

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 241 of 2008

Date	Order with signature of Judge
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FOR HEARING OF CMA NOS:

- |     |   |                               |
|-----|---|-------------------------------|
| 1.  | 10503 OF 2012   | (U/O 1 R 10 CPC)              |
| 2.  | 8735 OF 2008  | (U/S 151 CPC)                 |
| 3.  | 8736 OF 2008  | (U/O 39 R 1&2 CPC)            |
| 4.  | 472 OF 2009   | (U/O 12 R 6 R/W S. 151 CPC)   |
| 5.  | 2811 OF 2010  | (U/S 151 CPC)                 |
| 6.  | 8990 OF 2010  | (U/O 39 R 1&2 CPC)            |
| 7.  | 6107 OF 2011  | (U/S 3 & 4 CONT. OF COURT)    |
| 8.  | 9370 OF 2011  | (FOR RECALL OF O. DT. 9.8.11) |
| 9.  | 278 OF 2012   | (U/O 1 R 10 CPC)              |
| 10. | 279 OF 2012   | (U/O 7 R 11 CPC)              |
| 11. | 1384 OF 2012  | (U/O 47 R 11 CPC)             |
| 12. | 1385 OF 2012  | (U/O 7 R 11 CPC)              |
| 13. | 6102 OF 2012  | (FOR RECALL OF O. DT.31.1.11) |
| 14. | FOR ORDERS ON NAZIR REPORT DATED 14.12.2011.          |                               |
| 15. | FOR EXAMINATION OF THE PARTIES/SETTLEMENT OF ISSUES . |                               |

08/10/2013:

M/s. Shazia Latif and Fazal Dad, Advocates for the plaintiff.

Ms.Samina Khursheed, Advocate for Defendant No.1 who is also present in person.

M/s. Imtiaz Ali and Muhammad Pervez Owais Ansari, Advocates for Def. No.4.

Mr. Maroof Hussain Hashmi, Advocate for intervenor Muhammad Shabir Ahmed.

None present for Defendants No.2 and 3.

1to6,8,10to13&15.      Deferred.

7&9. This is a suit for administration pending since 2008 and only one property bearing No.1237-A, M-II/E, Street No.77, Sher Shah, Karachi, measuring 1250 Sq. yards is in dispute. In this property there were several tenants at the time of filing of this suit and the Defendant No.1 was in possession of the property. By order dated 31.01.2011 the property was inspected through Mr. Muhammad

Aqil, Advocate, and he had submitted his report as well. It is alleged by the legal-heirs of deceased Alauddin that most of the time the rent was received by Defendant No.1. This fact is also available on the Court file that Defendant No.1 has been receiving rent and in this respect several tenants have filed affidavits alleging that they are paying rent to Defendant No.1. Thereafter, there was allegation against Defendant No.1 for violation of status-quo order and a contempt application (CMA NO.6107 of 2011) was filed against Defendant No.1. Notice of this application were issued and today learned counsel for Defendant No.1 claims notice inspite of the fact that she has attended the case on almost every date whenever this application was taken-up for hearing. The orders dated 17.8.2011 passed in presence of the counsel for Defendant No.1 and the defendant after hearing of CMA No.6107 of 2011 clearly reflect that learned counsel for Defendant No.1 was aware of this application though today she claims copy of the same. Nazir of this Court has also filed a report on 17.8.2011 in compliance of order dated 9.8.2011 whereby Nazir was directed to take over possession of the property and seal the same and to obtain police assistance if so required to ensure compliance of the said orders of the Court. Unfortunately this order is available on Court file and Nazir has failed to comply this order which was passed on CMA No.6107 of 2011 when Defendant No.1 was also in attendance, the sale of the property after 25 days of such an order pending CMA No.6107 of 2011 was another act of contempt of Court on the part of Defendant No.1 and confirms that he has no respect for Court order. The Defendant No.1 remained unaware about the contempt proceedings in spite of Court order and it has been reported that

he has sold this property to applicant/intervenor Muhammad Shabir Ahmed on 5.9.2011 through a simple sale agreement and claiming that the sale was done by consent of everyone. The counsel appearing on behalf of applicant/intervenor Muhammad Shabir Ahmed states that his client has purchased the subject property under the sale agreement and claims that his client was never aware about the court proceedings. Be that as it may, the property in question is subject matter of the suit which is pending since 2008, therefore, even otherwise during pendency of suit which was by all means is a suit for administration of the property amongst the legal-heirs, the Defendant No.1 had no right to sell the property. If at all the applicant/intervenor has acquired any rights under a sale agreement dated 5.9.2011 he may pursue his remedy according to law but he cannot be made a party in a suit for administration.

In view of above CMA No.278 of 2012 is dismissed.

14. After the Orders dated 9.8.2011 through CMA No.8773 of 2011 some of the tenants have appeared in these proceedings and have understood the orders dated 9.8.2011 and 17.8.2011 and they have undertaken to deposit rent in respect of the tenements in their possession or in respect of the tenement they claim to be occupying as tenants. The Nazir report dated 14.12.2011 clearly indicates that the said tenants have not deposited rent with the Nazir. In view of this report and on account of the failure of the tenants to deposit rent in terms of the order dated 17.8.2011 they are not entitled to any concession due to non-compliance of order dated 9.8.2011. Therefore, it is hereby ordered in continuation to

the order dated 9.8.2011 read with Order dated 22.8.2011 that the entire property in question should be taken over and sealed by the Nazir of this Court as already ordered. Nazir report dated 14.12.2011 is taken on record and disposed of as such. The Nazir of this Court to immediately take over the property in question in compliance of the order dated 9.8.2011 and also submit an explanation for his failure of not complying with the order dated 9.8.2011 despite police aid for compliance of Court order. Nazir fee is fixed at Rs.20,000/- which will be paid by the plaintiff and all other defendants within twenty four hours of this order.

Adjourned to a date in office.

JUDGE.

S.Akhtar