

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Suit No. 386 of 2016

Date	Order with Signature(s) of Judge(s)
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1. For hearing of CMA No. 3298/19.
2. For hearing of CMA No. 2480/16.
3. For hearing of CMA No. 4528/16.
4. For hearing of CMA No. 4529/16.
5. For exparte order against defendants No. 4 to 6.

22.04.2021

Mr. Abdullah Azzam Naqvi, Advocate for plaintiff.

Mr. Rashid Hussain, Advocate for defendant No. 1.

Mr. Ghulam Rasool Korai Advocate associate of Mr. Khalid
Mehmood Siddiqui, Advocate for defendant No. 2.

1. By means of this application filed under Order VI, rule 17 C.P.C., the plaintiff seeks amendments in the plaint as proposed in the application.

The defendant No. 1 (Muhammad Saleem) has not filed any counter affidavit/objection, while defendant No. 2 (Standard Chartered Bank) has filed counter affidavit to this application.

Learned counsel for the plaintiff contends that the plaintiff is the owner of an immovable property i.e. Pent House bearing No. 501-A, admeasuring 1080 Sq. Fts., 5th Floor, Madina Garden constructed over Plot No. V, Block No. 4 & 5, Al-Hilal Cooperative Society, Scheme No. 7, Opposite Old Sabzi Mandi, Karachi (**suit property**) under Sale Deed registered on 11th August, 2005. He further contends that the plaintiff filed the instant suit seeking declaration, injunction and cancellation; however, certain facts with regard to the suit property have surfaced after filing of written statement by the defendant No. 1, who has also filed copy of registered Indenture of Sub-Lease, registered on 8th October, 1998 in respect of Pent House on top floor of the project, namely, Madina Garden, admeasuring 1200 sq. fts., which was mortgaged by him with defendant No. 2/Bank; however, no number of the said Pent House is mentioned in the said Indenture of Sub-

Lease but even then the so called title documents of defendant No. 1 are deposited being mortgaged with defendant No. 2/Bank in respect whereof Execution Application is pending before Banking Court No. 3, Karachi and on the pretext of said documents the defendant No. 2/Bank is executing decree against the Pent House of the plaintiff. He further contends that infact on the rooftop of the said project there is only one Pent House which is owned by the plaintiff; hence, necessity has arisen to seek certain amendments in the pleadings as well as prayer clause relating to cancellation of defendant No.1's so called title documents, which infact will not change the complex of the suit, as the plaintiff has already sought adjudication of the forged and fake title documents registered in the name of defendant No. 1 in the prayer clause.

On the other hand, learned counsel for defendant No. 1 maintains that the defendant No. 1 is the owner of Pent House bearing No. 501, which has nothing to do with the Pent House owned by the plaintiff. He; however, admits that there is only one Pent House constructed over the subject project, which is in possession of the plaintiff.

Learned counsel for defendant No. 2/Bank also opposes this application on the ground that in case the proposed amendments are granted the same shall introduce a total different and new cause, inconsistent with the present one.

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

It appears that the plaintiff has filed this suit for declaration, injunction and cancellation claiming that he is the owner of the Pent House bearing No. 501-A in the said project. It is case of the plaintiff that defendant No. 1 bears forged and fake documents in respect of a Pent House constructed on top floor of the said project on the basis whereof has he obtained certain finance facility from

defendant No. 2/Bank. Perusal of proposed amendments in the pleadings in paragraph No. 6 and prayer clauses “b & c” show that the plaintiff has come to know about certain facts from the written statement filed by the defendant No. 1; hence, whatever the amendments he seeks is related to the declaratory relief already prayed for, which appears to be necessary for the purpose of determining the real matter in controversy, causing no prejudice to defendants No.1 & 2; as such, the same are not going to change the substance and nature of the suit; therefore, the application in hand is allowed.

It is; however, observed that this application was filed by the plaintiff on 2nd March, 2019 and thereafter the original defendant No. 2 in the original suit was struck out vide order dated 16th March, 2021; hence, in the light of such order declaratory relief sought by the plaintiff in subsequent prayer clause “c” against old defendant No. 2 is required to be corrected by substituting defendant No. 3 as defendant No. 2 and defendant No. 5 as defendant No. 4.

Let such amended plaint be filed within a period of two weeks hereof. The defendants shall be entitled to file their respective amended written statement to meet the amendments.

2to5. Adjourned to a date in office. Interim order passed earlier shall continue till the next date of hearing.

Athar Zai

JUDGE