

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
J.M No.37 of 2010

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No.16587/2014.
2. For hearing of CMA No.16588/2014.
3. For hearing of CMA No.16589/2014.

12.12.2017.

Mr. Yousuf Moulvi, Advocate for Applicant.
Mr. Khawaja Shamsul Islam, Advocate for Intervenor.

1. This is an Application under Order 1 Rule 10 CPC, filed on behalf of the Intervenor for joining him as Respondent in this matter as he claims to be owner of the property in question.

Learned Counsel for the Intervener has contended that the Intervener has purchased the Suit Property bearing Old Na. class No.118 (new Survey No.313), Deh Okwari, Tapo Drigh Road, Karachi East admeasuring 6 acres 11 ghuntas in records (but on the ground physically it is having only an area of 4 acres 37 ghuntas), from Respondent No.1/Decree Holder in Suit No.129/2004, which was decreed by this Court on 10.03.2008, whereas, the Applicant in the instant J.M in Para-22 of his supporting affidavit has also mentioned the name of the Intervener as purchaser of the property but for reasons best known to him has not arrayed the Intervener in this matter. Per learned Counsel Order passed on 20.07.2010 in this J.M directly affects the interest of the Intervener as the Nazir of this Court has been restrained from executing the Sale Deed in favour of the Intervener. Therefore, learned Counsel submits that the Intervener be joined as Respondent.

On the other hand, learned Counsel for the Applicant in this J.M has though made an attempt to argue that the Intervener has fraudulently managed to purchase the property from Respondent No.1,

who has also sold the property to the Applicant of this J.M, and therefore, the Intervener is not a proper or necessary party, he, however, could not satisfactorily controvert the facts so stated on behalf of the Intervenor.

I have heard both the learned Counsel and perused the record. It is not in dispute that this J.M has been filed by the Applicant, whereby, the Applicant seeks setting aside Judgment and Decree dated 10.03.2008 passed in Suit No.129/2004 for which an Execution Application bearing No.19/2008 is also pending. The said Judgment and Decree has been passed on an Application under Order 12 Rule 6 CPC, whereas, the Intervener appears to be the beneficiary of such Judgment and Decree as Nazir was about to execute the Sale Deed in its favour. This directly affects the interest of the Intervenor and on this ground alone he ought to have been joined as Respondents in this matter. Notwithstanding this, in Para-22 of the supporting affidavit as rightly pointed out by the Counsel for the Intervener, the applicant himself has disclosed such fact. It further appears that some agreement was also entered into between Applicant and intervener on 18.9.2009, whereas, Applicant in his Suit No.268/1998 is also allegedly claiming the same land or part of it for that matter.

In the circumstances, I am of the view that the Intervenor is not only necessary party but proper party as well and therefore, this application ought to have been allowed for the aforesaid reasons, therefore, on 05.12.2017 by means of a short order, the application was allowed.

J U D G E

Avaz P.S.