

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT NO. 1303 / 2011

DATE	ORDER WITH SIGNATURE OF JUDGE
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- 1) For hearing of CMA No. 10867/2011.
- 2) For examination of parties / settlement of issues.

18.01.2018.

Mr. S. Zafar Ali Shah Advocate for Plaintiff.
 Mr. Masood Ghani Advocate for Plaintiff in Suit No. 1386/2011.
 Mr. Mohamed Wavda Advocate for Defendant No. 17.
 Mr. Suneel Talreja AAG
 Mr. Sehar Rana Advocate for Defendant No. 11 & 12.
 Mr. Ghulam Akbar Lashari a/w Ms. Nasreen Sehto
 Advocate for SBCA.

1. This is a Suit for Declaration, Permanent Injunction, Possession, Cancellation of Documents and Damages and through listed application; Plaintiffs seek restraining order against the Defendants from raising construction of any nature on the Suit Property.

Learned Counsel for the Plaintiff submits that the property in question i.e. 13-31 Acres from Survey No.190 and 3-29 Acres from Survey No.189 Deh Gujro, Tapo Songal District East Karachi was owned by Defendants No.5 to 10 pursuant to a Judgment and Decree dated 29.04.1989 passed in Suit No.1408/1988 by the Court of IInd Senior Civil Judge, Karachi East after which an Allotment order dated 17.09.1991 was made by the then Chief Minister in compliance of the decree; that thereafter a proper lease was executed in favour of Defendant No.5; that the Plaintiffs hold a valid Power of Attorney issued by Defendants No.5 to 10 and thereafter the land was regularized pursuant to payment of regularization charges under the Regularization Ordinance and thereafter the Plaintiffs obtained permission and NOC from the respective authorities to

raise construction; that Defendant Nos. 11 & 12 partly dispossessed the Plaintiff compelling the Plaintiff to file instant Suit; that another Suit No.1422/2004 filed by the Railway Society (Defendant No.17) is pending and Suit No. 44/2005 filed by their allottee is also pending, therefore, the status-quo order passed on 31.10.2011 may be confirmed and matter be listed for evidence.

On the other hand, learned Counsel for Defendant No.17 submits that the land belongs to Defendant No.17 since decades and they are in possession; that a Suit bearing No.68/1981 was filed against the Government of Sindh including the then Commissioner as part of the land was unlawfully allotted by them to third party(ies) and the said Suit was decreed on 31.3.1987; that an Appeal was preferred which also stands dismissed and thereafter leave to defend application has also been refused by the Honourable Supreme Court; that insofar as title of Defendant No.17 is concerned the same stands established and accepted through these proceedings; that the Deputy Commissioner or the Commissioner from whom the Plaintiffs' predecessor in interest derives their title was never authorized to allot this land; that even otherwise the Plaintiffs have no legal documents in their favour as their predecessor-in-interest has already executed a Conveyance Deed in favour of Defendants No.11 & 12, and therefore, impliedly their Power of Attorney stands revoked, whereas, they are not in possession.

Learned AAG has referred to the written statement and submits that insofar as their record is concerned, certain allotments were made to the predecessor-in-interest; however, the Plaintiffs cannot claim entire land in question.

I have heard all the learned Counsel as well as learned AAG. Insofar as the Plaintiffs are concerned their claim is based on

two documents. The first one is the Power of Attorney, which they claim to have been executed by Defendants No.5 to 10 on 12.02.1996. The said Power of Attorney appears to have been executed only by Defendant No.5 and in the said Power of Attorney there is no reference of the Judgment and Decree on the basis of which purportedly the land was allotted to them by the then Chief Minister. Moreover, this Power of Attorney is in respect of the entire land i.e. 17-20 Acres in Survey No.189 and 190. The second document is a lease purportedly executed by the Assistant Commissioner. The said lease referred to by the learned Counsel for the Plaintiff is in respect of only 7.24 Acres in Survey No.190. Counsel was confronted to assist the Court in respect of this discrepancy as to the Judgment & Decree and then in the purported allotment and thereafter execution of the lease but the learned Counsel could not satisfactorily respond to such query of the Court. It further appears that the lease on which reliance has been placed does not specifically mentions the date of execution nor it is a registered document and only signed by the Assistant Commissioner, whereas, in the litigation as relied upon on behalf of Defendant No.17 up till the Hon'ble Supreme Court, it has been held that the Commissioner had no authority to execute lease or allot the land in question. Therefore, all these documents of which reliance has been placed prima-facie at this stage of the proceedings do not support the case of the Plaintiffs. Needless to mention that at the injunction stage, the plaintiff has to make out a prima facie case on the basis of averments in the plaint / application duly supported by the documents relied upon.

On the other hand, it is also noticeable that the Defendant No.5 to 10 have also executed a Conveyance Deed in favour of Defendants No.11 & 12, therefore, the stance of the Plaintiff that they derive

their title form the said Defendants on the basis of Judgment and Decree, Power of Attorney and thereafter the Lease Deed is belied by this fact as apparently Defendants No.5 to 10 have revoked the Power of Attorney on the basis of which the Plaintiffs are claiming ownership and possession of the land in question.

In view of hereinabove facts and circumstances of this case, the Plaintiffs have failed to make out a prima-facie case as no supporting documents are available with them for claiming injunctive order at this stage of the proceedings, whereas, admittedly they are out of possession at least partly, and therefore, no case for injunctive relief is made out. Accordingly by means of a short order in the earlier part of the day, listed application was dismissed and these are the reasons thereof.

J U D G E

Ayaz