

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.872 of 2010

ORDER WITH THE SIGNATURE OF THE JUDGE

For hearing of CMA No.5652/2010
For Examination of the parties/Settlement of issues

09.12.2013

Mr. Masroor Ahmed Alvi, Advocate for Plaintiff
Mr. Mehar Khan, Advocate for Defendant No.1.
Mr. Ashraf Ali Butt, Advocate for Defendant No.3.
Mr. Nasreen Saheto, Advocate for SBCA

This is suit for specific performance of contract between the plaintiff and the defendant No.1 and no relief has been claimed against the defendants Nos.2 and 3/the Government functionaries. Learned counsel for the plaintiff is unable to satisfy the Court that whether in a specific performance of contract anybody other than the parties who have entered into a contract can be impleaded. In the circumstances, the name of the defendants Nos.2 and 3 are stuck of from the file. Learned counsel for the plaintiff is directed to file amended title. The Plaintiff and the defendant No.1 have filed their proposed issues and with their assistance, the following issues are framed:

1. Whether the plaintiff is entitled to specific performance of Apartment No.A-103, situated at first floor, Gulf Way Tower and Gulf Way Shopping Mall, situated at H/1, Block-8, Scheme-5, Clifton, Karachi with possession?
2. Whether the plaintiff is entitled to have damages from the defendant?
3. Whether the defendant is liable to specifically perform the contract of sale of the above mentioned Apartment and/or to pay damages?
4. Whether the Flat No.A-103 does not exit on the site as there is no construction on its first floor?

5. Whether the plaintiff is defaulter in payment of the installment and is not entitled for such discretionary relief as prayed by him?
6. Whether the plaintiff is entitled for the relief as claimed?
7. What should the decree be?

Learned counsel for the plaintiff is directed to file amended title. Since this suit is for specific performance and the plaintiff is pressing for disposal of the case at the earliest and even otherwise the issues have been framed and this matter is to come up for evidence. In the circumstances, it is ordered that the evidence shall be recorded through Commissioner. As suggested by the parties, former District & Sessions Judge Syed Kousar Ali Bukhari is appointed Commissioner for recording evidence. The Commissioner's fee will be Rs.15,000/- per witness to be paid in advance. Learned counsel for the plaintiff is directed to file affidavit-in-evidence on 24.12.2013 before the Commissioner at 10:30 a.m. in the High Court Consultation Room alongwith Commissioner's fee, with advance copy to the defendant. The documents may be produced before the Commissioner. It is clarified that in case any dispute arises during the course of recording of evidence before the Commissioner, the same shall not deter the Commissioner from recording of evidence and recording of evidence will continue. He should just record the objection(s), if any. Once the evidence is completed the parties may point out the number of objections, if any, during the course of arguments and the Court will first decide the said objections before going for final arguments of the case on the basis of the said evidence. Commission is to be completed within three months, starting from 24.12.2013. Since the parties are present in Court, they know the Commissioner, therefore, the Commissioner is not required to issue any notice to the parties.

Adjourned. To come up after the commission is completed.

JUDGE