

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
SUIT No. 1508 / 2015 a/w
SUIT No. 765 / 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

SUIT NO. 1508 / 2015

- 1) For hearing of CMA No. 11718/2015.
- 2) For hearing of CMA No. 17136/2015.
- 3) For hearing of CMA No. 918/2016.
- 4) For hearing of CMA No. 3397/2016.
- 5) For hearing of CMA No. 13559/2017.

SUIT NO. 765 / 2017

- 1) For hearing of CMA No. 3160/2017.

Date of hearing: 21.03.2018.

Date of order: 03.05.2018.

Mr. Ovais Ali Shah Advocate for Plaintiff in Suit No1508/2015 & for Defendant No.3 in Suit No 765/2017.

Mr. Adnan Ali Advocate for Defendant No. 1.

Mr. Altamash Arab Advocate for Defendant No. 2 & 3 in Suit No1508/2015 & for Plaintiff in Suit No765/2017.

Mr. Suneel Talreja AAG.

ORDER

Muhammad Junaid Ghaffar, J. These are two connected Suits and all listed applications are being dealt with and decided through this common order. **Suit No.1508/2015** has been filed against various Defendants including Defendant No. 3 and the relief sought is to the extent that Plaintiff is lawful owner and in possession of property bearing Plot No. 213 admeasuring 2000 square yards on Survey No. 17/18 situated at Deh Drig Road, Tappo Drig Road, Shah Faisal District Korangi Karachi pursuant to Sale Deed executed by Defendant No. 1 vide serial No. 677 dated 27.02.2015 and registered vide registration No. 934 Book No. 1 dated 10.04.2015 and copied vide MF Roll No. U 27698/10010 dated 11.05.2015. **Suit No. 765/2017** has been filed by the said Defendant No. 3 against various persons including the Plaintiff of Suit No. 1508/2015 who has been arrayed as Defendant No. 3. These are the main contesting parties and for ease of reference, the Plaintiff in

Suit 1508/2015 would be hereinafter referred to as the “**Plaintiff**” and the Plaintiff in Suit 765/2017 as the “**Defendant**”.

2. The Plaintiff has filed application under Order 39 Rule 1 and 2 CPC bearing CMA No. 11718/2015 seeking restraining orders against the Defendant from being dispossessed, whereas, the Defendant has filed applications for appointment of receiver bearing CMA Nos. 17136/2015 and 3160/2017 in both the Suits. These are the main contesting applications.

3. Briefly, the facts as stated are that Plaintiff purchased the Suit property from Defendant No. 1 and after fulfillment of requisite formalities a Sale Deed was registered in his favour and after taking over possession; the Plaintiff is running a business of restaurant under the name and style of Al-Macca Restaurant as well as a Milk Shop. Whereas, on 11.8.2015 an attempt was made allegedly by Defendants No. 2 to 5 to dispossess the Plaintiff, hence instant Suit.

4. Learned Counsel for the Plaintiff has contended that property in question was purchased from Defendant No. 1 and a registered Sale Deed was executed on 27.2.2015 and according to the learned Counsel, the schedule of property reflects that the Suit property is bounded and butted on the North by 40 feet wide road, on the South by 24 feet wide road, on the East by 24 feet wide road and on the West by Plot No. 525 and 527. Learned Counsel then referred to Letter dated 4.3.2015 issued by concerned officials. According to the learned Counsel, the Defendant claims ownership on the basis of Sale Deed dated 20.12.2013 purportedly executed by his father in respect of 500 square yards or thereabout in Survey No. 18 whereas, there is no record as to how the father could lawfully execute such Sale Deed. He has further contended that there is no schedule annexed or attached with the Sale Deed, whereas, there is difference in the Survey numbers; therefore, the Defendant is owner of some other property and not the Suit property of the Plaintiff. He has further contended that for the remaining 1500 square yards Defendants claim ownership on the basis of Declaration of Oral Gift dated 26.6.1990 by one Khawaja Abdul Rehman in favour of his wife from whom purportedly the Defendant has purchased and claims ownership, whereas, the schedule of the property to this Gift Deed depicts that the location of this property is somewhere else. Per learned Counsel, the allotment

