

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No.1173 of 2012

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DATE

ORDER WITH SIGNATURE OF JUDGE

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For hearing of CMA Nos:-

1. 8/14 (U/O 1 Rule 10 CPC)
2. 13534/12 (U/O VII rule 11 CPC)
3. 9395/12 (U/O 39 Rule 1 & 2 CPC)
4. 11439/14 (U/O VII rule 11 CPC)
5. For ex-parte order against Defendant No.8.
6. For non-prosecution (summon not issued to Defendant No.4 as cost not paid)

**11.04.2018**

Mr. S. Nasir Hussain Jafri, Advocate for Plaintiffs.  
Mr. Abdul Wajid Wyne, Advocate for Defendant No.2.  
Ms. Ahmed Masood, Advocate for Defendant No.3.  
Mr. Iqbal Khurram, Advocate for Defendant MDA.  
Mr. Suneel Kumar Talreja, AAG.  
Mr. Shabbir Ahmed Shaikh, Advocate for Board of Revenue.

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3. This is a Suit for Declaration, Cancellation and Permanent Injunction and through listed application bearing CMA No.9395/2012, the Plaintiff seeks restraining orders against the Defendants from disturbing the possession of the Plaintiffs and/or raising any construction on the Suit Plot i.e. Survey No.32, Deh Shah Mureed, Gadap Town, Karachi.

Learned Counsel for the Plaintiffs submits that the property in question was owned by the late father of the Plaintiffs and was transferred to them pursuant to a compromise decree dated 12.06.2000 in Suit No.295/2000 and when the concerned office of the Mukhtiarkar was approached for mutation in the year 2005, it transpired from the record that the late father of the Plaintiffs had sold the property to Defendant No.2 through a Sale Deed dated 26.01.1999. According to the learned Counsel such Sale Deed was forged, and therefore, the Sub-Registrar concerned was again approached, who vide his Letter dated 26.09.2005 confirmed that there is no record available in their office regarding the said Sale Deed. He further submits that thereafter on the

basis of such letter, the DDO Revenue cancelled the mutation entry of Defendant No.2. According to the learned Counsel, the Plaintiffs are in possession and all original documents are also with the Plaintiffs, therefore, a prima-facie case is made out, hence the listed application be granted.

On the other hand, Counsel for Defendant No.3, who is present owner and purchaser of the property in question from defendant No.2, submits that firstly the Suit is barred in Limitation under Article 91 of the Limitation Act, 1908, inasmuch as according to the Plaintiffs' own case in 2005 it came into their knowledge that there was some Sale deed executed by their late father in favour of Defendant No.2, who thereafter had also executed Sale Deed in favour of Defendant No.3, therefore, the Suit ought to have been filed within 3 years from the date of such knowledge, whereas, instant Suit has been filed in the year 2012 which is hopelessly time barred. He further submits that the Plaintiffs were never in possession and in fact it is Defendant No.3, who holds possession and such fact is also reflected in the inspection Report of Nazir dated 06.10.2012. According to the learned Counsel, the order passed by the DDO Revenue regarding cancellation of entry was thereafter recalled on the appeal of Defendant No.3 through Order dated 05.07.2008. He submits that the Revenue Officer, per settled law, has no authority to cancel any registered instrument and it is only a Civil Court which can do so. Per learned Counsel even otherwise, the Plaintiffs claim ownership on the basis of a compromise decree, whereas, they ought to have been obtained a Succession Certificate as according to the learned Counsel, the compromise is between only two parties and not all legal heirs. Learned Counsel has also relied upon Sales Certificate dated 04.10.2004 and submits that all along the ownership and registered documents were acknowledged by the

Revenue Department, whereas, the only document on which the Plaintiff has relied is the cancellation of mutation of defendant No.2, which stands recalled, whereas, the sale deed(s) are still intact, hence no case is made out. According to the learned Counsel the remedy, if any, is with the Revenue Department and which according to the Plaintiffs' own version has been availed by filing of an appeal against order dated 05.07.2008, as disclosed in Para-11 of the Plaint, hence the plaintiffs Suit is otherwise barred in law. Learned Counsel has also relied upon the Lay Out Plan of the property issued by Malir Development Authority. In support he has relied upon **2004 CLC 15 (Jamal Nasir v. Karachi Development Authority (K.D.A) and others), 2017 YLR 2197 (Syed Sajid Raza through Registered Attorney v. City District Government (K.D.A. Wing) through District Coordination Officer and 5 others), PLD 1975 SC 624 (Hamida Begum v. Murad Begum).**

