

ORDER SHEET
 IN THE HIGH COURT OF SINDH, KARACHI
 Suit No.30 of 2012
 Suit No.1676 of 2012

Date	Order with Signature(s) of Judge(s)
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Suit No.30/2012.

1. For hearing of C.M.A. No.143/2012.
2. For hearing of C.M.A. No.7203/2013.

Suit No.1676/2012.

For hearing of C.M.A. No.11914/2020.

18.03.2021

Mr. Samiullah Soomro, Advocate for plaintiff in Suit No.30/2012
 and for defendant No.1 in Suit No.1676/2012.

Mr. Khawaja Shams-ul-Islam, Advocate for defendant No.14 in
 Suit No.30/2012 and for plaintiff in Suit No.1676/2012.

Suit No.30/2012.

1. This is an application (*C.M.A. No. 143 of 2012*) filed on behalf of the plaintiff, under Order XXXIX, rule 1 & 2 read with Section 151, C.P.C., seeking interim injunctive order restraining the defendants from creating third party interest in the suit lands and transferring, alienating or allotting/leasing the same to anyone else and to disturb possession thereof in any manner, which is being enjoyed by the plaintiff.

Learned counsel for the plaintiff contends that the plaintiff has filed this suit for cancellation, declaration and permanent injunction in respect of suit lands i.e. two open pieces of land admeasuring 17545 square yards (*3.25 acres*) bearing Survey No. 436 and 445, situated in Deh Mehran, Taluka and District Malir, Karachi against the defendants, which is owned by him under two registered lease deeds executed in his favour by Mrs. Uzma Ghazanfar, through her attorney, namely, Tahir Mehmood on 27.11.2002 and Syed Amiruddin on 15.02.2002. He further contends that on the written request of the plaintiff, the defendant No.9 [*Mukhtiarkar (Revenue) Malir, Karachi*] carried out the

demarcation on the suit lands and thereafter plaintiff started work of raising boundary wall around suit land to preserve and protect the same. He further contents that the plaintiff came to know that defendant No. 13 (*Syed Muhammad Akhtar*) with the active collusion of defendant No. 3 [*Member (Land Utilization) Board of Revenue, Government of Sindh*] managed forged and fabricated title documents of the suit lands purportedly dated 15th November, 1992 on the name of his predecessor-in-interest and started raising claim over the suit lands; hence, the plaintiff has filed the instant suit. He further contends that the plaintiff has prima facie good arguable case for the grant of interim injunction and since he is in possession of the suit lands, the balance of convenience also lies in his favour and in case interim injunctive order as prayed is not passed in his favour, he shall suffer irreparable loss.

On the other hand, learned counsel for defendant No. 14 maintains that the defendant No. 14 is the owner in possession of the suit lands under a registered deed of conveyance bearing No. 3729, dated 06.07.2011, which are properly surveyed and demarcated lands and the record of rights in respect thereof is also maintained in his favour. He further maintains that the plaintiff has no concern with the suit lands and his claim in respect of possession thereof is false and frivolous, which fact is crystal clear from the inspection report of the Commissioner/ Assistant Registrar, D-I Branch of this Court, dated 1st February, 2012. He also maintains that the plaintiff has failed to make out a good prima facie arguable case in his favour and since he is not in possession of the suit lands, balance of convenience does not lie in his favour but in favour of defendant No. 14, who shall suffer irreparable loss, if any interim injunctive order is passed in favour of the plaintiff, as after purchasing suit lands, the defendant No.14 has spent huge amount to develop the same and the entire developing work being carried out by the defendant No. 14 shall stand still.

I have heard learned counsel for the parties and perused the material available on record.

It appears from perusal of record that vide order dated 24th January, 2012 the Assistant Registrar, D-I Branch of this Court was appointed as Commissioner to inspect the suit lands in order to ascertain actual possession with regard to status thereof and construction, if any thereon, who submitted his report dated 1st February, 2012, mentioning therein that he conducted the inspection in presence of parties including Revenue Surveyor, during which it was found that the suit lands are infact in possession of defendant No. 14; hence, it is yet to be ascertained as to whether the plaintiff is the owner of the suit lands with possession as claimed by him. Plaintiff though claims that after purchasing suit lands, the same were demarcated by the concerned revenue officer, yet no demarcation report or sketch duly signed by the concerned revenue officer is annexed with the plaint. The plaintiff; therefore, has failed to make out prima facie case in his favour for the grant of interim injunctive relief, as there is no supporting documentary evidence available on the record with regard to possession of the suit land as claimed by him. On the contrary, it has come on record through Commissioner's report that the suit lands are in possession of defendant No. 14; hence, any interim injunctive order passed in favor of plaintiff may cause inconvenience to said defendant, who would also suffer irreparable loss in case interim order is passed in favour of the plaintiff. Accordingly, this application is dismissed with no order as to costs.

Both the matters are adjourned to a date in office. Let copy of this order be placed in Suit No.1676 of 2012.

Athar Zai

JUDGE