

# IN THE HIGH COURT OF SINDH AT KARACHI

## **Suit No.217 of 2009**

Plaintiff No.1. : Muhammad Ashraf

Plaintiff No.2. : Rabia Jan

Through Mr. Yawar Farooqui, advocate.

Defendants : Dilshad Ali & others.

Applicant(s)/  
Intervener(s) : Ghullam Mustafa & others  
Through Mr. Neel Keshov, advocate.

Date of hearing : 03.12.2014.

## **CMA No.3541/2009 & CMA No.945/2013**

### **ORDER**

**NAZAR AKBAR, J.** Through this application under Order 1 Rule 10 CPC, Mr. Neel Keshov, learned counsel for the Interveners claims that his Clients should be allowed to join proceedings as Defendants because they are the Villagers of Abdullah Shah Ghazi Village and in occupation of 4-00 acres land of suit property since the time of their forefathers. He has informed that during pendency of this application the Interveners have already filed a Civil Suit bearing No.1189/2013 claiming ownership of the suit property in which they have already impleaded the Plaintiffs and the Defendants herein as defendants in their suit alongwith Government Officials. Mr. Yawar Farooqui, learned counsel for the Plaintiffs has opposed

this application on the ground that the Interveners are now already in Court by filing a separate Suit for determination of their title in the suit premises and, therefore, they are not entitled to become party in these proceedings. He has drawn my attention to the following passage from the order dated **13.09.2013**, which was passed in presence of Mr. Neel Keshov, learned counsel for Interveners.

*“The Interveners have not been made party in this case till date as their application under Order I Rule 10 CPC (CMA No.945/2013) is still pending and apparently they have entered in this case when the case was already fixed for final disposal as the official defendants have not contested the claim of the Plaintiff, rather the order sheets referred above indicates that one or the other official defendants whenever appeared in Court they have conceded the claim of the Plaintiff. The Intervener claim at this point of time is even subject to final order on their application under Order I Rule 10 CPC. On the face of it, the claim of the Interveners, if any, on the basis of allotment orders filed alongwith their application to become Interveners should be asserted by them by filing a separate suit for declaration of ownership of the property.”*

The Interveners seem to have complied with this above observation by filing a separate suit. Now the apprehension of the Interveners about their title, irrespective of its present status in suit property, is in the hands of court through their suit, I do not see any justification to implead them as defendants in the present suit because their claim is for ownership, which would be determined cleared, if lawful, by this court through the ultimate order in their suit. Even otherwise, this is a suit for specific performance of contract between the Plaintiffs and Defendant No.1. An intervener who has to first obtain a declaration of his own title, if any, in suit property, cannot be a proper or necessary party in the suit for

specific performance of contract since he was not party to the contract sought to be enforced against defendant No.1. In my humble view, even Defendants No.2, 3 and 4 were not required to be impleaded in the Suit for Specific Performance of the Contract dated 16.04.2007. In the suit for specific performance only contracting parties are supposed to be before the Court and not the strangers to the Contract. Be that as it may, the consequences of the present suit would not adversely affect the rights of the Plaintiffs since if their suit is decreed, the Decree would also be against the Plaintiffs and the Defendants in the instant suit and would obviously be binding upon them accordingly.

Mr. Neel Keshav, learned counsel for Interveners has lastly contended that suit filed by the Interveners in the year 2013, may be tagged with the present suit which is pending since 2009 because the parties according to him are same. In the first place, the parties are not same since his clients are not party in the present suit. Secondly the nature of the two suits, one filed by the Plaintiffs and the other filed by the Interveners are not same. The suit for specific performance has different footing and is pending since **2009**. It cannot be tagged with the Suit filed in the year **2013** by Interveners who claim their interest in the property on the basis of different documents but not by virtue of any agreement to sell, or other title document. Both the suits have to be decided on their own merits, which are entirely different from each other. However, if Mr. Neel Keshav, advocate insist that both the suits are identical and between the same parties, then instead of tagging two

suits I would prefer to follow the provisions of Section **10 CPC** which reads:-

**10. Stay of suit.** No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title where such suit is pending in the same or any other Court in <sup>4</sup>[Pakistan] established or continued by Federal Government and having like jurisdiction, or before <sup>5</sup>[the Supreme Court].

