

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1717 of 2019

Date	Order with signature of Judges
	<ol style="list-style-type: none">1. FOR HEARING OF CMA NO.459/20202. FOR HEARING OF CMA NO.6227/20213. FOR HEARING OF CMA NO.1326/20214. FOR HEARING OF CMA NO.1327/20215. FOR HEARING OF CMA NO.4106/20216. FOR ORDER ON CMA NO.6151/20227. FOR ORDER ON CMA NO.7205/20228. FOR ORDER ON CMA NO.7206/20229. FOR ORDER ON CMA NO.7752/202210. FOR ORDER ON CMA NO.12018/202211. FOR EX-PARTE ORDERS AGAINST DEFENDANTS No.2, 3, 4, 5, 6, 7, 10 and 11

08.11.2022

Plaintiff-Muhammad Khalid Ali Khan, present in Court in person.
M/s. Ali Azad Saleem & Shamim Bano, Advocates for Defendant
No.1.

Statements filed by Plaintiff along with certain documents and by
learned counsel for Defendant No.1 along with a copy of Judgment, are
taken on record.

Learned counsel for Defendant No.1 has referred to the earlier
Judgment and Decree passed in Suit No.37 of 2011, which was filed by
the present Defendant No.1 against present Plaintiff and Defendant
Rizwan Cooperative Housing Society Limited (“**Society**”). The said Suit
was decreed against the present Plaintiff; the plaint of the above Suit is
available (*in the IInd Part of the Court File*) at page-49; in the above
Suit No.37 of 2011, present Defendant No.1 has sought declaration of
ownership in respect of the “**Suit Property**”, viz. House No.B-17,
situated in Rizwan Cooperative Housing Society, Sector No.38/A,
Scheme No.33, University Road, Karachi.

Learned counsel for Defendant No.1 has then referred to the Civil Suit No.Nil of 2018, filed by present Plaintiff (Muhammad Khalid Ali Khan) in this Court seeking almost similar relief as sought in the present case, which was allowed to be withdrawn by the Order dated 05.11.2018, on the ground that some proceeding was *sub judice* [at the relevant time], before the learned District Court, Malir, Karachi. This Court showing leniency has even refunded the Court Fee in the above matter because Plaintiff appears in person. A Criminal Case was also instituted being Special Case No.38 of 2008, on the Complaint of present Plaintiff [Khalid Ali Khan], in which present Defendant No.1 was acquitted; the judgment is at page-125 of the Court File.

The second set of facts is that the above judgment passed in earlier Suit No.37 of 2011 was challenged by present Plaintiff by filing an Application under Section 12(2) of CPC, which was dismissed by an elaborate Order dated 29.08.2018, also mentioning adverse remarks against present Plaintiff. The said Order was challenged in the appeal, being Civil Appeal No.83/2018 and the learned Appellate Court has dismissed the same vide Judgment dated 03.08.2019 (available at page-305 of the Court File), which was questioned in the Civil Revision Application No.125 of 2019 before this Court and it met the same fate and eventually now a Civil Petition No.449-K/2020 for Leave to Appeal is *sub judice* before the Hon'ble Supreme Court; this fact is not disputed and Plaintiff today himself produced the Memo of appeal along with an order in which he has sought adjournment before the Hon'ble Supreme Court [which is taken on record].

Learned counsel for Defendant No.1 states that present proceeding is barred under Order VII Rule 11 as well as Section 11 of

CPC (Civil Procedure Code), because material questions raised in the present *Lis* have already been decided by the Courts; particularly, with regard to the ownership of the **Suit Property** and its possession, in favour of present Defendant No.1.

Mr. Muhammad Khalid Ali Khan has refuted the above arguments and stated in response to the above Application, that Defendant No.1 has concealed the material facts from this Court and even the earlier litigation of the above suit was instituted through misrepresentation before the learned Trial Court, because already at the relevant time, same parties were litigating in the hierarchy given in the Cooperative Societies Law. He has referred to the decision handed down by the learned Division Bench of this Court in CP No.D-4882/2020 filed by present Plaintiff, wherein the Order of the Appellate Authority under the Cooperative Societies Act, was set aside and matter was remanded to the Registrar for decision in accordance with law.

Both Plaintiff and learned counsel for Defendant No.1 state that Registrar till date has not decided the matter.

The above undisputed record shows that dual nature of proceedings was instituted by the Parties hereto in respect of the above Suit Property. The one is in the form of civil litigation, in which till date, Defendant No.1 is successful and the other one is under the provisions of the Cooperative Societies Law, regarding which the above **remand order** of the learned Division Bench is in the field. The proceeding of this *Lis* is an attempt to circumvent the proceeding before the Registrar, which is not permissible.

In the above referred Suit No.37 of 2011 [filed by Defendant No.1], the Court has decreed the Suit by declaring the present Defendant No.1 as lawful owner of the Suit Property purchased through a registered Sale Deed of 04.03.1989 and **present Plaintiff as a trespasser**, who was directed to handover the possession of the Suit Property to Defendant No.1, apart from paying the mesne profit. Once the substantial issues of the present *Lis, inter alia*, seeking declaration of the ownership [for the Suit Property] in favour of present Plaintiff and cancellation of documents including the Sale Deed dated 04.03.1989, which were directly and substantially the subject matter of earlier Suit [*ibid*] instituted by present Defendant No.1, have been determined/decided by the Court, the same cannot be interfered with in the present *Lis*. Present *Suit* is barred by Section 11 of CPC and the instant proceeding is nothing but an attempt to dilute the above Judgment and Decree in a collateral proceeding. It is an established rule that a decision of an Authority or Court having jurisdiction to decide the matter, cannot be circumvented in a collateral proceeding, but is only challengeable under the hierarchy mentioned in the relevant statute. The above principle enunciated by the Courts has the force of law; thus, present Suit is barred by the above principle and the law.

More so, the earlier withdrawal of the Suit No.Nil of 2018, without permission to file a fresh case, will also bar this *Lis* and present proceeding is also hit by Order XXIII, Sub-rule 3 of CPC, because in the earlier Suit and the present *Lis*, the Plaintiff has sought declaration about his ownership rights, which are already decided against him in the Suit filed by present Defendant No.1 (*supra*), besides, in both Suits (earlier one, Nil of 2018 and present *Lis*) cancellation of same Sale Deed dated

04.03.1989, Lease Deed of 26.12.1988 and General Power of Attorney dated 19.02.1989, are sought; and for the same reliefs the above Suit No. Nil of 2018 was filed and later withdrawn but without the permission of the Court to file a fresh *Lis*.

It is also observed by looking at the Record of earlier litigation, that present Plaintiff avoided to testify in support of his claim in the afore referred Cases, including the Criminal Case.

In view of the above discussion, the Plaint of present Suit is rejected under Order VII Rule 11 of CPC. All the pending Applications stand disposed of. Office to prepare a Decree.

Plaint rejected.

JUDGE

asim/pa