

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
 Suit No.493 of 2011

Date	Order with signature(s) of Judge(s)
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1. For orders on Nazir's report dated 23.1.2014 & 27.1.2014.
 2. For hearing of CMA No.4252/2011 (U/o. 39 Rule 1 & 2 CPC)
 3. For hearing of CMA No.9347/2011 (U/o. 26 Rule 13 CPC)
 4. For hearing of CMA No.9348/2012 (U/s. 151 CPC)
 5. For hearing of CMA No.9349/2012 (U/o. 7 Rule 11 CPC)
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17.02.2014.

Mr. Muhammad Rafiq Kamboh, Advocate for the Plaintiff.
 Mr. Khalid Mehmood Siddiqui, Advocate for the Defendants
 Mr. Idrees Alvi, Advcoate for KMC.

1, 3 & 4. Deferred.

2. Plaintiff appears to be co-owner by virtue of inheritance in the suit premises and the parties to this suit had filed a suit for partition, declaration, and injunction bearing Suit No.593/2000 in which they had entered into a compromise. The Defendants and Plaintiff are living in the suit premises, which is one unit constructed on the suit plot. Plaintiff in the suit has shown apprehension that the portion of the plot as well as building in the hands of the Defendants is going to be utilized by them in such a fashion that might affect Plaintiff's right of easement and in case of demolition of the portion of building by the Defendants the premises in possession of Plaintiff would be damaged to irreparable loss. The Defendants claim that in terms of the compromise entered into by and between the parties in Suit No.593/2000, they have unfettered right to use the portion of the property in their possession. They admit the terms and conditions of the compromise were the same as alleged in para-11 of the plaint. The Plaintiff as well as Nazir of this Court has filed a report of Structure Architect Engineer available at page 127 of the file. The

Defendants' counsel does not dispute the correctness of this report regarding the existence structure of bungalow on Plot No.D/5 Bath Island Clifton Karachi. The counsel for the Defendants claims that suggestion given by Architect in the said report is such that the building can be demolished to the extent of their share. The suggestion specifically endorse that the demolition would be possible only when the entire building is unoccupied or vacated and the entire building would need renovation. It is also suggested in the report that the building would develop inherent concrete cracks which could be dangerous to the life of the occupants.

Next contention of Plaintiff is that even bifurcation has been obtained by the Defendant without even seeking objection or involving the Plaintiff who is occupant of the property. The bifurcation is available at page 125 of the file. Defendants have not disputed this bifurcation. However, they have not produced any documents that when and how this bifurcation has taken place. Be that as it may, factual position is that Defendant No.6 as bifurcating authority has not come forward to own this bifurcation. The Plaintiff and Defendant No.6 is directed to submit details of obtaining this bifurcation. The grievance of the Defendants is that through interim restraining orders they have been restrained from creating any third party interest in the premises in occupation in terms of compromise in Suit No.593/2000.

At present the entire premises is owned by the Plaintiff and the Defendants byway of inheritance and they are enjoying possession through a private partition. Therefore, irrespective of the entitlement of the Defendants whether they have marketable title or not as is the case of the Plaintiff, since nothing else is done in furtherance of the

compromise deed in the earlier suit for partition. Pending this suit, Defendants are restrained from demolishing their portion of property which may adversely affect building in possession of the Plaintiff. However, being owner by inheritance, if they are so advised even to dispose of the portion of their premises, they may do so subject to the compromise deed in respect of the Suit No.593/2000. The compromise should be disclosed to the prospective buyer as rights of the Plaintiff under compromise will continue to be applicable, if any.

In terms of above, this application is disposed of.

5. Learned counsel for the Defendants does not press the listed application; the same is dismissed as not pressed.

JUDGE

SM