made in favour of the predecessor in interest of the Defendant pertains to the year 1987 whereas, such lease if any, was for 30 years and stood expired somewhere in 1993 whereas, after expiry of 10 years it was extended for another 99 years which in law could not have been done. According to the learned Counsel, all documents being relied upon by the Defendant are forged and fabricated and do not have any continuous chain which could satisfy that even property was owned by the predecessor in interest of the Defendant. Per learned Counsel, allegedly, the Defendant in 2008 bought the property pursuant to Sale Agreement for a sum of Rs.25 million and then sold the same in 2013 in Rs.10 million, which is unbelievable, whereas, purportedly the Defendant generated two registered documents which are in favour of father and son; hence they create doubt as to their authenticity. According to the learned Counsel, the said Sale Deeds have been created between father and son, to frustrate the Plaintiff's case, and to give an impression that registered documents are in field. Learned Counsel has also relied upon Nazir report dated 12.4.2016 and submits that admittedly the Plaintiff is in possession which is not in dispute, whereas, in the given facts no case is made out for appointment of receiver as neither the property is in danger nor any new situation has been created so as to fulfill and satisfy the ingredients of Order 40 Rule 1 CPC. In support he has relied upon **2001 YLR 2291 (Mithan V. Jamila), PLD 1978 Karachi 401 (Yakhtiar Khan and 2 others V. Rahim Bux and 2 others), 1997 SCMR 1508 (Islamic Republic of Pakistan and others V. Muhammad Zaman Khan and others) 2001 MLD 1905 (Abdul Karim V. Abdul Karim) and PLD 2003 Karachi 691 (Jehan Khan V. Province of Sindh and others).**

5. On the other hand, learned Counsel for the Defendant has contended that the Defendant claims ownership of the Suit property on the basis of registered documents, separately registered for 1500 and 500 square yards, and they are prior in time to the Plaintiff's Sale Deed, and therefore, the Plaintiff is not entitled to retain possession any more. According to the learned Counsel, the predecessor in interest of the Defendant were residing abroad, and the cinema constructed on the Suit plot was being managed through a Manager, who colluded with the Plaintiff and took over the possession and

generated forged documents. Learned Counsel has referred to no objection certificate dated 8.11.2013 in respect of 500 square yards issued by the Mukhtiarkar Revenue, and submits that as late as in 2013 there is no objection in respect of the property of Defendant by the Government officials. He has then referred to Search Certificate dated 19.5.2015 and again submits that on the basis of these documents the Defendant's ownership is undisputed. According to the learned Counsel, during pendency of the proceedings and passing of orders by this Court, the Defendant filed contempt application as well as application under Order 10 Rule 2 CPC for examination of Defendant No. 1 and in the given facts it is in the interest of justice that a receiver be appointed. Learned Counsel has further contended that the predecessor in interest of the Plaintiff had earlier filed Suit No. 1876/2015 for Declaration and Cancellation of their Sale Deed; but thereafter, withdrew the same. According to the learned Counsel, there is enough evidence on record that a Cinema was constructed on the Suit plot by the predecessor in interest of the Defendant, whereas, there are two registered instruments in favour of the Defendant, and therefore, proprietary demands that no one should enjoy the benefit of possession, till such time the Suits are finally adjudicated upon; hence it is inevitable that a receiver be appointed. Insofar as Counsel for Defendant No.1 in Suit No.1508/2015 is concerned, he has supported the plaintiff's case. Learned AAG has contended that detailed reports and comments have been filed on behalf of the concerned Government Officials and so also by Secretary (Revenue), Board of Revenue, pursuant to order dated 5.10.2016, which reflects that the predecessor in interest of Defendant are not in possession, whereas, the concerned Deputy Commissioner has cancelled their allotment vide order dated 13.8.2015.

