

HIGH COURT OF SINDH, AT KARACHI

SUIT NO. 1229 of 2009

ORDER

Plaintiff : Muhammad Tariq
Through Mr. Mehmood Anwar Hussain Baloch,
Advocate.

Defendants : Muhammad Saleem and others
Mr. Munawar Ali, Advocate for Defendant No.1.

Mr. Abdul Wajid Wyne, Advocate for the
Defendants No.3, 7, 8 and 9.

CMA No. 12784 OF 2012

DATE OF HEARING: 27.01.2014

NAZAR AKBAR, J. Complaint was rejected by short order dated 27.1.2014 and following are the reasons for rejection of the complaint. The complaint was hit by provisions of Order II Rule 2 and Section 11 CPC. The Defendants have filed an application under Order VII Rule 11 CPC (CMA No.12784/2012) and placed on record copy of complaint of Suit No.428/2009. The counsel for the Defendant No.1 has pointed out by referring to Suit No.428/2009 and complaint of the present suit that the contents of para-1 to para-26 of both the complaints are identical. There is no difference even of full-stop and comma in the pleadings of the two complaints. Counsel for the Defendant No.1 has also drawn attention of this Court to prayer clause 'C' of the Suit No.428/2009 and clause 'D' of the present suit. The prayer of damages in both the suits are same as damages has been claimed by the Plaintiff on the basis of an order of this Court in Cr. Misc. Application No.84/2007 dated 02.4.2008. The documents annexure 'FF' mentioned in para-29 of the complaint of suit No.428/2009 is exactly the same annexure 'EE' to the present suit. Therefore, cause of action is one and the same in both the suits at least to the extent of claim of damages; therefore, the prayer clause 'D' is not maintainable in a fresh suit, since this relief is still pending adjudication in suit No.428/2009.

In the present suit the Plaintiff has added relief of prayer clauses of cancellation of compromise dated 3.11.2006. Since Plaintiff has omitted to include the same in earlier suit No.428/2009. I have called file of Suit No.428/2009, which is pending on the original side of this Court and I was surprised to note that annexure 'E' of the present suit is the same compromise deed which was filed by the Plaintiff also as annexure 'E' in suit No.428/2009. Thus it is clear that at the time of filing of earlier suit No.428/2009, the Plaintiff was fully aware of the existence of the compromise deed dated 3.11.2006 and yet he has omitted to claim the relief of cancellation of the same in the earlier suit No.428/2009 which is still pending. The learned counsel for the Plaintiff has not been able to justify the filing of a separate suit for cancellation of the compromise deed though he could have easily claimed this relief in suit No.428/2009. The Plaintiff in present suit has added 16 additional paragraphs from para 27 to 43 as the only distinguishing mark between the earlier suit and present suit. I have thoroughly examined the plaint from paras 27 to 43 and I did not find anything new or subsequent fact or happening from the date of filing of the earlier suit to justify as new cause of action, therefore, the cause of action for filing of the present suit is one and the same which was available at the time of filing of earlier suit No.428/2009. The Plaintiff has either intentionally or may be even inadvertently omitted to include the relief of cancellation of compromise which has now been sought to be declared as cancelled or forged and fabricated in present suit. The upshot of the above discussion is that the second Suit No.1229/2009 is hit by provision of Order II Rule 2 CPC. These are the reasons for the short order dated 27.1.2014.

Karachi:
Dated:25.4.2014

JUDGE