

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT NO. 758 / 2015

DATE	ORDER WITH SIGNATURE OF JUDGE
1)	For orders as to maintainability of this Suit vide Court's order dated 12.5.2015.
2)	For hearing of CMA No. 7206/2015.
3)	For hearing of CMA No. 7207/2015.

18.10.2016.

Mr. Syed Abdullah Advocate for plaintiff.
Mr. Muhammad Siddique Darya Advocate for defendant No. 1.
Mr. Ghulam Akbar Lashari Advocate for SBCA.
Ms. Nighat Afaq State Counsel.
Mr. Zulfiqar Ali Mirjat Advocate for defendant No. 9.

1. On 12.05.2015 while entertaining this Suit, an objection was raised by this Court in view of the fact that the plaintiff being member of defendant No.2 (Society) had issued a Notice to the Registrar under Section 70 of the Cooperative Societies Act, 1925 and was required to prefer his claim pursuant to Section 54 of the Said Act. Today, Counsel for the plaintiff and defendant No.1 have been heard on this objection of maintainability.

Learned Counsel for the plaintiff submits that plaintiff is a Member of defendant No.2 and was allotted a plot/piece of land of 200 Sq. Yds. vide Allotment Order dated 01.01.1983 and thereafter was issued a Possession Order dated 03.01.1984. He further submits that it is the case of the plaintiff that the defendant No.2 (Society) and its land was unlawfully taken over by defendants No.4 & 5 in connivance with the official defendants, and when the plaintiff returned from abroad somewhere in the year 2013, it transpired that defendant No.1 has raised construction on the Suit Plot and therefore, instant Suit has been filed against defendant No.1 as well as other defendants. According to the counsel the matter does not fall within the terms of Section 54 of the Societies Act and therefore no arbitration proceedings can be entertained by the Registrar, whereas, even otherwise affairs of defendant No.2 (Society) are under litigation before this Court, wherein, Administrator has been appointed by the Court, hence, the objection of maintainability of Suit be over ruled.

On the other hand, Counsel for defendant No.1 submits that instant Suit is not maintainable as appropriate remedy lies in terms of section 54 of the Societies Act and plaintiff may approach the Registrar of the Cooperative Societies. Counsel for SBCA has filed counter affidavit in which it has been stated that since dispute is pending before the Court in respect of the entire land of the Society, SBCA has not approved any Building Plan for construction, which has been raised by defendant No.1 on such plot.

I have heard all the learned Counsel and perused the record. The objection, which was raised by the Court, was in view of the fact that in the plaint, the plaintiff has disclosed that a Notice under Section 70 of the Cooperative Societies Act, 1925 has been issued to the Registrar as required in law by intimating that instant Suit is being filed. On this Statement, the Court has made a query that as to why the plaintiff did not lodge its claim under Section 54 of the Said Act for arbitration proceedings. After hearing the learned Counsel for the plaintiff and perusal of the record, I am of the view that instant Suit is not a case which would squarely fall within the provisions of Section 54 of the Said Act, as it is not merely a dispute with the Society or any of its members, but in respect of possession of the Suit plot. The plaintiff claims to have been allotted a piece of land and issued a Possession Order, whereafter the possession of his plot including plots of other Allottees have been allegedly taken over by defendant Nos.4 and 5 and sold out to various other parties, who have raised construction. Plaintiff's Suit is in fact for possession as well as declaration and other consequential relief(s) and therefore, it is not merely a matter either between the Society and the plaintiff or any of its members, hence would not fall within the contemplation of Section 54 of the Act, *ibid*. It is in fact a Suit for possession.

In view of hereinabove observation, objection regarding maintainability of instant Suit raised on 12.05.2015 is overruled.

2&3. Adjourned. Office is directed to list this matter for hearing of applications on the next date.

J U D G E

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