impleaded otherwise there is likelihood that some order may be passed in the matter on the basis of allegations which cannot be defended or controverted by the intervenor unless he is impleaded as respondent in the petition.

7. As a result of above discussion, this application is allowed. The intervenor is impleaded as respondent No.10. The counsel for the petitioner is directed to file the amended title and the (intervenor) newly added respondent No.10 may file the counter affidavit to the main petition as well as pending miscellaneous application within two weeks.

2 & 3. Hearing of CMA No.25250/2015 as well as main case deferred. Interim orders passed earlier to continue till next date.

Judge

Judge