

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No. 315 of 2019

Iktikhar Cutchi

Versus

Ibrahim Nawroz Ali Bhamani & others

Date

Order with Signature of the Judge

1. For order on office objection.
2. For hearing of main case.
3. For hearing of CMA No. 3395/2019.

5th December, 2023.

Mr. Shahzeb Akhtar Khan, Advocate for the appellant.

Mr. Danyal Shaikh, Advocate for respondent.

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This is an appeal which arises out of order dated 19.09.2019 when application bearing CMA No. 11890/2019 for framing of some additional issues was dismissed.

Brief facts of the case are that suit for specific performance was filed by respondent No.1 against respondent Nos. 2 & 3. While it was pending adjudication, appellant intervened on the strength of some old registered partnership deed and he was inducted, included and arrayed as additional defendant. The appellant (newly added defendant) though also filed independent suit for declaration in respect of property in question bearing Suit No. 504/2008, however, it was dismissed for non-prosecution on 26.11.2018 and such dismissal order attained finality as neither restoration application filed nor appeal preferred, as stated. The appellant having interest in the proceedings then moved an application for additional issues, perhaps belatedly, when the evidence of plaintiff i.e. respondent No.1 was recorded. Such application in terms of impugned order for framing of issues was dismissed. As of now not only the evidence of respondent No.1 being plaintiff was recorded but also of the contesting defendant which is appellant here. It is appellant's case that performance of agreement could not be ordered and the suit was not maintainable in the sense that the partners as disclosed in the alleged forged partnership deed were never formed an entity to own that property and to execute a conveyance deed.

Be that as it may, it is the appellant who is contesting the suit as being owner of the property. Before us the question is whether at this stage, some additional issues, which could cover the pleadings of newly added defendants could be framed or not since evidence has been recorded. In terms of order XIV Rule 5 CPC court at any time before passing a decree may amend the issue or frame additional issues on such terms as it thinks fit, and that such amendments and additional issues as may be necessary for determining the matter in controversy between the parties, shall also be made or framed. This Rule thus, would enable the court to frame issues at any time before passing of judgment and decree. Although for an application seeking such amendment we find that it is belated attempt yet viewing the frame of Order XIV Rule 5 CPC learned single judge, if at any point of time before passing judgment and decree feels for any such amendment, by remaining within frame of pleadings and evidence already recorded, may frame additional issue provided the evidence is available for the discharge of burden. This High Court Appeal stands disposed of in the above terms.

J U D G E

Aamir/PS

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