

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 24 of 2009

DATE	ORDER WITH SIGNATURE OF JUDGE
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Plaintiff: Aligarh Muslim University Old Boys
 Cooperative Housing Society Limited
 through Mr. Murtaza Wahab Advocate.

**Defendants
 No. 1& 2:** The Mukhtiarkar & another through
 Mr. Noor Alam Khatri holding brief for
 Mr. G.N Qureshi Advocate

**Defendants
 No. 3 to 7:** The Town Nazim & others through
 Mr. Suneel Talreja AAG alongwith
 Ms. Rakhshinda Waheed State Counsel.

Interveners: Mashooq Ali & another through
 Mr. Muhammad Khalid Hayat Advocate.

- 1) For hearing of CMA No. 116/2012.
- 2) For hearing of CMA No. 15179/2014.
- 3) For hearing of CMA No. 15180/2014.
- 4) For hearing of CMA No. 11740/2017.
- 5) For examination of parties / settlement of issues.

Date of hearing: 11.04.2018.

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ORDER

Muhammad Junaid Ghaffar, J. Application at Serial No. 1 bearing CMA No. 116/2012 has been filed under Order 1 Rule 10 CPC by the Applicant for joining him as a Defendant and application at Serial No. 2 bearing CMA No. 15179/2014 has been filed under Article 199 of the Constitution read with Section 3 & 4 of the Contempt Ordinance, 2003 for alleged violation of order dated 24.4.2012 and 5.4.2012 in HCA No. 203/2011.

Learned Counsel for the Applicant submits that an order was passed in this Suit on 21.6.2010 whereby, certain directions were issued to the Nazir for taking over possession of certain properties including the Applicant's property and such order was impugned in HCA No. 203/2011 whereby, the Applicant was permitted to file appropriate application in this Suit for joining as a Defendant. Learned Counsel submits that as per Nazir report dated 08.04.2017 the Applicant is in possession on the basis of a valid Sublease dated 10.10.2011 executed in favour of the Applicant by the previous owner. Learned Counsel has referred to the documents i.e. Lease Deed dated 25.05.1995 executed by the original owners i.e. Leela Ram and others in favour of one Noor Muhammad who subsequently, executed a registered Power of Attorney in favour of Haji Gahno Khan Jatoi on 25.12.2004 who has now executed an Indenture of Sublease in favor of Applicant. Learned Counsel submits that the stance of the Revenue Officials also in support of the Applicant and therefore, the Applicant is a necessary and proper party to be joined as a Defendant as the Plaintiff is claiming the property owned by the Applicant.

Learned Counsel the Plaintiff has opposed this application and submits that insofar as the first document on which the Plaintiff is relying is Lease Deed dated 25.05.1995 purportedly executed by Leela Ram and others; however, the recital of the Sublease / Deed reflects that it is in respect of Sector 54-A Deh Bitti, Amri, Taluka District Malir, Karachi, whereas, the Plaintiff has no concern with Sector 54-A. He further submits that on the basis of this Lease Deed according to the Plaintiff's own case a General Power of Attorney was executed by the Lessee Noor Muhammad in favour Haji Gahno Khan Jatoi, but from nowhere in the Power of Attorney instead of Sector 54-A, Sector 7-A

has been mentioned. According to the learned Counsel, without prejudice, the Lessee was granted property in Sector 54-A, but without any justification and or material on record, it has been changed to Sector 7-A, in the said Power of Attorney on the basis of which the Indenture of Sublease as claimed has been executed in favour of the Applicant. Learned Counsel submits that Sector 7-A belongs to the Plaintiff's Society. He further submits that even the Lease Deed dated 25.05.1995 has not been executed by the alleged owners, but by their attorney Noor Hussain, whereas, the Power of Attorney purportedly executed in favor of Noor Hussain has not been placed on record. According to the learned Counsel, the Applicant is an encroacher and not the owner of the property in question. He has also referred to the last page of the Lease Deed dated 25.05.1995 and submits that it is on behalf of five owners, whereas, on the first page there are four owners of the property and according to the learned Counsel the same is a forged document and is not even an original but a copy of the true copy. He has also referred to some endorsement on the last page of the Lease Deed whereby, transaction is made in respect of some other property which has no nexus with the property in question. Learned Counsel submits that when order dated 21.06.2010 was impugned in HCA No. 203/2011 the Applicant was confronted with all these arguments by the Court itself and was required to satisfy the chain of documents being relied upon. Per learned Counsel notwithstanding this objection on 26.04.2010 all parties were directed not to create third party interest, whereas, according to the Applicant's own case the Indenter of Sublease has been executed on 10.10.2011 and therefore, the same is invalid and cannot confer any title on the Applicant. Learned Counsel has referred to order dated 13.09.2011 through which the order of Executive District

