

# IN THE HIGH COURT OF SINDH AT KARACHI

**Suit No. Nil (-1163) of 2018**

Plaintiff : Hameed Ahmed, through Mr. Mukhtair Ali, Advocate.  
Defendant No.\_ : Arif Latif, through Mr. Muhammad Haseeb Jamali, Advocate.  
Dates of hearing : 06.12.2019

## **ORDER**

**YOUSUF ALI SAYEED, J** – Prior to this Suit, an earlier suit bearing Suit No. 400/2013 had been filed by the Plaintiff seeking specific performance of the same sale agreement between him and the Defendant No.1 in respect of land measuring 05-39 acres/ghuntas out of Survey No.244, Jiryan No.1612 and measuring 05-39, acres/ghutas out of Survey No.245 Jiryan No.1613 both situated at Deh Drigh, Tapo Malir, District Malir, Karachi (the “**Suit Property**”). That earlier Suit had been unconditionally withdrawn on 01.08.2016. As such, upon presentation of the plaint of this subsequent Suit, the Office had raised an objection as to the maintainability thereof with reference to the unconditional withdrawal of Suit No. 400/2013.

2. Addressing such objection, learned counsel for the Defendant No.1 sought to contend that as the Plaintiff had asserted his continued right to possession of the Suit Property and it had been Ordered on 10.05.2018 in that earlier Suit following its withdrawal that possession thereof was to remain with the Nazir and the parties were left at liberty to agitate their plea in another Suit that was then pending in relation to thereto, being Suit No. 1676/15, wherein both the parties had been arrayed as

defendants, such circumstances afforded a cause of action to the Plaintiff to reassert his claim to specific performance of the agreement of sale in respect of the Suit Property and impugn any subsequent transactions in relation thereto which were in derogation of his entitlement under such agreement, hence this Suit subsequently filed in that regard was maintainable.

3. On the other hand, learned counsel for the Defendant No.1 submitted that Suit No. 400/2013 had been filed seeking specific performance of the same sale agreement in respect of which a claim for specific performance was being advanced in terms of this Suit. It was submitted that upon unconditional withdrawal of Suit No. 400/2013, the Plaintiff had voluntarily abandoned his claim under such sale agreement and was estopped from espousing any further claim on that basis. He submitted that in view of the unconditional withdrawal of the earlier suit, this subsequent Suit was barred and the Plaintiff could not once again advance a prayer for specific performance of that same agreement.
  
4. Having considered the arguments advanced and examined the record of Suit No.400 of 2013, it is apparent that the contention as to the scope for reassertion to specific performance of such sale agreement is misconceived as upon the unconditional withdrawal of that suit, the Plaintiff stood disentitled from thereafter asserting his right in relation to the sale agreement or claiming damages for the delay in performance thereof, and cannot either seek possession of the Suit Property or assail any transaction as may have ensued in relation thereto, and it is apparent that this subsequent Suit is barred by virtue of Order 23, Rule 1(2) CPC.

5. That being so, the Suit stands dismissed accordingly, along with all pending Applications.

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

JUDGE