

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
Suit No.261 / 2010

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DATE

ORDER WITH SIGNATURE OF JUDGE

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1. For hearing of CMA No.17023/2015.
2. For Examination of parties/settlement of Issues.

20.10.2016.

Mr. Khaliq Ahmed, Advocate for defendant.  
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This is an Application under Order VII rule 11 C.P.C filed on behalf of the defendants for rejection of plaint on the ground that there exists no cause of action to the plaintiff for filing instant Suit. Nobody has affected appearance on behalf of the plaintiff whereas, on 30.09.2016 it was categorically observed that that if Counsel for the plaintiff does not assist the Court on the next date, appropriate orders would be passed on this application.

Learned Counsel for the defendant submits that the plaintiff's suit is not maintainable as the property in question was given in the possession of defendant No.1 pursuant to Judgment dated 13.07.2009 in Suit No.260/2008, passed by the VIIth Assistant Sessions Judge, Karachi East and Decree dated 14.07.2009 and an Order dated 19.01.2008 in Execution Application No.38/2009 passed by VIIth Senior Civil Judge and Rent Controller, Karachi East. Per learned Counsel instant Suit has been filed to claim possession of the said property as well as mesne profit, which per learned Counsel is not admissible as the appropriate remedy for the plaintiff, if any, was to challenge the Judgment and Decree of the Trial Court in appeal.

I have heard learned counsel for the defendant and perused the record and also the plaint and the contention so raised on behalf of the

plaintiff. The facts, as stated by the learned Counsel for the defendant does not appear to be in dispute as such documents i.e. Judgment and Decree of the Trial Court have been annexed with the plaint, perusal whereof, reflects that it is the same property, which is now being claimed through instant Suit. The plaintiff's claim appears to be that though in the Trial Court a civil suit was filed, however, it did not come into knowledge of the plaintiff that an order was passed in his absence. It has been further stated that the execution application was allowed due to negligence of the plaintiff's counsel. This clearly reflects that insofar as instant Suit is concerned, the same appears to be barred and not maintainable for having no cause of action as well as title to the property in question, for which a Declaration is being sought. If the plaintiff's counsel was negligent before the trial Court, the appropriate remedy is not instant Suit but proceedings against his counsel, if so advised. Insofar as, the damages and mesne profit are concerned since they emanate from the claim in respect of the same property, which has been given into the possession of defendant No.1 through a proper decree of a Court of competent jurisdiction, which has not been challenged any further and has in fact attained finality, there does not arise any question of claiming such damages or mesne profit.

In view of hereinabove facts and circumstances of the case, I am of the view that instant Suit does not disclose a proper cause of action in respect of which any declaration can be granted and appears to be barred in law as well. Accordingly plaint in this Suit is rejected under Order VII Rule 11 C.P.C.

J U D G E

Ayaz P.S.