6. I have heard all the learned Counsel as well as learned AAG and perused the record including response filed on behalf of Board of Revenue and other concerned departmental officials. The Plaintiff's case in Suit No. 1508/2015 is to the effect that he is in possession on the basis of Sale Deed dated 11.5.2015 and is the lawful owner also, whereas, the Defendant be restrained from causing any disturbance in the lawful possession and so also the documents being relied upon by the Defendant are forged and liable to be cancelled. On the other hand,

the case of the Defendant is also somewhat on similar footings in his Suit bearing No. 765/2017 as well as a Defendant in the Plaintiff's Suit, whereby, he seeks a Declaration of being a lawful owner on the basis of two Sale Deeds dated 11.10.2013 and 20.12.2013 and so also cancellation of the Plaintiff's registered documents. The Plaintiff along with his Suit has filed an application under Order 39 Rule 1 & 2 CPC which was placed before the Court on 25.8.2015 and while issuing notice, in the meanwhile, parties were directed to maintain status quo. Such status quo is operating till date and the Plaintiff's case is that at the time of filing of Suit he was in possession which fact has not been categorically or specifically denied by the Defendant. The Defendant on the other hand, initially in this Suit filed an application for appointment of receiver under Order 40 Rule 1 CPC and thereafter, filed an independent Suit bearing No. 765/2017 on 14.3.2017 along with a similar application for appointment of receiver. It is the precise case of the Defendant that till such time both these Suits are finally adjudicated, a receiver be appointed. On perusal of the stance taken by the Defendant in both the Suits, it appears that the pleadings of the Defendant do not clearly specify as to when the possession of the Suit property was handed over to him pursuant to agreement, and thereafter, through Sale Deed(s) executed by the predecessor in interest of such property. Neither it is clear that when the predecessor in interest were dispossessed; nor a categorical and specific plea has been taken as to when the Defendant was dispossessed. The case as set up in the pleadings is that the Defendant was out of country and somewhere in 2015 one Haji Akbar Khan who was the Manager of their property in collusion with the Plaintiff, forged documents and took over possession. These are vague assertions and do not make out a prima facie case before this Court so as to compel exercising of any discretion to appoint a receiver. Nor it has been explained as to why from 2015 till 14.3.2017, when Suit No.765/2017 was filed, no efforts were made to approach the Court to recover possession, and it is only after filing of Suit by the Plaintiff, that the defendant has come before this Court pleading dispossession. It is to be appreciated that for seeking the relief for appointment of a receiver, stringent conditions are to be met, specially in a case wherein, the possession is with the opposing party who also has title documents duly registered. It is in fact more

stringent than the conditions stipulated for making out a prima facie case for an injunctive relief under Order 39 Rule 1 & 2 CPC. It is by nature the harshest remedy provided under CPC and is only exercised when the Court is satisfied and finds it to be just and convenient, appoints a receiver. It is noteworthy that the idea and intention as well as the object behind appointing a receiver is to preserve the status quo during pendency of a lis, and further to prevent the ends of justice from being defeated as are stipulated under Order 39 and Section 94 CPC. It is not in dispute, rather conceded, that when Plaintiff filed its Suit he was in possession, and status quo order was immediately passed. If the Defendant's application is granted it would be amounting to a mandatory order, whereby, the possession is to be taken over from the Plaintiff and handed over to the receiver. The Defendant has also not been able to show that as to what damage has been caused by the Plaintiff while retaining possession, or after passing of the status quo order. Though some allegations have been attributed that even after passing of status quo order construction was raised or an attempt has been made; but for that a separate and independent contempt application has been filed and could be dealt with by the Court accordingly. It is not that in each and every case when it is alleged that the status quo order passed has been violated, a receiver must necessarily be appointed. A party approaching the Court for appointment of receiver must make out a prima facie case as well as a title of the property, and in this case the Court at this stage of the proceedings is not in a position to finally accept the title documents in favour of the Defendant. It is not clear as to why the father of the Defendant who according to its own case had entered into a Sale Agreement in 2008, and was purportedly issued a Power of Attorney by the predecessor in interest of the property to the extent of 1500 square yards, would suddenly execute a Sale Deed in 2013 in favour of his son. This apparently (but without prejudice) gives an impression that before the Court there is one owner who has a registered Sale Deed in its favour; but as already discussed the stance in respect of possession is either silent or at the most vaguely pleaded. It is also unclear as to how two different plots (1500 & 500 Square yards) owned by two different owners at the relevant time, were being used together, as allegedly, a cinema house was being run on the plot measuring 1500 square yards,

