

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
 Suit No.712 of 2001

DATE	ORDER WITH SIGNATURE OF JUDGE
1. For hearing of CMA No.9346/15 (U/S 151 CPC.) 2. For hearing of CMA No.9347/15 (U/S 12(2) CPC.	-----

27.03.2017

Mr. Ansar Mukhtar, Advocate for Plaintiff.
 Mr. Abdul Baqi Lone, Advocate for Applicant/Objector.

1-2. Through application at Serial No.1, the applicant seeks suspension of the auction proceedings in respect of Plot bearing **No.C-32, Block-C, Sector 51/D, measuring 448 Sq. Yds. Situated at Korangi Township, Karachi** and through application at Serial No.2 under Section 12(2) CPC, the applicant seeks setting aside of Decree dated 24.03.2010 to the extent of the aforesaid property.

Learned Counsel for the applicant submits that the applicant entered into a Sale Agreement on 01.01.2009 with defendant No.1(ii), in respect of aforesaid property, who by virtue of the allotment and title documents, was the owner of the same, and therefore, the same could not have been distributed amongst the legal heirs in question as a property of the deceased. He has referred to Nazir's Report dated 07.10.2011 in this regard.

On the other hand, learned Counsel for the plaintiff submits that insofar as defendant No.1(ii) is concerned, he expired in 1976 leaving behind the plaintiff and defendants as legal heirs and therefore, the applicant has no claim in respect of this property on the basis of a sale agreement. He submits that the application be dismissed.

I have heard both the learned Counsel and perused the record. It appears that this is a Suit for Administration in respect of the estate of the deceased Mian Rehmatullah and Mst. Qamar Rehmatullah, as father and mother of the plaintiff, who left behind various properties. It is stated in the Plaint that the aforesaid

property belonged to the deceased parents but was in the name of Late Irfan Rehmatullah Iqbal [Defendant No.1(ii)], who was no more alive when the Suit was filed in 2001. Thereafter on 24.03.2010 a Judgment was passed on the basis of an Agreement of Settlement reached between the parties while recording evidence, and the properties in question including the aforesaid property were distributed. It was further ordered that names of all the legal heirs in respect of the aforesaid property be mutated after verification by the Nazir. Subsequently, Nazir placed his report dated 07.10.2011, which was taken on record and through the said report, it was verified that the property was allotted to Muhammad Irfan S/o Rehmatullah / Defendant No.1(ii), therefore, Defendant No.1(ii), who expired somewhere in 1976 could not have entered into an agreement of sale as claimed by the applicant. If further appears that the said agreement has been entered into on behalf of Defendant No.1(ii) through an attorney, whereas, no further steps have been taken by the applicant pursuant to such alleged agreement. In the circumstances, no case is made out for entertaining an Application under Section 12(2) CPC after a lapse of 5 years from the date of passing of Judgment and Decree and after six years of the date of alleged agreement. The applicant even otherwise cannot claim any right in a Suit for Administration not being a legal heir as held by a learned Division Bench of this Court in the case of ***Muhammad Zahid v Mst. Ghazala Zakir and 7 others*** (PLD 2011 Karachi 83).

In view of hereinabove facts and circumstances of the case, both these applications are dismissed, however, the applicant shall be at liberty to seek appropriate remedy against the person with whom he entered into the alleged agreement strictly in accordance with law, including limitation, if so permitted.

J U D G E

Ayaz P.S.