

IN THE HIGH COURT OF SINDH AT KARACHI

SUIT NO.828/2009

Plaintiff : Raja Rehmat Khan,
through Mr. Badar Alam, advocate.

Respondent : Muhammad Aamir Tasteer & others,
through Mr. K. B. Bhutto, advocate for
defendant No.3.

Date of hearing : 28.10.2014.

ORDER

NAZAR AKBAR, J. Through this order I intend to dispose of CMA No.14160/2013 under Order 1 Rule 10 CPC filed by defendant No.3. The plaintiff has filed counter affidavit to the application and rejoinder has also been filed by defendant No.3.

2. The brief facts relevant for disposal of this application are that the plaintiff has filed the present suit under **section 9** of the Specific Relief Act, 1877, (hereinafter SRA, 1877) with the following prayer for decree of:-

“.....possession of the plot of land measuring 3000 sq. yards from N.C. No.398, now bearing Survey No.646, situated in Deh Gujro, Tappo Songal, Yasinabad, Federal B Area, Karachi together with the structures, constructions and boundary walls raised thereon.”

3. Defendants No.1 and 2 have been declared exparte and defendant No.3 contested the suit and filed their written statement.

4. Defendant No.3 through this application has prayed for impleading the following as necessary party:-

- i. Board of Revenue, Government of Sindh,
- ii. Sindh Katchiabadis Authority and
- iii. Government of Sindh through Chief Secretary.

5. I have heard learned counsel for both the parties and perused the record.

6. The only ground advanced by defendant No.3 in his application for impleading the aforesaid defendants is that according to defendant No.3 suit property belongs to the Government of Sindh and the claim of plaintiff that he has purchased the same from original lessee for 99 years can be proved only by joining the Board of Revenue and Government of Sindh. Learned counsel for defendant No.3 is unable to satisfy the Court that how this Court in a suit under **section 9** of the SRA, 1877 can decide the question of ownership. Even Plaintiff has not prayed for declaration of ownership or title to the suit property. The other important aspect of the case is that defendant No.3 is not himself government of Sindh nor he claims that he is owner of the property. **Section 9** of the Specific Relief Act, 1877 confirms that Government cannot be pleaded in such suits.

The Section 9 of SRA, 1877 read as follow:-

“If any person is dispossessed without his consent of immoveable property otherwise than in due course of law, he or any person claiming through him may, by suit recover possession thereof, notwithstanding any other title that may be set up in such suit.

Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.

No suit under this section shall be brought against the Government.

No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.”

7. Bare reading of Section 9 of SRA, 1877, is sufficient to hold that impleading of Provincial Government in this suit is barred, therefore this application is dismissed with no order as to cost.

Imran/PA

J U D G E