

# IN THE HIGH COURT OF SINDH AT KARACHI

**Suit No. 44 of 2019**

Plaintiff : Syed Mehdi Hassan, through Mr. Mir Naqi Ali, Advocate.

Defendant No. 1: Syed Qasim Hassan, through Mr. Raja Aftab Ahmed, Advocate.

Defendant No.2: Mahar Naz Hussain, through Mr. S. Athar Abbas Rizvi, Advocate.

Date of hearing: 08.04.2019

## **ORDER**

**YOUSUF ALI SAYEED, J** – In terms of CMA No. 282/2019 filed under Order 39, Rules 1 and 2 CPC, the Plaintiff seeks that the Defendant No. 1 & 2, who are his brothers, be restrained from creating any third-party interest in the Suit property, bearing Flat No. A-19, 2<sup>ND</sup> Floor, Block 13-A, Al-Azam Apartments, Gulshan-e-Iqbal, measuring 138 Sq. Yds, Sub-Plot No. FL-5/A-3, of Plot No. FL-5-A, KDA Scheme No. 24, Karachi (the “**Subject Property**”), till final disposal of the Suit.

2. The claim to such interim relief and indeed the final relief elicited in terms of the plaint is predicated on the averment of the Plaintiff that notwithstanding that the Suit Property stands in the name of the Defendant No.1, their mother had jointly purchased the same by making a substantial financial contribution towards its acquisition, which was for the collective benefit of the Plaintiff and Defendant No. 1 & 2, and had orally gifted half portion thereof to the Plaintiff.

3. It is submitted on this basis that the Plaintiff was entitled to a share in the Subject Property and to partition thereof, which claim was being denied by the Defendant No. 1, who accordingly ought to be restrained from dealing in the property and from dispossessing the Plaintiff therefrom. It was contended that the Plaintiff had prima facie case for grant of injunctive relief, that the balance of convenience was in his favour and that irreparable loss would ensue were such relief to be denied.
  
4. Conversely, it is pointed out by the learned counsel for the Defendant No. 1 that the Plaintiff had approached the Court with unclean hands in as much as he had suppressed the fact that various earlier litigations had ensued between the parties in relation to the Subject Property, including Suit No. 411/2019 which had been filed by the Defendant No. 1 for possession, mesne profit and permanent injunction before the Senior Civil Judge Karachi East, which had been decreed in favour of the Defendant No. 1 on 03.10.2018, against which the Plaintiff had preferred Civil Appeal No. 199/2018 which had been dismissed by the learned 6<sup>th</sup> Additional District Judge Karachi East vide judgment 04.01.2019, wherein it had been observed as follows:

“I have heard the learned counsel for the Appellant and learned counsel for the Respondent and perused the Judgment and Decree passed by the learned IXth Senior Civil Judge Karachi East in the suit filed by the Respondent/Plaintiff for Possession, Mense profit and Permanent Injunction against the defendant/Appellant, whereby the suit was partly Decreed to the extent of possession of the half portion of the suit property in favour of the Respondent/Plaintiff. Since, the Respondent/Plaintiff being owner of the property allowed to the Appellant/defendant to reside in the said premises and when he demanded for vacation of

the same property, the Appellant/defendant did not hand over the possession to him. The Respondent/plaintiff filed the suit and also established the ownership before the Trial Court by producing the documentary evidence that he is owner of the same property. The Appellant/defendant failed to bring any document on the record to prove his ownership/title over the property on the basis of which he is occupying the same premises. The Appellant/defendant has failed to point out any material illegality in the Judgment passed by the learned trial Court, but the appeal filed by the Appellant is based on misconception and having no merits.”

5. It was contended that the aforementioned appellate judgment had not been assailed further, and instead the Plaintiff had filed the instant Suit in an endeavor to frustrate the Plaintiff's entitlement to possession. He submitted no prima facie case existed in favour of the Plaintiff under such circumstances, hence the Application under reference was to be dismissed.
  
6. When confronted with these submission, learned counsel for the Plaintiff was not in position to refute the earlier litigation or that the Judgments cited were in the field, but merely fell back on the contention that he had not disclosed the same so as to leave it open to the Defendant No. 1 to bring the matter to the attention of the Court. He submitted that as the complete parcel of facts was now before the Court, the lack of disclosure ceased to be material and the determination ought to be made on an overall appreciation of the case without the failure to disclose serving to disentitle the Plaintiff from relief.

7. Having considered the arguments advanced at bar and material available on the record, it is apparent that the Plaintiff has not been forthright in his approach to the Court in as much as material facts have evidently been suppressed for ulterior motive. It is well settled that the relief of injunction is a discretionary and equitable relief and a party seeking the same must necessarily come to the Court with clean hands, whereas the concealment in the instant case of the earlier litigation and adverse judgments made therein was clearly contumacious and inequitable. Under such circumstances and in view of the subsisting Judgments in favour of the Defendant No.1, no prima facie case for injunctive relief stands made out.

8. Under the circumstances, the discretionary relief prayed for must be refused. CMA No. 282/2019 stands dismissed accordingly.

JUDGE

Karachi  
Dated \_\_\_\_\_