

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

Suit No. 2469 of 2015
Suit No. 1483 of 2016
Suit No. 1484 of 2016
Suit No. 646 of 2021

Date: Order with signature of the Judge

1. For hearing of CMA No.15781/2019
2. For hearing of CMA No.18204/2015
3. For hearing of CMA No.3011/2023

21.09.2023

Mr. Abdul Moiz Jafferii, advocate for the plaintiffs
Mr. Muhammad Ayub, advocate for defendant
Mr. Khursheed Javed, advocate for KDA

1 & 2. Adjourned to 19.10.2023. Interim order passed earlier to continue till the next date of hearing. Office is instructed to place copy of this order in connected matters.

3. This application is filed under Order I Rule 10 CPC whereby the applicant seeks to become party. Matter was listed for hearing yesterday, however, learned counsel for the applicant sought time to prepare himself. Today, Malik Khushhal Khan Advocate has filed power and submits that he has superseded the earlier counsel and will argue the application.

It is applicant's case that the property, subject matter of this suit, belongs to the applicant. Per learned counsel, property being C/2/2/1 measuring 800 sq. yds. was allotted to Anwar on 10.10.2014. Thereafter, it was acquired by Sharafat Ali on 25.03.2021 and eventually by the applicant on 12.03.2021. It is argued that since it is the property in question is the same therefore the applicant is necessary party. In addition thereto, it is submitted that while no suit to assert any rights in respect of the property has been filed by the applicant, however, CP D 2288 of 2021 was filed with respect to the property and the same was dismissed one year ago. It is also added that the present suit is barred by *res judicata*.

On the contrary learned counsel for the plaintiff submits that the applicant is not a necessary and property party in this suit and the property, in respect whereof the applicant claims rights, is demonstrably distinct to the property subject matter herein.

Heard and perused. The prayer clause demonstrates that the relief sought is with respect of Plot C/2/1/4 situated in scheme No.35 Lines Area Redevelopment Project, Gulshan-e-Zahoor, Karachi measuring 1300 sq. yds. The applicant has claimed interest in the plot particularized supra. *Prima facie* the two properties appear to be distinct as there appears to be no correlation in nomenclature / identifying particulars or even in terms of area. It was never the applicant's case that the property claimed was a subset or in/divisible constituent of the property subject matter herein.

Whether or not the suit is barred by *res judicata* or if there is any other impediment to the same cannot be determined in this application under Order I Rule 10 CPC.

While the plaintiff remains at liberty to institute any independent proceedings, subject to the law, to assert rights in respect of any property claimed, however, the plaintiff's counsel has failed to demonstrate that the applicant is proper and necessary party for adjudication of the present suit. In view hereof this application is dismissed.

J U D G E

Amjad/PA