

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 859 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on CMA No. 7598/19. (if granted)
2. For orders on CMA No. 7599/19. (U/S 151 CPC)
3. For orders on CMA No. 7600/19. (U/O 39 Rule 1 & 2 CPC)

15.05.2019.

Mr. Taha Alizai along with Mr. Zehsan Khan, Advocates for Plaintiff.

1. Granted.
2. Dismissed as it cannot be granted in a Civil Suit.
3. This is a Suit for possession, declaration, recovery of mesne profits and injunction. Learned Counsel for the Plaintiff submits that the Plaintiff bought property bearing Plot No.14, CF-1-5, Old Clifton, Karachi, and established its Embassy therein, whereas, in 1960 and 1962, two more plots were added to it, increasing the total area of the property in question. He submits that thereafter the Embassy established in the said property was closed and Plaintiff moved to Islamabad for such purposes and subsequently entered into an Agreement dated 31.03.1981 with Defendant No.4 ("Society"), whereby, the property was rented out to Defendant No.4 through one Mr. Simon D'Lima. According to him, thereafter, Defendant No.4 was running its School i.e. St. Peter's School. Per learned Counsel subsequently a rent case was filed by the Plaintiff as the property was not being vacated; however, the Plaintiff lost up to the level of Hon'ble Supreme Court. However, in 2012, the Defendant No.4 illegally and unlawfully handed over the possession of the property to Defendant No.3, whereas, the Defendant No.4 i.e. the Society was replaced and Defendants No.2 & 3 became its Members and Executive Committee Members. He submits that with malafide intent, the name of the School was changed from "SP

School” to “Saint Peter / World Academy”. Per learned, the entire exercise of handing over possession and change in the name of the School was unlawful and illegal, whereas, Defendants No.1,2 & 3 were never recognized as their tenants nor Defendant No.4 had any lawful authority to handover the possession or even sell the property to anyone else including Defendants No.1,2 & 3. He submits that the Petitioner being a foreign Embassy, approached the concerned government department, and thereafter Deputy Commissioner (South) Karachi passed an order dated 21.06.2013, whereby, directions were given to initiate proceedings against the Defendants, wherein, Mr. Simon D’Lima gave a statement to the effect that he, in his personal capacity, had sold the Society to Defendant No.3 for Rs.27.5 Million, out of which Rs.6 Million was paid and the remaining amount was due. Per learned Counsel, the Defendants also filed a Suit bearing No.822/2013 before this Court with a prayer that they may not be dispossessed unlawfully, which was decreed as the Plaintiff never had any intention to act against the law. According to the learned Counsel though the Defendants are still in possession; but such possession is unlawful as they have never been recognized as tenants of the Plaintiff; hence instant Suit has been filed for possession, injunction and mesne profit, whereas for the time being, the Defendants be restrained from operating the School and making fresh admissions and so also from creating any third party interest as well as from raising any construction.

Let notice be issued to the Defendants for **29.05.2019**. Till the next date of hearing, the Defendants are restrained from creating any third party interest, whereas, they are also restrained from raising any further construction on the suit property.

J U D G E

Ayaz P.S.