

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 30 of 2012

Date	Order with Signature(s) of Judge(s)
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1. For non-prosecution of CMA No. 6776/2020 (Notice not issued as process fee paid)
2. For hearing of CMA No. 143/12.
3. For hearing of CMA No. 703/12.
4. For hearing of CMA No. 9637/12.
5. For hearing of CMA No. 9638/12.
6. For hearing of CMA No. 10343/12.
7. For hearing of CMA No. 7202/13.
8. For hearing of CMA No. 7203/13.
9. For hearing of CMA No. 9872/13.
10. For hearing of CMA No. 5042/14.
11. For hearing of CMA No. 5043/14.
12. For hearing of CMA No. 17131/16.

17.09.2020

Mr. Samiullah Soomro, Advocate for plaintiff.

Mr. Khawaja Shams-ul-Islam, Advocate for defendant No. 14.

Mr. Akhtar Ali Mastoi, Advocate for Board of Revenue alongwith Muhammad Anwar Kumbhar, Mukhtiarkar Taluka Airport, Karachi.

Mr. Waqar-ul-Haque, Advocate for applicants/interveners Muhammad Hassan Dahari and Mst. Sumera.

Mr. Ziauddin Junejo, AAG.

6. This is an application (CMA No. 10343 of 12) filed on behalf of the applicants/interveners, namely, Muhammad Hassan Dahari s/o. Haji Faiz Muhammad and Mst. Sumera wife of Arbab Ali, under Order I Rule 10(2) read with Section 151, C.P.C., whereby they have prayed for their addition as defendants in the instant suit.

Learned counsel for applicants/interveners contends that the applicants/interveners are the owners of a Plot bearing No. B-50, Block-D, Syed Village, Sector 42-A, Scheme No. 33, Malir Cantonment Board,

opposite Race Course Ground, Karachi; that Syed Village is situated in Sector 42-A of Scheme-33 and spread over an area of about 20 Acres and having about 200 houses mostly build by block sheets; however, as per letter dated 16.02.1992 of the then Deputy Commission, Karachi-East an area of 13 Acres in the said sector was proposed by the Allotment Committee in favour of M/s. Divisional Commissioner Employees Cooperative Housing Society but till date no final allotment has been issued by the Board of Revenue Sindh; besides, an area of 10.25 Acres out of said 13 Acres land has been granted in exchange to Maniar/M/s. Humair Associates Limited with possession inspite of the fact that an area of about 6.34 Acres out of said 10.25 Acres is still under physical possession of the residents of Syed Village in the shape of Katcha/Pacca houses; that the then Chief Minister Sindh accepted the application of one Rashid Riaz s/o. Riaz-ul-Hassan dated 17.12.1991 for regularaization of Syed Village, latter vide letter dated 29.02.1992 Secretary to Government of Sindh, Land Utilization Department, while exercising his powers under Section 10(1) of Colonization of Government Lands (Sindh) Act, 1912 read with condition No. 3 of the Statements of Conditions, notified on 12.01.1980, regularized the entire area of 20 Acres of land in favour of Syed Village with further orders that M/s. Humair Associates Limited should be provided alternate site to the extent of 6.34 Acres; subsequently, vide letter dated 09.04.1992 the then Deputy Commissioner Karachi-East granted plot bearing No. D/50 admeasuring 1000 Square Yards in Syed Village to applicant/intervener No. 1 for a period of 99 years lease on payment of occupancy price and development charges; subsequently, vide letter dated 21.11.2010 Mukhtiarkar Revenue/ACSO Scheme-33, CDGK made a request to Deputy District Officer Revenue, Scheme-33, CDGK for taking further necessary action according to policy of the Government

on the request of the villagers for regularization of Syed Village, disclosing that Syed Village exists in urban area; as such, it does not come under the purview of Sindh Gothabad Scheme. Learned counsel further contends that from above orders/letters/conversation of revenue authorities it establishes beyond any doubt that Syed Village is existing in Sector 42-A of Scheme-33 for many decades and since this is a suit for cancellation, declaration and permanent injunction in respect of 2.13 Acres of land in Sector 41-A and 42 of Scheme-33; the, presence of applicants/interveners before this Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in this suit.

On the other hand, learned counsel for the plaintiff while opposing this application states that the plaintiff is the lawful owner of two open plots bearing Survey Nos. 436 and 445 admeasuring 3.25 Acres and 00.24 Acres, respectively, situated in Deh Mehran, District Malir vide entry No. 332/333 dated 03.03.2002 through Sale Deed which is duly verified by Mukhtiarkar Malir Town on 18.03.2003 and later the said Mukhtiarkar vide letters dated 29.06.2004, 05.08.2004, 06.08.2004, 13.08.2004 and 16.08.2004 carried out demarcation/survey of the land after payment of demarcation charges whereafter he issued Ghat Wadh form of Survey Nos. 436 and 445 and thereafter plaintiff constructed boundary wall/fences and posted guards on his land, which is in his uninterrupted possession without any fetters, obstacles or interference, while land of the applicants/interveners is situated in Sector 42-A, Scheme-33, District Malir, Karachi, which is a different land than the land of the plaintiff and in case the applicants/interveners are made party in the suit, it would create unnecessary complication and whatever the claim of the

applicants/interveners is, that is under different cause of action than the cause of action accrued to the plaintiff to file this suit; hence, this application is liable to be dismissed.

