

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No.769 of 2012

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)
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1. For order on CMA No.8568/2013
2. For hearing as to maintainability of the suit.
3. For hearing of CMA No.6693/2012
4. For examination of parties / settlement of issues

23.02.2015

None present.

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1&2. This application under Order XXIII Rule 3 CPC was filed on 13.8.2013. However, prior to that by order dated 13.7.2013 Plaintiff was required to satisfy the Court that how this suit is maintainable. The Plaintiff was specifically required to satisfy about the title of Defendant No.1 to sell the suit property since he himself has not purchased it from the actual owner but from an unregistered attorney. Plaintiff counsel has never come forward to satisfy the Court on maintainability of the suit and preferred to ignore the question of maintainability by filing aforesaid application wherein Plaintiff and Defendants have agreed to use the office of the Nazir for transfer of the suit property in favour of the Plaintiff on deliberate failure of the defendant to execute sale deed within seven days from the date of filing of this application. Such compromise is not a lawful compromise since it replaces the Defendant by Court without any sufficient cause. If the Defendant has realized the entire sale consideration, he should execute the sale deed by himself or return the sale consideration. If there is no legal hurdle in his way to sale the suit

property, he should appear before the Registrar for confirming the transfer deed. However, it is not legally possible for the defendant and, therefore, they have entered into a preplanned compromise to mis-use the process of Court, the compromise is unlawful compromise, this application is dismissed.

The suit is also dismissed as Plaintiff has failed to satisfy the Court about the title of the defendant, the seller of suit property. Precisely the Defendant had no authority to sell the suit property as the unregistered power of power attorney is not enough to transfer any immoveable property. This appears to be a case in which an attempt has been made to mis-use the process of Court for obtaining a compromise decree to transfer suit property by the so-called attorneys on both side i.e the Plaintiff and the Defendants. Therefore, copy of this order be sent to the Sub-Registrar Properties concerned and the office of the Defense Officers Services Officers' Cooperative Housing Society Ltd., having office at Karachi to ensure that no transaction in respect of suit property bearing Plot No.5-C, admeasuring 200 square yards situated at Lane-7, Ittehad Commercial, Phase-VI, DHA Karachi, be entertained unless the owner appears in person before them.

3. In view of the above this application has become infructuous.

JUDGE