

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT NO. 709 / 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

- 1) For orders on CMA No. 6075/2019.
- 2) For orders on CMA No. 6076/2019.
- 3) For orders on CMA No. 6077/2019.

17.04.2019.

Mr. Khawaja Shamsul Islam Advocate for Plaintiff.

- 1) Granted.
- 2) This is a Suit for Specific Performance of Agreement dated 22.07.2014 entered into by the Plaintiff with Defendant No. 1 in respect of 2 Acres Agricultural land, Na-class bearing No. 1, situated at Deh Songal, Scheme No. 33, Tapu Songal, Taluka Karachi. Learned Counsel submits that thereafter, a memorandum of understanding was also entered into with the said Defendant on 22.05.2014 (wrongly typed as 2014) in the memorandum. Learned Counsel submits that payment was made and possession was given. He further submits that Defendant No. 1 also executed a Power of Attorney in favour of Plaintiff on 06.07.2015. Per learned Counsel, the Defendant No. 1 was the owner of the property in question having purchased the same from Defendant No. 3 and had filed a Suit bearing No. 217/2009 against Defendant No. 3 and in that Suit Defendant No. 1 filed an application bearing CMA No. 12648/2015 which was pending and in that application she came before the Court admitting the sale agreement with the Plaintiff and so also informing the Court that the present Plaintiff would represent the Defendant No. 1 in the Suit as she has already executed a Power of Attorney. As to the ownership of Defendant No. 1, he submits that in Suit No. 217/2009 an

order was passed on 07.12.2012 by this Court which confirms the ownership of Defendant No. 1. Per learned Counsel, now it has come in the knowledge of the Plaintiff that not only the Suit bearing No. 217/2009 has been withdrawn, prejudicing the rights of the Plaintiff; but so also third party interest have been created by executing Sale Deed in favour of Defendants No. 4 to 8 by Defendant No. 3 notwithstanding the fact that since day one status quo order was operating in respect of the Suit property in Suit No. 217/2009. Per learned Counsel, once CMA No. 12648/2015 was filed by Defendant No.1 with her supporting affidavit, Plaintiff's interest was secured, whereas, no withdrawal of the said Suit ought to have been sought without notice to the present Plaintiff and no proper assistance was given to the Court while obtaining the order of withdrawal of Suit. Per learned Counsel, vide order dated 23.10.2014 in HCA No. 119/2013 possession was also handed over to the Nazir of this Court. In support he has relied upon ***Mst. Tabbasum Shaheen V. Mst. Uzma Rahat and others (2012 S C M R 983)***.

Let notice be issued to the Defendants for 08.05.2019. Till then, the Defendants shall maintain status quo and no further third party interest shall be created.

3) Notice for 08.05.2019.

J U D G E

ARSHAD/