

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1302 of 2011

Date

Order with signature of Judge

1. For hearing of CMA No.5922/2013 (U/S 151 CPC)
2. For hearing of CMA No.5923/2013 (U/O 26 R 1 CPC)

12/09/2013:

Mr. Ziaul Haq Makhdoom, Advocate for the plaintiff.

Mr. Bashir Ahmed Khan, Advocate for Defendants
No.1 and 2.

1. By consent this application will be taken-up after recording of evidence of the parties.
2. Through this application (CMA No.5923 of 2013) the Defendants No.1 and 2 seek appointment of a Commissioner for recording of evidence of the parties to which learned counsel for the plaintiff has no objection but submits that since this application has been moved on behalf of Defendants No.1 and 2 cost of the commission shall borne by Defendants No.1 and 2.

Learned counsel for the parties filed their proposed issues today in Court and after going through the same following issues are framed:-

1. Whether the suit is barred by limitation?
2. Whether the plaintiff has cause of action to institute the present suit?
3. Whether the receipt dated 25.6.2011 was not issued by Defendant No.1 against payment made by the plaintiff?
4. Whether the plaintiff had fulfilled the contract promise at or before the specified time or failed to do so? If failed what would be effect of failure?

5. Whether Akbar Khan and Muhammad Akbar Khan son of Sheikh Fazal Khan and Muhammad Akbar Khan son of Muhammad Fazal Khan are one & the same person?
6. Whether the transfer of plot in favour of the Defendant No.2 by the Defendant No.1 is illegal, collusive and sham transaction, hence liable for cancellation?
7. Whether the plaintiff is entitled to damages if yes, to what amount?
8. Whether the Defendant No.2 has suffered any damages due to filing of instant suit?
9. Whether the Defendant No.2 is entitled to any damages, if yes to what extent?
10. What should the decree be?

List of witnesses to be filed within seven days and documents within one month.

As suggested by learned counsel for the parties Mr. Aatif Awan, Advocate, having office at 1st Floor, Court View Building, M.A. Jinnah Road, Karachi, is appointed Commissioner to record evidence of the parties. The parties may lead evidence by means of affidavits-in-evidence alongwith all original documents on which they intend to rely with advance copy to the other side. The learned Commissioner shall keep photo-copies on record and return the original documents to the witnesses after seeing them. As suggested by learned counsel for the parties the fee of the learned Commissioner will be Rs.10,000/- per witness which shall be paid by Defendants No.1 and 2 who have move application (CMA No.5923 of 2013) for appointment of Commissioner. Commission is to be returned within two months which will start from the receipt of this order by the learned Commissioner.

Office to communicate this order to the learned Commissioner at the earliest.

In view of above CMA No.5923 of 2013 stands disposed of.

JUDGE