

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
HCA No.05 of 2015

| DATE | ORDER WITH SIGNATURE OF JUDGE(S). |
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Hearing (Priority) case.

1. For hearing of CMA No.5518 of 2015.
2. For order on Office Objection/Reply at "A".
3. For hearing of Main Case.
4. For hearing of CMA No.29 of 2015.

10.05.2018

Mr. Anand Kumar, Advocate for Appellant.
None present for the Respondent No.1.
Mr. Ghulam Shabbir Shah, AAG.

The appellant has challenged the order dated 29.12.2014 passed by the learned Single Judge of this Court on CMA No.17519 of 2014 in Suit No.2511 of 2014. Copy of CMA No.17519 is available at page-151 of the Court file, which shows that the Plaintiff in the Trial Court filed an application under Order XXXIX Rules 1 and 2 CPC for restraining Defendant No.1 i.e. Appellant in this case from raising any construction or causing interference in the possession of the suit land till joint demarcation of the suit land and the land of the Defendant No.1 was carried out by the Defendants No.4 and 5 under the supervision of the Nazir of this Court.

The record reflects that on 18.12.2014 when the matter was fixed in Court for orders, the learned Judge of this Court while issuing notice to the Defendants directed the parties to maintain status quo. So far as the request made by the counsel for the Plaintiff for inspection of the land no order was passed. Learned counsel for the Appellant argued that on 29.12.2014 on urgent application, the matter was taken up and the learned Single Judge of this Court passed the following order on CMA No.17519 of 2014: -

“Learned counsel for the plaintiff submits that despite passing of the order of status quo the defendant No.1 are still continuing construction on the land which per learned counsel belongs to the plaintiff. Learned counsel

has relied upon Nazir's report dated 23.12.2014 and submits that in terms of para-8 of the report the issue of overlapping of the land of plaintiff could be a possibility which cannot be overlooked. Learned counsel submits that in a haste manner the defendant No.1 are competing the process of construction and would create third party interest which would create further complications.

In view of the above submissions, I deem it appropriate to direct the Mukhtiarkar concerned i.e. defendant No.5 to demarcate the land of the plaintiff as well as the defendant No.1 and in case the defendant No.1 is found overlapping the land of plaintiff then defendant No.1 would not raise construction until further orders of the Court. Such demarcation be carried out by the concerned Mukhtiarkar/defendant NO.5 under the supervision of the Nazir and report be submitted within three days. Nazir as well as the Mukhtiarkar concern shall issue notices to all concerns including the defendants however no notice is required to the plaintiff who may accompany and pursue their matter as directed by the Nazir for compliance of the above order of demarcation."

Learned counsel for the Appellant has shown us copy of Suit No.2511 of 2014, which is available at page-27 of the Court file. He pointed out that the Respondent No.1 being Plaintiff in the aforesaid Civil Suit sought the declaration that he is absolutely and undisputed owner of the land measuring 14-08 Acres situated in survey Nos.171 and 172, Deh Dozan, Sector 37-A, Karachi and consequently the entries of the title is in record of rights in favour of Plaintiff, who shall be remained intact and Defendant shall be restrained from disturbing the plaintiff's title and creating third party interest. He further argued that on deciding this application in a piecemeal and ordering the demarcation, nothing shall be left for the decision in the main suit and in which the Plaintiff has himself

prayed for the declaration of his title so without deciding the claim of declaration there was no justification to pass the demarcation order even without notice to the Appellant in that suit.

We have noted that CMA No.17519 of 2014 was filed for restraining order against the construction but this Court had already passed order for the maintaining status quo by the parties. Learned counsel submitted that the exercise of demarcation has not been completed for the reasons that on 09.01.2015 the operation of the order was suspended to the extent of direction given to the concerned Mukhtiarkar and Nazir of this Court for demarcation.

We have called this matter before the break but nobody was present for the Respondent No.1 even after break, neither counsel for Respondent No.1 is present nor any intimation is received. In our view, the order was passed for demarcation is a substantial order so before passing this order we feel keeping in mind the principle of natural justice as well as right to fair trial under Article 10-A of the Constitution that notice of such application could not be ignored mainly for the reasons that the Nazir may issue notice to the Petitioner so no notice was required to be issued by the Court while the application was fixed only for order on urgent motion.

As a result of the above discussion, the impugned order dated 29.12.2014 is sat-aside, however, the CMA No.17591 of 2014 will remain pending and the learned Single Judge may decide the same after hearing the parties. The Appeal is disposed of with all pending applications accordingly.

JUDGE

JUDGE

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