

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 1529 of 2009

Venu G. Advani

Versus

Muhammad Zubair & others

Date	Order with signature of Judge
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For hearing of CMA No.8754/11  
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Dated of hearing: 21.11.2014

Mirza SARfraz Ahjmed Advocate for the plaintiff.  
Mr. Shahzeb Khan Advocate for the defendant  
.X.X.X.

This is an application under Order VII Rule 11 CPC filed by the defendant agitating the sole ground that such sale agreement be its oral or in writing is contrary and violative of law and also contrary to the Waqf.

Learned Counsel for the defendant has taken me to the various clauses of Waqf which per learned Counsel provides that it is within the power and discretion of "all" Mutawali to mortgage, transfer and charge immovable properties mentioned in the schedule. Learned Counsel also relied upon modification deed and submitted that since the plaintiff claimed to have entered into sale agreement only with the defendant No.1 therefore such suit under the law is not maintainable. Learned Counsel for the defendant submitted that in view of the proceedings pending before the Rent Controller the plaintiff is very much aware of the authority of defendant No.1 and in fact this suit has been filed to protract rent proceedings.

On the other hand learned Counsel for the plaintiff submitted that although such objection was raised by the learned Counsel earlier when he has challenged the maintainability of the suit, however such

contention of the defendant No.1 was declined and it was observed by this Court vide order dated 07.12.2011 that the suit appears to be maintainable on account of the fact that the Mutawali possess power to sell the subject property. Learned Counsel further submitted that these proceedings have not been initiated to protract rent proceedings as at the relevant time there was no such order and the case was remanded to the trial Court by the appellate Court in FRA No. 177/2010.

I have heard the learned Counsels and perused the record. It appears from the record that it is the defendant No.1 against whom it is claimed that he has entered into such sale agreement. Though such averments/contents of entering into an oral agreement are denied in the written statement however it is a matter of fact that the Mutawali does enjoy such powers to mortgage, transfer and alienate such property. The facts regarding entering into an oral agreement with or without consent of other Mutawali could only be determined once the parties are allowed to lead evidence and at this stage it would be premature consideration to oust the plaintiff in consideration of the ground that it was only one Mutawali who had entered into an agreement without consent of others. It is pertinent to point out that no other defendant/Mutawali has come forward in support of the defendant No.1. In absence of other Mutawali the defendant No.1 against whom it is alleged that he has entered into an oral agreement, would amount to reach to a premature conclusion, hence in view of such intricate question which goes to the root of the case it cannot and should not be decided summarily relying on the affidavits of the parties. It needs to be probed and the appropriate recourse would be recording of evidence in this regard. Needless to point out that such issue with regard to the maintainability of the suit has already been ordered to be framed and any subsequent issue which has now been raised regarding the prerogative of the sole Mutawali can also be considered in the same line.

Accordingly for the above reasons, the application under Order VII Rule 11 CPC was dismissed by order dated 21.11.2014.

Judge