

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.625 of 2012.

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of CMA Nos:

1. 722/16 U/O 39 Rule 4 CPC.
 2. 5436/12 U/O 39 Rule 1 & 2.
 3. 6813/13 U/O 7 Rule 11 CPC.
 4. 11170/13 U/S 151 CPC.
 5. 2172/14 U/S 151 CPC.
 6. 15077/15 U/O XXII Rule 4 CPC.
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23-02-2016.

Mr. Raja Aftab Ahmed, for the plaintiff.
Mr. Muneer-ud-din, Advocate for defendant No.1.
Mr. Muhammad Ali Jan, Advocate for defendant No.3.
Mr. Shehanshah Hussain, Advocate for defendant No.4.

These are Applications under Order 39 Rule 1 & 2 and 4 CPC, filed by defendant No.4 and Plaintiff respectively. On 31.5.2012 while ordering notices on the application at Serial No.2, parties were directed to maintain Status Quo, whereas, subsequently application at Serial No.1 has been filed on behalf of defendant No.4, whereby, it has been prayed to modify/recall the status-quo Order dated 31.5.2012 passed by this Court. Counsel for defendant No.4 submits that the status-quo order has been obtained by the plaintiff by misrepresentation of facts as the two properties in question, as stated in the plaint, are owned by one deceased Syeda Husna Ara Abbas, whereas, the plaintiff is not the legal heir of the said deceased. Learned Counsel submits that an impression has been given to the Court that this is a Suit for Administration and Partition, whereas, on perusal of the plaint it appears to be a recovery Suit in respect of some investment made by the plaintiff in M/S. Al-Abbas Builders, which according to the plaintiff was a partnership firm of deceased, her sister and defendant No.1. In the circumstances, Counsel submits that the

status-quo order may be recalled as the Suit for Administration, filed by the legal heirs, is not proceeding and proceeds of the estate of the deceased are yet to be distributed amongst the legal heirs.

On the other hand, Counsel for the plaintiff submits that the plaintiff had invested a huge amount in the partnership business, whereas, the property in question was handed over to the plaintiff in lieu of such claim.

I have heard the Counsel for defendant No.4 as well as for the plaintiff. Perusal of the plaint and prayer clause reflect that the claim of the plaintiff appears to be for recovery of some amount invested in a Partnership Firm, whereas, no document of ownership in respect of said property is on record. It further reflects that the plaintiff has titled this suit as Suit for Administration, Partition, Declaration, Possession, Recovery of plaintiff's amount and Permanent Injunction, whereas, in prayer clause, the plaintiff has prayed for a declaration that he is a lawful owner of the property in question. The Suit, as framed, has perhaps led to the Court to pass the status-quo order on the very first date of hearing, whereas, this Suit is not for administration and nor of partition and is simply a Suit for recovery for which the appropriate remedy for the plaintiff was to file an application under Order 38 Rule 5 CPC for attachment before Judgment, if so advised and not under Order 39 Rule 1 & 2 CPC, seeking an injunctive order in respect of the property, which is neither owned by the plaintiff nor any documents have been placed on record, on the basis of which such a declaration can be granted by the Court.

In the circumstances and facts of the case Ad-interim order passed on 31.05.2012 is hereby recalled. The Nazir, in the administration Suit, may proceed in accordance with law. Application listed at serial No.1 stands disposed of in the above terms, whereas,

application listed at Serial No.2, being misconceived in facts and law is hereby dismissed.

3 to 6. Adjourned.

J U D G E

Ayaz