

# IN HIGH COURT OF SINDH, AT KARACHI

Suit No.115 of 2005

## **ORDER**

Date of hearing	23.01.2014.
Plaintiff	through Mr. Mirza Sarfaraz Ahmed, advocate.
Defendant No.25	through Mr. Sameer Ghazanfar, advocate.
Defendant/State	through Mr. Ziauddin Junejo, AAG.

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**NAZAR AKBAR-J:** On 23.01.2014, I have dismissed two applications being **CMA No.12532/2012** and **CMA No.157/2013** by a short order, for the reasons to be recorded later on. The reasons for dismissal of both applications are as follows:-

2. The Plaintiff in both these applications has prayed for appointment of Receiver in respect of 2-14 Acres of suit land. Though there is no concept of filing two applications under Order XL Rule 1 read with Section 151 CPC one after other and that too before disposal of earlier application, learned counsel for the Plaintiff has contended that these applications have been filed on changed circumstances. Whatever may be the reasons, since both the applications are on the point that as to whether Receiver can be appointed or not? This order will govern disposal of both the applications.

3. Learned counsel for the Plaintiff admits that the suit property is an open land/plot. In the first application bearing **CMA No.12532/2012**,

learned counsel has relied on the Report of the Nazir of this Court as ground for appointment of Receiver and in the second application he has filed a pamphlet showing that the Defendant No.25 intends to create third party interest by plotting the suit land and selling the same.

4. Perusal of the Nazir's Report shows that the land is so far unspecified and the Nazir has informed that since the Revenue Surveyor is facing difficulty to complete the exercise and to measure the area of land certain equipments are required which were not available, therefore, inspection of site has not been differed to be undertaken after notice to all the concerned. The pamphlet attached with the second application is also not a ground for appointment of Receiver of the immoveable property. It is an admitted position that vide order dated 09.03.2005 this Court has already passed interim order to maintain status quo in respect of the suit land and while confirming status quo orders by a subsequent order dated 23.01.2012, the Parties have further been restrained from creating any third party interest in the suit land and such order had been passed in presence of the Defendant No.25, whose name has been specifically mentioned in both these applications. The Defendant No.25 has no objection to the grant of these applications. The very fact that the Defendant No.25 has no objection is sufficient to appreciate that there is no need for appointment of Receiver and that too when there is no complaint against the remaining 27 Defendants of causing any inconvenience to the Plaintiff or to the property in question.

5. The Plaintiff's Suit is for Declaration, Cancellation and Possession, which means that the Plaintiff's right of ownership to the property is in dispute and the Defendants have already been directed not to create any

third party interest in the suit land. Even otherwise, if the Plaintiff is of view that the Defendant No.25 is creating any third party interest in the suit land, appointment of a Receiver is not the remedy, he may file an application for Contempt of Court order, which he has not done and the Defendant No.25 has extended his no objection for appointment of Receiver. It means the Defendant No.25 is not creating any third party interest in the suit land.

6. In view of the above facts and circumstances, no case is made out for appointment of a Receiver. Interim order, under the given circumstances of the case, is more than enough to protect the rights of the Plaintiff pending the suit as in any case, if the Suit is decreed, the Plaintiff in execution proceedings shall be put in possession of the suit property.

7. Both the applications were dismissed by a short order dated 23.01.2014. These are the reasons for the same.

JUDGE

MUBASHIR