whereas, the 500 square yards plot was for parking purposes. What nexus these two plots and owners have prior to transfer / sale agreement and execution of power of attorney by the owner of 1500 square yards plot in favor of father of the defendant? It is also a settled proposition that the discretion in appointment of receiver must be exercised sparingly and only for safeguarding interest of all the parties, and for that an applicant first must clearly make out a prima facie title to the property and secondly as to the danger of damage to the property, in case a receiver is not appointed. All these ingredients are apparently lacking in this case. The appointment of receiver has been recognized as one of the harshest remedy allowable under the code and it is allowed only in very exceptional cases. The party seeking appointment of receiver, therefore, has to show some emergency or danger or loss demanding immediate action. The principles for exercise of discretion have been laid down by the superior Courts. One of these principles is that the power of appointment of a receiver would be sparingly used. Another principle is that it would be exercised for the safeguard of the interest of all the parties as well as the property which is subject-matter of litigation. The third principle is that possession of persons bona fide in occupation of the property would not be disturbed unless there are allegations of wastage or dissipation of property or apprehension or irreparable loss or injury. The plaintiff applying for the attachment of property must show, prima facie, that he has strong case and a good title of the property and also that defendant does not have a good title to the property¹. The object for the interference by the Court in a case, by appointment of receiver by interlocutory order is to prevent the ends of justice from being defeated and therefore in taking action in that direction the Court has to see that the rights of the parties are not jeopardized. The rule in such a case is that a receiver is appointed whenever it appears to the Court to be just and convenient to do so. The object and purpose of appointment of a receiver can generally be stated to be the preservation of the subject-matter of the litigation pending judicial determination of the rights of the parties thereto. Besides it is not sufficient for the applicant to show prima facie case but further it must be shown that the property in the hands of the

¹ Muhammad Siddique v Muhammad Latif [1997 MLD 181-SC (AJ&K)]

opposite-party is in danger, of being wasted². Though both parties claim ownership of the property in question on the basis of registered documents; but when the entire chain in respect of the ownership of defendant is examined, it appears to be matter of record that insofar as the ownership and allotment of the predecessor in interest of the Defendant is concerned, as per report of the Mukhtiarkar Revenue, Shah Faisal Sub-Division Karachi dated 5.4.2016 furnished to the Nazir of this Court, and placed by him along with his report dated 12.4.2016, it stands cancelled vide order of the Deputy Commissioner Korangi Karachi dated 13.8.2015. The same has been reiterated by the Secretary Revenue, Board of Revenue Sindh pursuant to compliance report to order dated 5.10.2016, in which it has been confirmed that neither the Defendant nor the predecessor in interest, are in possession, whereas, the order of cancellation passed by the Deputy Commissioner is appealable before the Commissioner Karachi. All these facts lead to the conclusion that for the present purposes, it would not be justifiable for this Court to exercise its discretion to appoint a receiver and therefore, the applications CMA Nos. 17136/2015 in Suit No.1508/2015 and 3160/2017 in Suit No.765/2017 filed on behalf of the defendant are dismissed, whereas, CMA No. 11718/2015 in Suit No.1508/2015 filed by the Plaintiff under Order 39 Rule 1 & 2 CPC is allowed. The order of status quo passed on 25.8.2015 is confirmed till final adjudication of the Suit, whereas, all other listed applications are adjourned to a date in office.

Dated: 03.05.2018

J U D G E

ARSHAD/

² Mst. Muhammad Bibi v Additional Settlement Commissioner (PLD 1976 Karachi 181)