

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
 SUIT NO. 1678 of 2014

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DATE

ORDER WITH SIGNATURE OF JUDGE

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1. For hearing of CMA No.17016/2016.
2. For hearing of CMA No.11735/2014.
3. For hearing of CMA No.11447/2016
4. For hearing of CMA No.11448/2016
5. For orders on Nazir's Report dated 16.09.2014.
6. For orders on Nazir's Report dated 26.11.2016.

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20.03.2017.

Mr. Muhammad Ali Jan, Advocate for Plaintiff.  
 Mr. Ashiq Ahmed, Advocate for Defendant No.1.  
 Mr. Sharafuddin Mangi, State Counsel.

1. This is an application under Section 151 CPC filed by defendant No.1, which on perusal reflects that the same is evasive as no specific prayer has been made, which could be considered by the Court, whereas, Counsel for Defendant No.1 was confronted to that effect, however, no satisfactory response was received. In the circumstances, this application being misconceived is dismissed, however, the defendant No.1 may file an appropriately worded application, if so needed.

2,3,4,5&6. Application listed at Serial No.2 has been filed under Order 39 Rule 1 & 2 CPC, whereas, through Application at Serial No.3, the plaintiff has requested the Court to appoint Nazir to take over the control of the Suit Property and through application at Serial No.4, the plaintiff seeks initiation of contempt proceedings against defendant No.1.

Learned Counsel for the plaintiff submits that property bearing Plot No.F-73, measuring 960 Sq. Yds. situated in Lucknow Cooperative Society, Karachi, ("Suit Property") was allotted vide Order dated 28.06.2004 and was purchased by the plaintiff from Predecessor-in-interest of Allottee namely Muhammad Tahir, whereafter, defendant No.1 filed ABN Case No.22/2009 under Section 54 of the Cooperative Societies Act. He further submits that the Nominee gave Award in favour of defendant No.1 against which Appeal No.16/2009 was filed before the Registrar of the Societies, which was also dismissed vide Order dated 03.09.2009 and thereafter a Revision under Section 64-A of the Cooperative Societies Act was filed, which was allowed in favour of the plaintiff and the orders passed by the Registrar was set aside on 10.01.2013. Subsequently, the entry in the name of defendant No.1 was cancelled and the necessary dues were paid accordingly. However, the defendant No.1 filed a Criminal Complaint on which the notice was issued to the plaintiff, hence instant Suit. He further submits that Nazir was appointed as Commissioner to inspect the property and he submitted his Report dated 16.09.2014, which confirmed possession of the property with the plaintiff, however, subsequently, the defendant No.1 through unlawful means took over the possession and second Report dated 26.11.2016 furnished by the Nazir confirms that some persons are in occupation at behest of the defendant No.1. In the circumstances, he prays that listed applications be allowed in favour of the plaintiff and contempt proceedings be initiated.

On the other hand, learned Counsel for defendant No.1 submits that the plot in question was given to Defendant No.1

through a proper and legal process through an Award, which was also confirmed by the Appellate Court, and therefore, defendant No.1 is lawful owner of the property in question. He further submits that the order in Revision is an ex-parte order against which a Petition bearing No.D-4887/2014 is pending before this Court, and therefore, listed applications be dismissed.

I have heard both the learned Counsel and perused the record. It appears that the order passed by the Nominee of the Registrar as well as the Appellate Order of the Registrar, both dated 18.04.2009 and 03.09.2009 respectively have been set aside in Revision by the competent authority vide Order dated 10.01.2013, which for the present proceedings declares the plaintiff as the owner of the property in question; notwithstanding pendency of the aforesaid petition as it does not operate as a bar to these proceedings for the reason that no restraining orders have been passed in said the petition nor the learned Counsel for defendant No.1 has placed any such order on record.

The Nazir's Report dated 16.09.2014 clearly reflects that possession of the property was with the plaintiff, whereas, subsequently, the Nazir's Report dated 26.11.2016 reflects that some persons are in occupation at the behest of the attorney of defendant No.1. This establishes that the order of this Court has apparently been violated. Be that as it may, and in the interest of justice and equity and to secure the respective claims of the parties, since when the status-quo order was passed, the possession was with the plaintiff and subsequently has been taken over, CMA Nos.11735/2014 and 11447/206 are disposed of by

confirming the status-quo order passed on 08.09.2014, which shall remain operative till final adjudication of the Suit, whereas, the Nazir of this Court is appointed as **“Receiver”** to take over the property in question and attach the same. Since apparently, it appears that status-quo order has been violated as reflected from two reports of the Nazir, the defendant No.1 is directed to file a proper counter affidavit to the contempt application bearing CA No.11448/2016 within two weeks, failing which he shall be in attendance personally on the next date.

To come up after four weeks.

J U D G E

Ayaz