

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.360 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For hearing of CMA No.3707/2016.
2. For hearing of CMA No.3708/2016.
3. For hearing of CMA No.3709/2016.
4. For hearing of CMA No.2276/2016.
5. For hearing of CMA No.11242/2016.

29.11.2016.

Mr. Saleem Khan, Advocate for the plaintiff.
Mr. M. Noman Jamali, Advocate for defendant.

4. This is a Suit for Declaration, Cancellation, Specific Performance of Contract, Possession, Mesne Profit and Permanent Injunction. Through listed application, the plaintiffs seek restraining order against defendants from transferring, selling or mortgaging the structure of first floor and shops on ground floor and so also dispossessing them from the second floor of the Suit Property i.e. House No.116, situated at P.I.B Colony, Karachi, East Admeasuring 252.67 Sq. Yds.

Learned Counsel for the plaintiffs submits that the Suit Property was purchased by the deceased father of plaintiffs from the Nazir of this Court pursuant to a Conveyance Deed dated 02.10.2004 and thereafter their deceased father entered into an arrangement with defendant No.1 for some business purposes and executed a Sale Deed of the Said Property on 30.08.2010. However, the said Sale Deed was only in respect of Ground Floor, Ist Floor of the property and not in respect of the Second Floor. He submits that the Sale Deed executed in favour of defendant No.1 was in good faith and due to some arrangement by their deceased father, however, the defendant No.1 after expiry of their father has become dishonest, hence instant Suit for Cancellation of the said Sale Deed. He submits that no sale consideration was received by their

father and deceased had only executed to avail loan facility from Habib Bank Limited, whereas, defendants No.2 & 3 intend to dispossess them from the Suit Property.

On the other hand, learned Counsel for defendant No.2 submits that the property in question has been purchased by him from defendant No.1 through the Banking Court and upon payment of the principal liability of the Bank, the documents in question were released to defendant No.1, who thereafter executed a proper Conveyance Deed in favour of defendant No.2. Per Learned Counsel, the defendant No.2 has no privity of contract either with the plaintiff or with their deceased father, hence in terms of Order XV Rule 2 C.P.C., no relief can be sought against defendant No.2. Learned Counsel has further submitted that the deceased father in his life time did not ever raised objection on the Sale Deed in favour of defendant No.1 and now the legal heirs of the said deceased are estopped by law to raise any such objection as they have no right in the said property. He further submits that defendant No.2 has filed separate Suit bearing No.744/2016 for Declaration, Possession and Permanent Injunction against the plaintiff as well as defendant No.1. He has relied upon the case reported as **2013 SCMR 299 (Muhammad Rustam and another v. Mst. Makhan Jan and others.**

I have heard both the learned Counsel and perused the record. Insofar as the plaintiff's case in this is concerned, it is only confined to the Sale Deed executed by their deceased father allegedly in good faith in favour of defendant No.1 and its cancellation. Counsel for the plaintiff was confronted as to why the subsequent sale deed executed in favor of defendant No.2 by defendant No.1 has not been challenged the Counsel could not satisfactorily responded to such query of the Court. Even otherwise, the entire case of the plaintiffs in this matter is based

upon the verbal assertion that the Sale Deed was executed in favour of defendant No.1 by their deceased father in good faith. However, learned Counsel was once again confronted as to why their deceased father never raised any such objection as the Sale Deed in question was executed on 30.08.2010, whereas, admittedly their father expired on 27.11.2014, the Learned Counsel for the plaintiffs had no answer to such query of the Court. I am afraid this is hardly a case, wherein an injunctive relief can be granted as neither any prima facie case has been made out nor balance of convenience lies in their favor and no irreparable loss would be cause if the same is refused.

In view of hereinabove facts and discussion, the listed application was dismissed by means of a short order in the earlier part of the day and these are the reasons in support thereof.

J U D G E

Ayaz P.S.