The above provisions of Civil Procedure Code is complete answer to his last submission which he made on realizing the fate of his application.

The habitual request of lawyers asking the courts to “tag” different suit for their convenience is not covered by any law, rather tagging of suits it is against the provision of section **10 of CPC** and more than often, it has resulted in inordinate delays in disposal of cases pending for several years. The delay is generally caused on account of absence of one or the other advocate from one of the parties of several lawyers appearing in different cases “tagged” together. The worst example of adverse consequences of order of tagging suits came to my notice in a banking suit which was filed in 1999 and decreed in 2004 but continued till late 2013 because the Defendant’s counsel had moved an application under **Order XXIII Rule 102 CPC** in almost disposed of suit and got the said suit “tagged” with two other pending suits. This adverse effect of “tagging of suit” is noted in the case reported in **2014 CLD 435 National Bank of Pakistan and another ..Vs.. Northern Polyethylene Limited (“NPL”) and 15 others** and I quote relevant portion as under:-

The Defendant No.1 through this application has sought to enforce/settle MOU dated 13.8.2007 signed between the Plaintiff and the Defendant No.1. The Plaintiff has filed counter affidavit and disputed the averment of Defendant No.1. Be that as it may, the Defendants Nos.1, 2 and 4 have no right of audience in this suit with effect from 25.8.2004 when their leave to defend application was dismissed till the time a decree is prepared. Till date decree against them in terms of judgment dated 25.8.2004 has not been prepared even after filing of statement of accounts by the Plaintiff. May be, it so happened on account of the fact that the learned counsel for Defendants Nos.1 and 2 on 15.5.2008 got this suit tagged with two other suits bearing Suit No.1630 of 1998 and Suit No.808 of 1999. And since then most of the Court orders are to the effect that "same order as in Suit No.1630 of 1998" or all the cases were adjourned by consent of the parties. The perusal of order sheet reveals that the office has repeatedly drawn attention of Court to the order dated 25.8.2004 until May 2008 and thereafter order sheet shows only for further orders or arguments of certain applications.

Therefore, in my humble view order of tagging of suit has resulted in smooth administration of justice. The request is turned down and the Interveners' suit should not be tagged with the present suit. Consequently, this application under Order 1 Rule 10 CPC is dismissed.

Now I take up the issue that how this suit is fixed for final disposal. I have checked the diary of the Additional Registrar (OS), which shows that on **23.2.2010** the plaint was struck off against all the Defendants as cost for notices was not paid and notices were not issued. However, subsequently on the application of the Plaintiffs, it was restored on **18.01.2013**. The diary of the Additional Registrar (OS) subsequent to the restoration of the suit does not show that notices were ever issued to Defendant No.1. It does not show that the case was ever again fixed for service on Defendants No.1 to 4 before the Additional Registrar or cost was

paid. However, even without debarring Defendants No.1 to 3 after holding service on Defendants No.1 to 3 good at the level of Additional Registrar followed by Court order to proceed exparte against them, the case was not supposed to be fixed for final disposal.

Office is directed to explain the circumstances in which this suit has been listed for final disposal without an effort to get the service effected on Defendants No.1 to 3, in terms of **Order V Rules 9, 10, 10-A, 16, 18, 19 and 20 of Civil Procedure Code, 1908** read with Sindh Chief Court Rules.

This application under Section 151 CPC filed by the Plaintiff is pending since 2009. The Plaintiffs have never pressed this application. However, I have examined this application. The Plaintiff has sought direction to Defendants No.2 to 4 to issue fresh Form-II and NOC to facilitate him to get sale deed registered in his name. The request of issuance of Form-II and NOC by Defendants No.2 to 4 is outside the scope of the suit for specific performance. If the Plaintiffs are found entitled for Specific Performance of the contract and if it is ordered that Defendant No.1 or Nazir of this Court as the case may be to specifically perform the contract in terms of the final disposal of the suit, there shall be no impediment in the way of Plaintiff or may be such Form-II and NOC would not be required. This application is dismissed.

JUDGE