

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.240 of 1971

[Amir Aliv.....Gul Shaker & others]

Date of Hearing : 15.08.2022

Plaintiffs through : Khawaja Shams ul Islam, Advocate for the plaintiff a/w Mr. Imran Taj, Advocate.
Mr. Samil Malik Khan, Advocate.

Defendants through : Mr. Asad Ali, Associate of Mr. Yawar Farooqi, Advocate for defendant No.8.

Mr. Asad Iftikhar, AAG. Ms. Sania Zubair, Advocate.

M/s. Faisal Siddiqui, Arshad Tayyebaly, Farjad Ali Khan, Sameer Tayyebaly & Abid Hussain & Muhammad Usman Ahmed & Alqamah Bin Mehmood Advocates for the Interveners.

Mr. Zhaid Abbas Akhund, Director, Culture, Tourism, Antiquities, Archives Department, Government of Sindh.

- 1.For hearing of CMA No.16697/2019 (Order 1 Rule 10 CPC)
- 2.For hearing of CMA No.19745/2021 (u/s 151 CPC)
- 3.For hearing of CMA No.18886/2021 (Order 1 Rule 10 CPC)
- 4.For hearing of CMA No.21927/2021 (Order 1 Rule 10 CPC)

ORDER

Zulfiqar Ahmad Khan, J:- This order pertains to CMA No.16697/2019, CMA No.1886/2021 and CMA No.21927/2021 moved under Order I Rule 10 CPC as well as CMA No.19745/2021 moved under Section 151 CPC for brining on record certain documents. Whilst the interveners have primarily sought to become a party in the present case which is a Suit for Administration seeking administration of the estate left by predecessors of the plaintiffs being Quaid-e-Azam Mohammad Ali Jinnah and Mohtarma Fatima Jinnah as well as Mohtarma Shireen Jinnah, schedule of properties to be administered is attached as annexure "A" available at page 79 to 81 of the suit file.

2. M/s. Arshad Tayyebaly, Faisal Siddiqui and Abid Hussain advocated the case of the interveners. Mr. Tayyebaly, set forth the case of the residents of Old Clifton (CMA No.21927/2021) where the Qasar-e-Fatima (aka Mohatta Palace) situates, whereas, Mr. Siddiqui appeared on behalf of Mohatta Palace Gallery Trust (CMA No.18886/2021) and Mr. Abid Hussain also appeared on behalf of certain interveners in CMA No.16697/2019.

3. The crux of Mr. Tayyebaly's arguments is that his clients are residents of the old Clifton area where the well-known property Qasar-e-Fatima (aka Mohatta Palace) is situated and his clients' rights and privacy would be infringed if the said property is converted into a Medical/Dental College. He further contended that his clients/intervenors would face traffic as well as road jams which otherwise have become order of the day in the city, therefore, his clients are necessary and proper party to be arrayed in the present proceedings.

4. Mr. Siddiqui argued the matter at great length. His entire anxiety is that Qasar-e-Fatima (aka Mohatta Palace) is being looked after by applicant/intervener which is a Trust constituted by the Government of Sindh, therefore, the Mohatta Palace Gallery Trust (CMA No.1886/2021) is proper and necessary party to be arrayed in the proceedings. Mr. Siddiqui through another CMA No.19745/2021 is eager to bring on record certain documents details of which are mentioned in the said CMA. Mr. Abid Hussain advocated the case of the applicants/intervenors in (CMA No.16697/2019) on the grounds that his clients are necessary and proper party to the proceedings because the applicants/intervenors are also one of the legal heirs of

the original plaintiff but the present plaintiff have filed the amended title concealing the real as well as the legal heirs mentioned in the said CMA.

5. Heard the arguments. It is well settled position that only those persons are necessary and proper party to the proceedings, whose interest are under challenge in the suit and without their presence, matter could not be decided on merits. The necessary party is one who ought to have been joined in and in whose absence no effective decision can take place. At the cost of repetition, the object of Order I, Rule 10, C.P.C. is to avoid multiplicity of proceedings and litigation and to ensure that all proper parties are before the court for proper adjudication of the suit. Once the court comes to the conclusion that a person who has applied for becoming a party is a necessary party, only then court to permit such a person to be impleaded in the proceedings. The general rule with regard to impleading the parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief but a proper party is a party who, though not a necessary party but is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made¹.

6. It is pertinent to point out here that this Court is hearing the instant suit of administration since 1971 of the assets of Quid-e-Azam

¹ (i) 2012 CLC 1477 (*Mst. Farasa Aijaz vs. Messrs Qamran Construction (Pvt.) Ltd.*), (ii) 2017 YLR 1579 (*Aroma Travel Services (Pvt.) Ltd. vs. Faisal Al Abdullah Al Faisal*), (iii) 2010 YLR 1666 (*Jiand Rai vs. Abid Esbhani*), and (iv) 2010 CLC 1622 (*Shams Mohiuddin Ansari vs. Messrs International Builders*).

Muhammad Ali Jinnah at the stage of Final Arguments. Evidence has already been recorded after framing of issues and a gesture of goodwill, with regards Qasar-e-Fatima (aka Mohatta Palace) the legal heirs after long deliberations has conceded that they would have no objection or claim to the said property if the said premises is used as per Will of the Fatima Jinnah (mother of the nation) for a Medical/Dental College.

7. As to the contention that use of the premises will generate excessive traffic, it could be witnessed that a large number of high rise buildings at a stone's through distance are situated or under construction from Qasar-e-Fatima, but seemingly no objection has been made by the present applicants on such an activity. As to the stance that a Trust is being run at the subject property, this Court has already declared that the property was only given for maintenance to the Government of Sindh² and establishment of a Trust on a private property by the Government for which an administration suit is pending was ill motivated and dishonest, least to say.

8. Once Father and Mother of the nation have given an area of approximately 197,00,000 acres to the people of Pakistan and had let them use this huge chunk of land as per their own discretion and choice, out of that millions of acres of land, when only one acre in the form of Qasar-e-Fatima is interested to be used per the wishes and Will of the founders, one wonders how ungrateful we are to even

² Court's order dated 17.03.1993. It is further ordered by consent that the **possession of Mohatta Palace will be handed over to the Sindh Government for the purpose of repairs** as soon as the aforesaid price assessed by the Official Assignee is deposited in Court.

object to such a use, that too for the spread of knowledge and education amongst womenfolks.

9. To me applicants/interveners are neither necessary nor proper party in the present *lis* as it pertains to the administration of a private property, therefore, neither the Trust nor the nearby residents have any cause of action. Neither they are heirs nor have any relationship with the deceased who owned the subject property and if the interveners are arrayed as a party whether necessary or proper would not get any fruit in the present *lis* which is administration of estate in its nature. As stated earlier, evidence in the matter has already been recorded and the matter is being heard for Final Arguments, thus inclusion of any new party is devoid of merit.

10. In sequel to the above rationale and deliberations, CMA Nos. 21927/2021 and 18886/2021 moved under Order I Rule 10 CPC by the applicants/interveners are hereby dismissed. CMA No.19745/2021 moved by the applicants for bringing certain documents on record. It is made clear here not taking on record of any document cannot be considered fatal at this stage when evidence has already been recorded, as well as the applicant who has filed CMA No.19745/2021 is also intervener of CMA No.18886/2021, since its main application has been dismissed, therefore, the CMA No.19745/2021 for producing certain documents also fails. As far as CMA No.16697/2019 is concerned, to come up for hearing.

Karachi
Dated 24.08.2023

JUDGE

Aadil Arab