Learned counsel for defendant No. 1 maintains that the dispute between the plaintiff and the defendants in its nature is different than the claim of the applicants/interveners in their application and even they failed to produce alongwith their application copy of any summary or order of the then Chief Minister Sindh for the regularization of Syed Village and the area claimed by the applicants/interveners admittedly exists in the urban area, which does not fall under the purview of Sindh Gothabad Scheme; hence, no such village can be sanctioned by the Chief Minister or Land Utilization Department/Board of Revenue, even otherwise the correspondence between officials of Government Departments does not confer any "title" in respect of the land in favour of the applicants/interveners.

I have heard learned counsel for the parties and perused the material available on record.

It appears that the plaintiff has filed this suit for cancellation, declaration and permanent injunction alleging therein that he is the owner of two open plots bearing Survey Nos. 436 and 445, situated in Deh Malir, Tapo & Taluka Malir, District Malir, Karachi, which falls within the prescint of KDA Scheme-36 according to Masterplan of city of Karachi, respectively admeasuring 3.25 Acres and 00.24 Acres through registered Sale Deed dated 27.11.2020 and he is in physical possession of the said land, which is also duly demarcated by the Mukhtiarkar (Revenue) Malir Town, Karachi and after the demarcation, the plaintiff commenced

erection of boundary wall/fence and guard room on the said land; however, some individuals interfered in such work; hence, on 05.10.2004 he filed Suit No. 1136 of 2004 before this Court seeking permanent injunction and damages, wherein on 05.10.2004 this Court passed statusquo order in terms of injunction application and thereafter the plaintiff did not face any opposition and later defendant No. 13 with the collusion of defendant No. 8 vide its letter dated 09.07.2011 issued demarcation plan in respect of 2.13 Acres from Sector 41-A and 42-A, Scheme-33 and thereafter with the collusion of defendant No. 11, the defendant No. 13 attempted to dispossess the plaintiff from suit land knowingly that the said land is situated within Scheme-36 of Gulstan-e-Jauhar and does not fall within the territorial limits of Scheme-33; hence, plaintiff has maintained this suit seeking declaration that the plaintiff's land falls within the prescint of KDA Scheme-36 according to Masterplan of city of Karachi and he has sought cancellation of regularization order passed by defendant No. 2 (Member, Land Utilization Department, Board of Revenue, Government of Sindh) in favour of defendant No. 13.

So far the application in hand is concerned, it may be observed that under Order I, Rule 10(2), C.P.C. two classes of persons, namely, necessary parties and proper parties can be joined. The former consists of persons who ought to have been joined as parties and the later of persons without whose presence the question in the suit cannot be completely and effectually adjudicated upon. If a person/ intervenor does not fall in either of two these classes, that is to say he is neither a necessary nor a proper party, then the Court has no jurisdiction to add him as a party under this sub-rule. It may also be observed that addition of a party may be made in order to enable Court to adjudicate upon and settle effectually and

completely all questions involved therein. Therefore, the Court will not give leave to add a party where the result would be to introduce a new cause of action which the plaintiff has not set forth in plaint or which may convert a suit of one character into a suit of a different character. It has been observed by this Court in the case of Abdul Razzak Tabba and 2 others v. Jetpur Memon Relief Society through Honorary General Secretary and 3 others (1999 CLC 2077) that where intervenors who sought to be impleaded in suit filed by the plaintiffs, were neither necessary nor proper party, but only wanted to introduce a fresh cause of action in the suit, the Courts in exercising their powers under Order 1, Rule 10, C.P.C. should not load the record by impleading such parties who have no interest in the suit and that the trial of the suit is not embarrassed by the simultaneous investigation of totally unconnected controversies.

For the foregoing facts and reasons, I am of the view that the applicants/intervenors are neither necessary nor proper party for impleading them in the suit as they want to introduce a fresh/new cause of action in this suit with regard to investigating totally unconnected controversies i.e. their title, interest and legal character in respect of the land/plot claimed by them, which are not the subject matter of the instant suit. Hence, this application (CMA No. 10343 of 12) is rejected. However, it would be open to the applicants/intervenors to file a separate suit provided they have any cause of action against the plaintiff or defendants.

1to5
& 7 to 12. The matter is adjourned to a date in office.

Athar Zai

JUDGE