

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit 2138 of 2019

Date	Order with Signature of Judge(s)
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1. For hearing of CMA No.17425/2019
2. For hearing of CMA No.301/2020
3. For hearing of CMA No.377/2020
4. For hearing of CMA No.1500/2020
5. For orders on CMA No.3224/2020

**05.03.2020**

Mr. Abdul Qayyum Abbasi, advocate for the plaintiff.  
Mr. Mohamed Vawda, advocate and Ms. Tahreem Aijaz Qureshi, advocate for the defendants.

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This suit prays, *inter alia*, that the plaintiff, being the owner of the school / school premises, has the legal right to utilize the same and the defendants cannot place any restraint thereupon.

Mr. Abdul Qayyum Abbasi, advocate has argued that the plaintiff is effectively in control and management of the subject school and has been dealing with the defendants in such regard for a considerable period of time. Learned counsel has also drawn the court's attention to correspondence undertaken between the plaintiff and the defendants. It is further contended that the restraint sought to be imposed by the defendants is *mala fide* and also contrary to the public interest.

Mr. Mohamed Vawda, advocate for the defendants has argued that the plaintiff has no capacity to maintain the suit, as the school is demonstrably owned and operated by another legal entity. Learned counsel has pointed out the documents filed by the plaintiff itself to demonstrate the foregoing. Learned counsel for the defendants has submitted that no cause of action has accrued to the plaintiff to maintain the present suit, and/or any interim application, which is even otherwise barred by the law.

This court has heard the respective learned counsel and in view of the arguments advanced endeavors to address each of the applications in seriatim.

1. This is an application, under Order XXXIX rule 1 & 2 CPC, seeking a restraint upon the defendants from taking any action prejudicial to the interests of the plaintiff. It is imperative for the consideration of an interim application to gauge the record available before the court and make a *prima facie* assessment predicated thereupon. The starting point for any such endeavor is the demonstrable existence of any right of the plaintiff infringement whereof is alleged or anticipated<sup>1</sup>.

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<sup>1</sup> PLD 2004 Supreme Court 70; PLD 2003 Supreme Court 344.

It is apparent from the documentation filed by the plaintiff, annexed with the plaint, that the allotment letter (page 23) in respect of the school is issued in favour of a third party, who is stranger to the present proceedings. The physical possession certificate in respect of the suit property (page 25) demonstrates that the possession of the amenity plot was handed over to the extraneous entity referred to supra. The site plan (page 27) also demonstrates that it was issued to the same entity referred to above. The receipts filed along with the plaint also corroborate aforesaid position. The court's attention was drawn to the plaintiff's pending application filed under Order VI Rule 7 CPC, being CMA No.377/2020, the affidavit in support whereof clearly admits the aforementioned facts, in paragraph 3 and 4 thereof.

It is, thus, an admitted position that any rights, being claimed in respect of the suit property/school, vest in a third party, and not in the plaintiff *per se*<sup>2</sup>, and the said third party has not come before the court. Since no demonstrable right vests in the plaintiff herein, hence, the question of protection thereof does not arise<sup>3</sup>. Therefore, it is observed, in the exercise of reasoned discretion<sup>4</sup> by this court, that no case for grant of interim relief is made out, hence this application is dismissed.

2. This is an application under Order 7 Rule 11 CPC, preferred by the defendants, seeking rejection of the plaint, upon the grounds contained therein. Learned counsel for the defendants submits that this application shall not be pressed if the defendants may be permitted to agitate the same grounds while framing of the issues. Learned counsel for the plaintiff has no objection in this regard.

This application is disposed of accordingly. The defendants shall remain at liberty to seek the framing of appropriate issues, including the questions / grounds raised in the present application, so as to safeguard their interests.

3. This is an application under Order VI Rule 17 CPC, seeking in effect to have the plaintiff, Educational Services (Pvt.) Limited, transposed to BPS (Private) Limited. The application is duly supported by an affidavit, paragraphs 3 and 4 whereof are relevant and have already been referred to supra. It is settled law that the amendment of pleadings cannot be allowed, if they alter the basic nature of the case.

However, after dilating upon the matter at some length, learned counsel for the plaintiff, on instructions, submits that he does not press this application, hence, the same is dismissed as withdrawn.

4. This application has wrongly been listed for hearing as no notice in respect hereof was issued on 04.02.2020 and subsequently on 11.02.2020, however, as this application was deferred. Notwithstanding the foregoing, learned counsel for the plaintiff does not press this application, upon instructions, and the same is dismissed as withdrawn.

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<sup>2</sup> 1990 SCMR 355; PLD 2006 Karachi 523.

<sup>3</sup> 2000 SCMR 780; 1993 SCMR 1510.

<sup>4</sup> 2011SCMR 1028; PLD 2003 Supreme Court 344; 2015 CLC 65; 2013 CLC 456.

5. Notice.

It may be poignant to observe that the observations herein contained are of a tentative nature and shall not influence the final determination of the suit.

Adjourned.

JUDGE

Khuhro/PA