

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT NO. 1580 / 2014

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For hearing of CMA No. 17653/2014.
- 2) For hearing of CMA No. 10877/2014.
- 3) For hearing of CMA No. 13714/2014.

02.12.2017

Ms. Naeema Aziz Advocate for Plaintiffs.
Mr. Samiullah Soomro Advocate for Defendant No. 3.
Mr. Iqbal M. Khurram Advocate for Defendant No. 2 to 5.
Mr. Naraindas Motiani Advocate for Defendant No. 7.
Mr. Sharfuddin Mangi State Counsel.

1) This is an application under Order VII Rule 11 CPC filed on behalf of the Defendant No. 7 for rejection of plaint on the ground that instant Suit is time barred as well as not maintainable and barred in law specially under Section 42 of the Specific Relief Act.

Learned Counsel for the Defendant No. 7 after making brief submissions has not pressed question of limitation and submits that the Plaintiff is only a licensee and therefore, under Section 62 of the Easement Act is only entitled for compensation but not for Possession, Declaration and Injunction. He further submits that there is no title document in favour of the Plaintiff to claim any such relief and therefore, instant Suit is barred under Section 42 of the Specific Relief Act. He further submits that the Defendant No. 7 is holding a proper registered Lease in respect of the same plot which is claimed by the Plaintiff and therefore, on these grounds the plaint is liable to be rejected. In support of his submissions he has relied upon ***Rehmatullah Khan and others V. Government of Pakistan through***

Secretary Petroleum and Natural Resources Division, Islamabad and others (2003 S C M R 50), Abdullah Bahi and others V. Ahmad Din (P L D 1964 SC 106), M. A. Naser V. Chairman, Pakistan Eastern Railways and others (P L D 1965 SC 83), Government of Pakistan through Ministry of Commerce and another V. Zamir Ahmed Khan (P L D 1975 SC 667), Government of Sindh through Secretary and Director General, Excise & Taxation and another V. Muhammad Shafi and others (P L D 2015 SC 380), Syed Najmul Hassan and others V. Shah Sawar and others (1980 C L C 1866), Shaukat Ali through legal heirs and 3 others V. Province of Punjab through District Collector and 2 others (2016 C L C 386), Syed Muhammad Ali and others V. Syed Dabir Ali and others (2016 S C M R 2164) and Muhammad Amin and 5 others V. Muhammad Latif (1987 C L C 2358).

On the other hand, learned Counsel for Defendant No. 2 submits that the plot was admittedly allotted to the Plaintiff; but thereafter, due to overlapping the same was given to Defendant No.7. However, according to their record the Plaintiff is still the owner and therefore, listed application be dismissed.

Counsel for Plaintiff submits that Plaintiff is owner of Plot No. E-47, whereas, Defendant No.7 claims ownership of Plot No.E-46/A and therefore, the Plaintiff's Suit is very much maintainable. She further submits that the plot was mutated in the name of the Plaintiff on 20.09.2006 which still subsists; whereas, the possession order was issued on 09.10.2007 but the same has been forcibly taken over by Defendant No. 7 and with the active connivance of Defendant No. 2's staff a new plot number has been carved out and has been allegedly allotted to the said Defendant. She has referred to order dated

06.05.2015 wherein, certain directions were given to Defendant No. 2 to place on record the master plan of the area so as to resolve the issue. In these circumstances she has prayed for dismissal of listed application.

I have heard all the learned Counsel and perused the record. Though there were two objections raised on behalf of Defendant No. 7 but the issue of limitation has not been pressed. Insofar as the ground taken in terms of Section 42 of the Specific Relief Act as well as the relevant provisions of Easement Act are concerned, it may be noted that after allotment of the plot and issuance of license to the Plaintiff the mutation was also recorded on 20.09.2006 and thereafter, on 09.10.2007 a possession order was issued. Both these documents still subsists according to the Defendant No. 2 and they have also stated before the Court that there is no dispute to the effect that the plot was initially allotted to the Plaintiff, whereas, according to their record the Plaintiff is still the owner as neither the mutation has been cancelled nor any other action has been taken. Therefore the question that plaintiff is merely a licensee, is a question which can appropriately be decided after evidence is led by the parties. It is also in dispute that as to whether the Defendant No. 7 has been allotted another plot or it is the same plot which is claimed by the Plaintiff as the Defendant's Plot number is E/46-A whereas, the Plaintiff's Plot No.E-47. This is a dispute which requires leading evidence so as to arrive at a just conclusion. Moreover, this Court passed the following order on 06.05.2015:-

"It appears that there is controversy between the parties in both suits bearing Nos. 1580 of 2014 and 2540 of 2014 with regard to location of Plot Nos. E-47 and E-46-A, S.I.T.E, Phase II, Super Highway, Karachi. In order to resolve controversy, the Managing Director SITE, shall appear in person with Master Plan. In case of failure, contempt proceeding can be initiated against him.

Admittedly, the aforesaid order is yet to be complied with. Further it is observed that in a number of cases pertaining to SITE Limited which is Defendant No.2 in this matter time and again it has been noticed that the plots have been allotted to more than one parties and the original allotment has neither been cancelled properly nor while doing so the procedure as provided in law has been followed. This has resulted in claims by the second allottees / owners and in such circumstances; I do not see any reason to reject the plaint as being barred in law. In this matter the Defendant No.7 was not originally a party and was later on joined on an application under Order 1 Rule 10 CPC, as he was found in possession, which according to the plaintiff was obtained forcibly, whereas, the plot of Defendant No.7 does not exist in the Master Plan of Defendant No.2. This entitles the plaintiff to seek its relief and prove its case on the basis of evidence available with him. The Court at this stage of the proceedings is not in a position to reject the plaint on the basis of the record available. The case law relied upon on behalf of Defendant No.7 is not applicable because of the peculiar facts and the stance of the Defendant No. 2 in this case.

In view of such position, I am of the view that no case is made out for rejection of the plaint and therefore, by means of a short order on 29.11.2017 listed application was dismissed and these are the reasons thereof.

J U D G E

ARSHAD/