

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.702 of 2010

| | |
|------|-------------------------------|
| Date | Order with signature of Judge |
|------|-------------------------------|

For further orders.

(As per Addl: Registrar's diary dated **29.8.2017**).

Plaintiff No.1 : M/s SONAX HOUSING (PVT) LTD.,
Through Mr. Moin Azhar Siddiqui, advocate

Defendant No.1 : The Province of Sindh
Defendant No.2 : Member Board of Revenue, Govt. of Sindh
Defendant No.3 : The Mukhtiarkar Scheme No.33, Govt. of
Sindh
Defendant No.4 : Station House Officer, P.S Malir Cantonment
All through Ms. Leela Kalpana A.A.G.

Defendant No.5 : Muneer son of not known. (Nemo).

Date of hearing : 19.02.2018

Dispose of on : 19.02.2018

NAZAR AKBAR, J. In this suit, all the defendants have been declared exparte one after the other. The Additional Registrar's diary dated **29.8.2017** is reproduced below:-

29.8.2017

Matter called. None is present.

Perusal of record reveals that defendant No.5 had been debarred vide court order dated 22.09.2014 while the case of defendant No.1 to 4 has already been referred to court for their failure to file written statement.

Despite directions of the court, the office has fixed the matter in Board. They are directed to fix the matter before the court for further orders.

Adjourned to 28.11.2017.

The perusal of the plaint shows that the suit has been filed by the plaintiff for the following relief(s):-

- a) *Declare that the Plaintiff is the lawful owner of Survey No.55 situated in Sectors Nos.46-A, 47 and 48-A, Scheme 33, Deh Thoming, Main Superhighway, Malir Cantonment, Karachi having acquired the same from its lawful owners through*

Sale Deeds duly registered with the concerned Registrar.

- b) Declare that the Plaintiff is entitled to enjoy and use its above property with out any interference and hindrance from the Defendants.*
- c) Permanently restrain the Defendants their agents, servants and all persons claiming through or under them from, interfering and dispossessing the Plaintiff from the suit land, creating third party interest in the same and from taking any adverse and coercive action against the Plaintiff and its officers.*
- d) Direct the inspection of the suit property through Nazir of the Court, so as to determine who is in the possession of the above property and its present status and position.*
- e) Award cost of the suit.*

2. From the own showing of the plaintiff in para 7 and 8 of the plaint, the suit property was already subject matter of suit No.844/2006 which was filed by the present plaintiff and another suit No.1289/2003 filed by one Hassan Nizami in which subject matter is one and same suit property. The plaintiff has become party to the suit No.1289/2003. In the proceedings of the aforementioned two suits inspection of the property has also been done under the Court orders. Be that as it may, the plaintiff in para-20 of the plaint has shown very limited cause of action and, that too, only against defendants No.4 and 5, which reads as follows:-

20. That the cause of action has arisen in favour of the plaintiff against the Defendants on 30.4.2010 when the Defendant No.4 and 5 in league with others attempted to dispossess the Plaintiff from the portion of Survey No.55. The said cause of action continues day by day in view of the threats given by the Defendant No.4 and 5 as mentioned in paras here in above.

The bare perusal of para-20 of the plaint reproduced above about cause of action clearly indicates that nobody has threatened the title of the plaintiff and it was only defendant No.4, SHO and defendant No.5 who attempted to unlawfully dispossess the plaintiff from the portion of suit property.

3. This is precisely a suit for permanent injunction. Since no body has come forward to contest the matter and even if it is established that an attempt was made on **30.4.2010** by SHO, PS Malir Cantonment and one Mr. Muneer son of not know and whose even address is not fully traceable, the purpose of suit appears to have been achieved when interim orders were passed on **7.5.2010** that "*In the meanwhile parties to maintain status-quo till the next date of hearing*". It is being continued till date. It goes without saying that at least in 2018 we do not expect that the same SHO, who was allegedly in league with defendant No.5 on **30.4.2010**, is still the same SHO, therefore, by now, cause of action against both the defendant No.4 and 5 cease to exist. In the given facts of the case, neither the title of the plaintiff is even alleged to have been challenged by any of the defendant nor it is in dispute, therefore, there is no occasion for the Court to endorse a declaration to title/ownership of the suit property in the present suit.

4. In view of the above facts and circumstances, the Government functionaries, who are defendants No.1 to 4 are directed to act in accordance with law and if there be any report or complaint lodged by the plaintiff against the said Muneer (defendant No.5), an action be taken by defendant No.4 in accordance with the law. The suit is decreed only to the extent that defendant No.5 is directed not to interfere in the suit property and the other government functionaries (defendants No.1 to 4) are directed to act strictly in accordance with law.

5. The suit is disposed of in the above terms.

JUDGE