

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.1483 of 2010

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. For order on official assignee Ref: No.101/2014 dated 7.11.2014.
2. For hearing of CMA No.12246/2014 (U/o.18 Rule 18 CPC)
3. For hearing of CMA No.12247/2014 (U/o.6 Rule 17 CPC)
4. For hearing of CMA No.10641/2014 (U/o.39 Rule 1&2 CPC)
5. For hearing of CMA No.9835/2010 (U/o.XXXIX Rule 1&2 CPC)

11.12.2014

Mr.Munir Ahmed Khan, advocate for the Plaintiff.

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1to5 Diary sheet of Additional Registrar shows that the suit was filed on 29.9.2010. Notices were never issued to the private Defendants No.3 to 5 and therefore, on 26.5.2011 the plaint was struck off against the private Defendants. However, it was restored on 4.10.2011 after almost five months by the Additional Registrar (O.S) but despite restoration he did never bother to issue summons of the suit to the private Defendants. Therefore, even an attempt to effect service of summons on Defendants No.3, 4 & 5 has never been made though they are the main contestants and in possession of the suit property. However, the Plaintiff during the last four years did not press her application for interim order (CMA No.9835/2010) and instead of getting the private Defendants properly served the Plaintiff on **20-08-2014** filed another application under Order XXXIX Rule 1 & 2 CPC (CMA No.10641/2014) and **22-08-2014** Court ordered notice for **25-09-2014** but soon after plaintiff filed two more applications. One under Order XVIII Rule 8 CPC for inspection of suit property and other under Order VI Rule 17 CPC for amendment to the plaint. On these applications, court instead of issuing notice directed the plaintiff to check the status of the suit and passed the following order: -

“Learned counsel for the plaintiff may check status of his suit with regard to defendant No. 3 to 5, since it appears that these applications are directed towards certain acts

done or purported to be done by and/or on behalf of these defendants.

Notice or order, as appropriate on these applications to be taken up on **25-09-2014**, the date already fixed”.

The Plaintiff ignored the order dated 19.9.2014 and deliberately has not checked the status of service of summons on the said Defendants till to date and obtained status quo order on **25-09-2014** and on **20-10-2014** persuaded me to pass order for inspection of suit premises on misrepresentation that there was status quo order for the last four years and it has been suddenly violated by the private Defendants. There was exparte status quo order from only **25-09-2014** and the defendants were not on notice of the said order.

The Official Assignee's reference No. 01/2014 after inspection is very defective. The order was to inspect suit property after notice to the other side but there is no proof of notice to the private Defendants filed with the reference. The reference is silent on the mode of service of notice and it served or not. If not then why inspection took place when the order was to inspect after notice. Official Assignee is directed to file prove of notice to the Defendants on the next date of hearing. Notice to other side means notice to the other side and not to dust bin. No orders can be passed on Official Assignee's one sided reference; however it is taken on record.

The above facts shows that the Plaintiff at every stage has managed to keep the contesting Defendants out of Court and wants order by misguiding the Court. Therefore, in view of the above conduct of Plaintiff status order dated 25.9.2014 on CMA No.10641/2014 is recalled. Office is to explain why CMA No.9835/2010 remained pending and it was not listed for hearing for four years from **1.11.2010 to 11.12.2014**. Was it under instruction of Plaintiff's counsel or was it supposed to be fixed after four years as per routine? CMA No.12246/2014 already stand disposed of on **20.10.2014** then why it is listed for hearing.

Even otherwise, if any construction is raised by Defendant No.3 to 5 on the suit plot, the Plaintiff if he gets the decree will be ultimately beneficiary. Defendants raising any construction or not cannot be restrained for doing so unless honestly served by Plaintiffs. Construction would not prejudice the right of the Plaintiff who is in Court since 2010 but has willfully failed to get summons issued to private Defendants. Therefore, there is no question of creating hurdle in construction on suit plot at the request of Plaintiff who wants to fraudulently obtain adverse orders against the private Defendants.

Additional Registrar (OS) is directed to explain the circumstances, in which he has not issued summons of the main suit to the private Defendants from **04-10-2011** when plaint was restored till to date so that the case may go for filing of the written statement or they may be declared exparte. Unless the process of service on the Defendants in term of Sindh Chief Court Rules or Civil Procedure Code is completed and the private defendants are served or not served or found not to be served and declared exparte this case cannot proceed.

Call R&P of Cr. Complaint No. 69/2009 from the court of II-Additional Sessions Judge, East, Karachi.

Adjourned to a date in office.

JUDGE