

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit Nos.384 & 202 of 1987

DATE ORDER WITH SIGNATURE OF JUDGE

Plaintiff (in Suit No.384/1987) & Defendant No.2
(in Suit No.202/1987) M/s. Pak Development Corporation
Through Mr. Mushtaq A. Memon,
Advocate.

Plaintiff (in Suit No.202/1987) Defendant No.4
(in Suit No.384/1987): M/s. Mohammadi Real Estate Co. &
(Pvt) Ltd. Through Mr. Muhammad
Zafar Ahmed, Advocate.

Defendant No.1 (in Both Suits): M/s. The Mercantile Cooperative
Credit Society Limited Through Mr.
Mehboob Aftab Khan, Advocate.

Defendant No.2
(in Suit No.384/1987): Saifuddin Pishori & others
Through Mr. Akhtar Ali, Advocate.

Applicant/Intervener: Through Mr. Muhammad Arif Khan,
Advocate.

Suit No.384/1987

For hearing of CMA No. 9091/2007.

Suit No.202/1987

For hearing of CMA No. 9090/2007.

Date of hearing: 30.04.2018

Date of Order: 30.04.2018

ORDER

Muhammad Junaid Ghaffar: The Applications bearing CMA No.9090/2007 and 9091/2007 in both Suits have been filed on behalf of the Applicant/Interveners with a prayer to join them as Defendants in these matters. Learned Counsel for the Applicants submits that the Defendant No.3 has sold/assigned their interest in the Suit Property during pendency of these proceedings, therefore, the Applicants are entitled for their impleadment as Defendant in these matters. Learned Counsel has relied upon

Order 22 Rule 10 CPC and submits that the case of the Applicant is fully covered by the said provision of law. Learned Counsel further submits that initially three agreements were entered into in the year 1987, and thereafter a Final Agreement/assignment was entered into on 15.05.2006, and immediately listed applications were filed, which are within reasonable time, and therefore, the applications be granted. In support he has relied upon the cases reported as **1997 SCMR 171** (*Rashid Ahmad v. Mst. Jiwan and 5 others*) and **2005 CLC 160** (*Messrs Environment Construction Co. Ltd. V. Muhammad Sarwar and others*).

2. On the other hand, learned Counsel for the Plaintiff submits that there is no question of any assignment in this matter as firstly the Suit property is a mortgaged property, and secondly, the persons who have purportedly executed Power of Attorney(s) pursuant to the alleged agreement/assignment are already parties before the Court, and therefore, the Applications are misconceived. He submits that the Applicants have no independent right as they have only stepped into the shoes of Defendant No.3, hence the Applications are liable to be dismissed.

3. Counsel for Defendants No.1 & 4 have adopted the arguments of the Counsel for the Plaintiff and have opposed both these applications.

4. I have heard both the learned Counsel and perused the record. At the very outset, learned Counsel for the Applicants was confronted as to why they have come before this Court in 2007, whereas, according to the applicants' own case at least three agreements were in field in the year 1987 and to this learned Counsel has referred to the final agreement to sale/assignment

dated 15.05.2006 and submits that this answers the Court's query. However, I am not impressed with such arguments as this is not a simple case of assignment as provided in Order 22 Rule 10 CPC. Admittedly the three agreements, on which reliance has been placed were in fact executed even prior to the filing of this Suit, whereas, the agreement of 2006 is nothing but an attempt to revive a time barred cause of action as clause-I of the Agreement reads as under:-

"1. That the Assigner/Seller confirms, admits and acknowledges to have received from the Purchasers the entire sale consideration to the extent of his shares in the said Land in terms of the previous agreements dated 25-04-1987, 26-4-1987, 27-4-1987 and Supplementary/Additional Agreement dated 26-12-1994 and Memorandum of Understanding dated 19-01-1995."

It clearly reflects that after having realized their difficulty in proceeding any further, a fresh agreement has been executed, which even acknowledges the previous agreements as well as some Memorandum of Understanding. Moreover, the property of Defendant No.3 admittedly is under mortgage and naturally could not have been sold or assigned without permission of the mortgagor, hence reliance on this agreement also become meaningless. The remedy, if any, for the Applicants was to initiate proceedings against Defendant No.3, who has purportedly sold the same Suit Property to them as well, and has not been able to fulfill the commitment.

It is trite law that in a case of specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation. And secondly, the Intervener must not be guilty of contumacious conduct and a beneficiary of clandestine

transaction. In this case the applicant had entered into three separate agreements with various parties much prior in time and never sought any legal remedy against the executants, and suddenly, from nowhere, one of the executants enters into a fresh agreement which is also titled as an assignment, wherein, he acknowledges the earlier three agreements. This is not understandable at all. Insofar as the Applicants case is concerned, it may be observed that if they have any case it is against the sellers / Defendant No.3 and not against the Plaintiff. This Suit has no concern with their claim, and even if it has, the same does not necessarily mean that they ought to be joined as Defendant. There is no privity of contract between the Plaintiff and Applicant(s), whereas, the Applicants have only come into picture subsequent to filing of this Suit on the basis of some agreement with the Defendant. The Plaintiff was never put to notice in respect of such agreement (agreement of 2006) nor was any leave of the Court obtained in this regard. Therefore, they are neither a necessary party nor a proper party to be joined in these proceedings. At the most their remedy lies against the Defendant No.3 and not the Plaintiff for which if advised they may seek appropriate remedy in accordance with law.

In view of hereinabove facts and circumstances, of this case and the discussion made thereunder, listed applications were dismissed in the earlier part of the day by means of a short order and these are the reasons thereof.

Judge