

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

SUIT NO.683 OF 2009

Plaintiff : Asif Mehmood Malik, through Mr. Rehman Aziz Malik, Advocate.

Defendant No.1 : Federation of Pakistan, through Mr. Anwar Kamal, Assistant Attorney General.

Defendant No.2 : The Officer Incharge/Commanding Officer, PAF Malir Cantt, through Mr. Muhammad Asif Malik, Advocate.

Defendants Nos. 4 to 7 : Executive District Officer (EDO) (Revenue) and others, through Mr. Muzaffar Ali Leghari, AAG.

Interveners : Muhammad Hanif Qureshi and Saleem, through Mr. K. B. Bhutto, Advocate.

Date of hearing : 02.05.2019

ORDER

YOUSUF ALI SAYEED, J. – The Plaintiff professes to be the lawful owner of commercial-cum-residential land admeasuring 5 Acres 15 Ghuntas, comprising two separate parcels of 2 Acres and 3 Acres and 15 Ghuntas respectively, carved out of 6 Acres 20 Ghuntas, situated in Sector 43-A, KDA Scheme No.33 (the “**5-15 Acres**”), said to have been acquired from one Shaukat Hussain, son of Muhammad Hussain, vide a registered Sale Deed dated 29.11.2006, and has brought this Suit against seven Defendants, the first three being (i) the Federation of Pakistan, through the Ministry of Defense, (ii) the Officer Incharge/Commanding Officer, PAF Malir Cantt, and (iii) the Military Estates Officer, Karachi Circle, and the others being the Province of Sindh, through the Secretary, Land Utilization, and certain functionaries of the Revenue Department, including the concerned Mukhtiarkar.

2. In terms of the Plaintiff it has been alleged that representatives/officers of the PAF under the command and control of the Defendant No.2 attempted to forcibly enter upon the 5-15 Acres in an endeavor to place/fix their boundary pillars and dispossess the Plaintiff, and prayers have accordingly been made seeking (i) a declaration of title, (ii) a permanent injunction to restrain the Defendants from interfering with the Plaintiff's possession and enjoyment of the 5-15 Acres, and (iii) damages in the sum of Rs.10,000,000/- on grounds of harassment, mental torture and agony said to have been caused by their unlawful acts and attempts to trespass thereon.

3. It is in this backdrop that Interveners have filed CMA Number 15056/2016 under Order 1, Rule 10 CPC, seeking to be added as defendants, alleging that they are the owners of a piece of land admeasuring 01 Acre 21 Ghuntas in Survey No.261 Deh Mehran, Sector 43-A, Scheme No.33, District Malir, Karachi (the "**1-21 Acres**"), and that their land has been illegally occupied by the Plaintiff under cover of this Suit and his claim that the 5-15 Acres falls within the same sector and scheme. It is on this basis that the Interveners seek to be added as defendants, contending that their joinder is necessary for them to be able to safeguard their interest.

4. In their Application, the Interveners accept that during the year 1994, the Defendant No.7 had allotted a piece of land admeasuring 5-15 Acres to the predecessor-in-interest of the Plaintiff, but contend that such land falls in Deh Dozan rather than Deh Mehran; echoing the contention of the Defendants in that respect.

5. It has been averred by the Interveners that the Plaintiff applied for and wrongly obtained alteration in the entries of the 5-15 Acres so as to show the same as falling in Deh Mehran, albeit that such rectification had not been previously applied for by his predecessor at the time of the allotment in his favour or even at time when such allotment was the subject of proceedings under the Sindh Urban State Land (Cancellation of Allotments, Conversions and Exchanges) Ordinance, 2001, and contended that on the strength of such manipulation the Plaintiff then usurped possession of the 1-21 Acres. In this regard, the Interveners have apparently also filed Suit Number 1554/2013 against the Plaintiff, seeking possession and other reliefs, and such Suit is said to be pending.

6. For purposes of the Application under reference, it merits consideration at the outset that only those persons may be added who are necessary or proper parties to the proceedings. The distinction between a 'proper party' and a 'necessary party' to a suit in terms of Order I, Rule 10, C.P.C, and the prerogative of the Court to add parties to a suit, was considered by a learned Judge of this Court in the case reported as Nazar Gul versus Maymar Housing Service (Pvt.) Ltd. and 4 others 2019 MLD 212, and from an examination of various precedents, certain principles were distilled in that regard, as follows:

- “(i). a 'necessary party' is one who ought to have been joined and in whose absence no effective decree can be passed;
- (ii) the non-joinder of a necessary party can be fatal to the suit;
- (iii). a 'proper party' is one whose presence before the Court is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all questions involved in the suit;

- (iv). a person can be joined as a proper party even though no relief is claimed against him but the primary object of impleading a proper party is to avoid multiplicity of legal proceedings and to determine effectually and finally all questions arising in the proceedings. Such person must, therefore, be a person whose interest is likely to be affected even though no relief is claimed against him;
- (v). person cannot be added as parties so as to set up a new cause of action which does not concern the original parties;
- (vi). the power of the Court under Order I, Rule 10(2), C.P.C to add parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case;
- (vii). while adding a party, the Court may put the party to terms;
- (viii). if a person does not qualify as a necessary or a proper party, then the Court has no jurisdiction to add him as a party under Order I, Rule 10(2), C.P.C;
- (ix). in exercising power under Order I, Rule 10(2), C.P.C the Court ought to see that it does not load the record with the parties wholly shown to have no interest in the suit, and that the trial of the suit is not embarrassed by the simultaneous investigation of unconnected controversies.”

By way of an extension to such principles, it was also observed that whether an intervenor is a necessary party or a proper party, the foremost question before the Court is how the intervenor’s absence from the suit will affect the decision and not how the suit affects the intervenor, such question being a secondary one.

7. In the instant Suit, the Plaintiff has not challenged any right or title of the Intervenor, and the Intervenor have also not disputed that the Plaintiff has title to 5-15 acres of land, but have merely raised a dispute as to its location, contending that the Plaintiffs possession under the umbrella of such title their 1-21 Acres have

been wrongly annexed. Be that as it may, their claim to possession to the 1-21 Acres falls to be determined in Suit Number 1554/2013 along with the question of the overlap in the respective parcels of land, if any, whereas the present Suit will either be decreed against the Defendants as to the 5-15 Acres or be dismissed, and the Intervenors will get nothing from becoming parties to the proceedings.

8. As such, the independent claim of the Intervenors has no nexus with the cause of action and controversy underpinning this Suit and they are neither necessary nor proper parties to the proceedings. Hence, there is no purpose to be served by joining the Intervenors as defendants, and CMA Number 15056/2016 is dismissed accordingly.

JUDGE

Karachi
Dated _____