Officer dated 20.06.2011, cancelling the entry of the Applicant's predecessor in interest was restored; however, the same was subject to the condition that no order, judgment or litigation is pending affecting the said property. He submits that even otherwise, the said order has been recalled under Suo Moto proceedings vide order dated 30.12.2015 and as of today the entry in favour of the Applicant's predecessor in interest as well as the Applicant stands cancelled. Finally, learned Counsel submits that the forgery on the part of the Applicant's documents can be noticed from the fact that this property was an Evacuee property and the original owners at the time of partition had left such property, and thereafter, forged documents were created in their names and for this reason the Applicant has conceded that they are not in possession of any documents which could establish the ownership of Leela Ram and others. He has relied upon **1996 SCMR 781 (Muhammad Sharif V. Dr. Khurshid Anwar Mian)**, **1999 CLC 2077 (Abdul Razzak Tabba and 2 others V. Jetpur Memon Relief Society and 3 others)**, **1992 CLC 700 (Altaf Parekh V. Delments Construction Company)**, **2014 CLC 561 (Muhammad Imran V. President KASB Bank Ltd. and others)**, **1985 SCMR 714 (Pakistan Banking Council and another V. Ali Maohtaram Naqvi and others)**, **2010 CLC 273 (Khawaja Ziaul Islam V. Alauddin Malik and another)**, **2005 MLD 376 (Mst. Jameela Begum V. Additional District Judge and 3 others)** and **1985 CLC 2569 (Mahmood Anwar V. Deputy Commissioner and others)**.

While exercising his right of rebuttal, learned Counsel for the Applicant submits that the total area of this Sector is 130 Acres and previously it was Sector 54-A but now it is known as 7-A, whereas, the

order passed under Suo Moto proceedings dated 30.12.2015 has been impugned in a Petition wherein, interim orders have been passed.

I have heard both the learned Counsel and perused the record. Though very extensive arguments have been made by both the learned Counsel, but insofar as the present Application is concerned, the same is under Order 1 Rule 10 CPC for joining the Applicant as a Defendant. For that the Court has to only see that whether the Applicant is a proper or for that matter a necessary party. The case as set up on behalf of the Applicant is that since the Plaintiff is claiming ownership in respect of properties in various sectors including Sector 7-A, which is owned by the Applicant on the basis of Indenture of Sublease dated 10.10.2011, therefore, the Applicant is a necessary and proper party to be joined as a Defendant. The first instrument in the chain of documents relied upon by the Applicant is Lease Deed dated 25.5.1995 purportedly executed on behalf of Leela Ram, Thakur Das, Nachal Das and Chattha Ram through their attorney Noor Hussain in favour of Noor Muhammad. Firstly, there is no disclosure or material on record that as to how Leela Ram and others were owners of the subject property. No document to that effect has been placed on record and in fact the Applicant's Counsel conceded that he is not in possession of any document prior to Lease Deed of 1995. Secondly, the Power of Attorney purportedly granted in favour of Noor Hussain is also not on record and again to this the Counsel for the Applicant concedes. It is to be noted that in the said Lease Deed it is stated that the Khatedar i.e. Leela Ram and others own agricultural land bearing Survey No. 21, 22, 62, 64, 69 and 70 Deh Bitti Amri and in the same Lease Deed in the recital part the property is stated to be in Sector 54-A. Now for the sake of arguments, even it is assumed that the said survey numbers also

include Sector 54-A; but even then in the Power of Attorney executed by the Lessee Noor Muhammad all of a sudden the same land is shown to be falling in Sector 7-A. This chain of documents is on the face of it defective at least to the extent of claiming ownership in Sector 7-A. Since this is only an application under Order 1 Rule 10 CPC and this Court has to see whether the Applicant can be joined as a Defendant in this matter or not; therefore, I have restrained myself from dilating upon other objections and arguments raised on behalf of the Plaintiff and will only observe that insofar as the Applicant's instance is concerned, it has no nexus with the case of the Plaintiff on the basis of documents relied upon in this application. It is settled law that a party seeking impleadment as a Defendant or for that matter Plaintiff must show some nexus or relation with the subject matter of the Suit; whereas, the documents relied upon do not substantiate the claim that Applicant's case has any nexus with this Suit. The Applicant if joined as a defendant will be giving rise to a new cause of action and that is not permitted. It is well settled that no person can be permitted to become a party to a suit for the purpose of adding a new cause of action. It is also well settled that a plaintiff is *dominus litis* and, ordinarily, no person should be added as party against his wishes. There is nothing on record of this case to justify departure being made from that rule. Further, it is clear that if the applicant is impleaded in the suit, the trial of the question involved in the suit would be embarrassed and unnecessary prejudice would be caused to the plaintiff¹. Moreover, even the Appellate Court in its order dated 19.12.2011 had specifically confronted the Applicant as to the chain of documents of ownership and after perusal of the record placed before me I have reached a conclusion that

¹ Altaf Parekh v Delments Constructions Company (1992 CLC 700)

Indenture of Sublease of the Applicant has no nexus or continuity insofar as his claim in respect of property in Sector 7-A is concerned, whereas, the Applicant himself relies upon the original Lease Deed of the year 1995. In such circumstances, I do not see that the Applicant is either a necessary or a proper party which could be joined as a Defendant in this Suit.

Accordingly, by means of a short order in the earlier part of the day, CMA No. 116/2012 under Order 1 Rule 10 CPC was dismissed and consequently, CMA No. 15179/2014 had become infructuous and was also dismissed. These are the reasons thereof.

J U D G E

ARSHAD/