I have heard both the learned Counsel and perused the record. The Plaintiffs' case, as setup in the plaint, is that the Suit Property is owned by them on the basis of inheritance devolved upon them from their late father. Record reflects that it is not in dispute that no Succession Petition was file nor any Letter of Administration was ever issued in favour of the Plaintiffs and it is only a compromise decree passed in Suit No.295/2000 on the basis of which the ownership is being claimed. It is a matter of record that such decree was in respect of a Suit for Declaration and Possession between deceased father's widow and Plaintiff No.1 and it further reflects that there were various properties in dispute, for which they entered into a compromise agreement and this property according to the Plaintiffs' case devolved to them. It is a matter of record that this decree was passed in the year 2000 and much prior to that according to the Defendants' case the late father of plaintiffs had executed the Sale Deed. It is not before the Court

that how and in what manner the Plaintiffs sought execution of the compromise decree to effect transfer of the property in their name. Moreover, according to the Plaintiffs' own case, it was in 2005 when it came into their knowledge that the property has been sold to Defendant No.2 on the basis of a Sale Deed. They instead of approaching the Civil Court went to the Revenue Officials and got the mutation of defendant No.2 cancelled. However, it is settled law that a registered instrument cannot be cancelled by the Revenue Department and it is only a Civil Court, which is competent to do so. In fact the sale deeds were not cancelled, but only the mutation. An entry of mutation in record of rights is not a title document nor it is the ultimate proof of ownership as it is only based on an instrument of transfer, be it a Succession, or Sale, Gift or a Conveyance Deed and so on and so forth. It is also a settled proposition of law that mere existence of a mutation entry in the revenue record does not confer any title to a party. Moreover, when the adverse party claims its ownership on the basis of a registered document, it has attached to it a presumption of correctness and genuineness. A Mutation Entry in Revenue Record could neither create nor extinguish title to property as they are only maintained for fiscal purposes. See ***Muhammad Ali v Hassan Muhammad* (PLD 1994 SC 245)**. Further a right to title or ownership of any property depends entirely on the title i.e. source of acquisition of the right while an Entry in the Record of Rights is not the conclusive evidence of the right to ownership. See ***Bahadur Khan v Qabool Ahmed* (2005 CLC 1937)**.

It further appears that as of today even the Order dated 28.11.2005, whereby, the mutation entry of Defendant No.2 was cancelled, stands recalled vide order dated 5.7.2008 and according to the Plaintiff's own case, an Appeal was filed in 2012, which is pending. At the same time they have also filed this Civil Suit. Once they

themselves availed the remedy by seeking the cancellation of the mutation entry of Defendant No.2, then at the same time they are not justified in agitating the issue before this Court. In fact the entire case of the plaintiffs is based upon a letter dated 26.9.2005 whereby they were informed that no record is available in respect of sale deed dated 26.1.1999 executed by their father. And to this it may be observed that this does not ipso facto renders the Sale Deed(s) of defendant No.2 and 3 as invalid, whereas, thereafter, orders have been passed in the Revenue hierarchy whereby the sale deed(s) have been accepted and acted upon. At least at the injunctive stage in this Suit, mere reliance on such document is meaningless, whereas, a presumption of correctness is always attached to registered instruments till such time they are cancelled by the competent authority or Court of law, as the case may be. Insofar as their claim regarding possession is concerned, the Nazir's Report dated 06.10.2012 does not confirm that the possession is with the Plaintiffs, rather some representative of the Defendants met the inspection team of Nazir and claimed possession of the Suit Property.

In view of hereinabove facts and circumstances of this case, I am of the view that the Plaintiffs have failed to make out a prima-facie case, nor balance of convenience lies in their favour, and no irreparable loss would be caused to them if the injunction application is dismissed. On the other hand, if injunctive relief is granted, the Defendants would suffer irreparable loss. Accordingly, CMA No.9395/2012 is hereby dismissed, and restraining order(s), if any stand recalled.

1,2,4,5 & 6.          Adjourned.

J U D G E

Ayaz P.S.