

IN THE HIGH COURT OF SINDH KARACHI

SUIT NO. 912 of 2010

Plaintiff : Zafar Mustafa Khan
through M/s. Amiruddin and Shoaib
Mohiuddin Ashraf, advocates

Defendants : Mst. Qurat-ul-Ain & others
through Mr. Abdul Qadir, advocate

Date of hearing : 12-11-2024

ORDER

Omar Sial, J: CMA No. 14786/2022 has been filed under Order VI, Rule 17, CPC by the counsel for the Plaintiff. He has prayed that he may be allowed to add an additional prayer to his plaint. The additional prayer essentially seeks a direction that Defendant No.1 be directed to make appearance before the relevant Sub-Registrar for the registration of the Sub-Lease Deed of the Suit Property or in the alternative the same be done through the Nazir of this Court. The application is contested by the Defendant No.1 (through legal heirs) on two grounds. Firstly, that it has been filed belatedly to prolong the matter. Secondly, that the Suit Property already stands gifted by the Defendant No.1 (now deceased) in favour of his wife, Mst. Qurat ul Ain. (the present Defendant No.1). That the said Gift Deed stood registered with the Sub-Registrar on 15.04.2009. This Gift Deed was challenged by the Plaintiff in Suit No. 1317/2016 before the 7th Senior Civil Judge (Central) via which the challenge was held to be unsuccessful on 30.07.2019 and so was the first appeal filed against that Judgement.¹

2. Heard the counsels and perused the record.

¹ Civil Appeal 124/2019 before VI Additional District and Sessions Judge (Central)

3. Order VI, Rule 17 provides that the application under this provision can be moved at any stage of the proceedings. Hence, the first objection of the defence is not supported by the governing provision itself. In so far as the substance of the amendment is concerned, Order VI, Rule 17 provides for two situations in which the Court can exercise its power for grant of an amendment to a pleading. The first vests in the Court the discretionary power to allow for all such amendments that it deems just. In the second situation, the Court has been mandated to grant permission for an amendment where the same is necessary for the purposes of determining the real questions in controversy.²

4. This suit has been preferred by the Plaintiff for possession, direction, recovery of rent and permanent injunction. Succinctly, the facts of the case are that the property bearing the following description; R-426, Sector 11-C/1, Adam Town, North Karachi Township, Karachi was jointly purchased by the Plaintiff and the Defendant No.1. The Lease Deed dated 11.03.2004 was executed by the sellers in favour of the Defendant No.1. The Lease Deed provided that the Defendant No.1 would execute a Sub-Lease of the ground floor of the said Property in favour of the Plaintiff. For some reason, the same was executed but not registered. However, the possession was handed over by the Defendant No.1 to the Plaintiff. Subsequently, the Plaintiff was dishonestly dispossessed by the Defendant No.1. Hence, the instant suit.

5. No amendment is being sought in the contents of the plaint itself. The only amendment being sought is in relation to the addition of a prayer clause. The entire plaint is for the recognition of the Plaintiff's legal title to the Suit Property. The prayer being sought to be added is for the Suit Property and flows from the pleadings. No inconsistent or alternate plea is being introduced. Neither does the prayer clause alter the complexion of the suit.

² PLD 1985 SC 345, Ghulam Bibi v. Sarsa Khan

6. The second defence moved by the Defendant No.1 vis a vis the Gift Deed pertain to the merits of the grant of the prayer and not whether the same should or should not be allowed to be added. This defence will be more relevant to the Defendant No.1 if raised at the time of the final arguments.

7. The case law relied upon by the counsel for the Plaintiff supports his plea.³ It is well settled that the rules of procedure are to act in furtherance of administration of justice and not to frustrate the same. The addition of the prayer clause will facilitate proper administration of justice. The case law provided by the Defendant No.1 is distinguishable and does not lend credence to her case.⁴ Accordingly, the instant application is allowed. Plaintiff is directed to file the amended plaint within a period of 7 days.

JUDGE

³ PLD 2005 SC 787; Syed Nazir Hussain Rizvi v. Zahoor Ahmed, PLD 1985 SC 345; Ghulam Bibi v. Sarsa Khan

⁴ 2008 SCMR 515; Khair Muhammad v. Nawaz Bibi, 1988 SCMR 34; Ijaz Mahmood v. Manzoor Hussain, 2011 CLC 130; Munawar Mehmood v. Nadeem Siddiqui