

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1641/2014

Date	Order with signature of Judge
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| 1. For hearing of CMA No.15787/14
2. For hearing of CMA No.15788/14
3. For hearing of CMA No.11295/14 | |
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15.12.2014

Mirza Sarfraz Ahmed advocate for the Plaintiff.

Today this case is fixed for hearing of two separate applications under Order 39 Rules 1 & 2 CPC bearing No.15787/2014 and 11295/2014 and an application under Order 1 Rule 10 CPC for impleading 7 more defendants in the suit. He informs that the proposed defendants have been allotted certain piece of land by assigning new Survey numbers to the said land unlawfully by the defendants. There is already interim order dated 29.8.2014 which is was obtained on the first date prior to service. Additional Registrar's diary about service of process on defendants for **7.11.2014** is silent. I do not find even bailiff report regarding service on the original defendants No.1 to 5. The plaintiff has managed to send notices of these applications through registered post AD and TCS to the proposed defendants for **12.12.2014**. However, notices were not issued and sent by bailiff. There was no order of Court or Additional Registrar to issue notices/summons to the proposed defendants through post. Even otherwise without record of avoiding personal service through bailiff, the smart plaintiff was not supposed to suo-moto adopt the substituted mode of service to claim adverse order against the proposed defendant. The Additional Registrar (OS) to explain that why he failed to take up this case on **7.11.2014**, the date on which process was

supposed to be return. He should also show from the record that summons were given to the bailiff and also explain why he has not taken any steps to procure bailiff report and / or issue fresh summons on cost to the defendants. Office is to explain under whose order notice were handed over to the plaintiff for service through post / TCS. In view of the state of affairs in the process of service of notices / summons, the plaintiffs own conduct also has a question mark. Therefore, the exparte interim order stand vacated.

Before proceeding further the plaintiff has to first satisfy the Court that why this suit should not be stayed in terms of **section 10** of CPC since an identical Suit bearing No.729/2013 filed by the plaintiff against the same contesting defendants i.e. defendants No.1 to 5 on identical facts and on the basis of identical annexures A/1 to A/22 is pending in this Court since 03.06.2013. In the earlier suit prayer clause (f) is about entire issue in the present suit.

The other import aspect of the case is that the plaintiffs who are controlled by the Federal Government are claiming ownership of suit land measuring 1377-6 acres which land belong to the Province of Sindh. Some of the annexures suggest that the suit land (1377.06 acres) was surrendered by plaintiff in 2007 to the Sindh Government because it was not utilized by the plaintiff for 40 years meaning thereby certain terms and conditions for acquisition were not fulfilled by the Federal Government and therefore, it was resumed by the Provincial Government the original owner of land. It is pertinent to mention here that the plaintiff have not purchased the suit land in open auction. Such disputes are generally covered by **Article 152** of the

Constitution of Islamic Republic of Pakistan, 1973. The plaintiff has to show their entitlement in terms of the first arrangement for the transfer of provincial land which appears to have been breached by them and consequently it was surrendered to and/or resumed by the Provincial Government. If such is the case, then I am afraid this Court is not the proper forum. Therefore issue notices to the Additional Attorney General for Pakistan as well as the Advocate General Sindh to assist the Court on the point that whether this suit is hit by Article 152 of the Constitution or not.

IK/P.A

JUDGE