

THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry.

- Suit No.2576 of 2016 : Abdul Karim Rathor and 48 others versus Muhammad Naeem and others.
- Suit No.2345 of 2016 : Fareeda Younus and 05 others versus Muhammad Naeem and others.
- Suit No.1234 of 2017 : Muhammad Naeem versus Abdul Karim Rathor and 63 others.
- For the Plaintiffs : Mr. Muhammad Abdur Rehman, Advocate for the Plaintiffs in Suit No. 2576/2016 and Suit No. 2345/2016.
- Mr. Muhammad Najeeb Jamali, Advocate for the Plaintiff in Suit No. 1234/2017.
- For the Defendants : Mr. Muhammad Najeeb Jamali, Advocate for the Defendants 1, 5 to 38 in Suit No. 2576/2016 & for the Defendant No.1 in Suit No. 2345/2016.
- Mr. Muhammad Abdur Rehman, Advocate for Defendant No.18 in Suit No. 1234/2017.
- For the Defendants 2-4 : Nemo.
[In Suits No.2576 & 2345 of 2016]
- For the Defendants 1-17 & 19-64
[In Suit No.1234 of 2017] : Nemo.
- Dates of hearing : 20-01-2021, 28-01-2021, 04-02-2021, 19-02-2021 & 08-03-2021.
- Date of decision : 21-06-2021.

ORDER

Adnan Iqbal Chaudhry J. - Since the facts underlying the above three suits are the same, the listed applications are being disposed of by this common order.

2. Plot No. 150-M, Khalid Bin Waleed Road, Block-2, PECHS, Karachi (suit plot) is jointly owned by (i) Abdul Karim Rathor (25% share), (ii) Farooq Ghaffar Danawala (25% share), (iii) Muhammad Naeem (25% share), (iv) Ghulam Khalil (12.5% share), and (v) Muhammad Kashif Shaikh (12.5% share), hereinafter 'the Plot Owners'.

3. For constructing a high-rise building on the suit plot and selling premises therein for profit, the Plot Owners entered into a partnership with Rosie Jessani (as investor), Iqbal Rehmatullah (as investor) and Hanif Rehmatullah (as builder). The Plot Owners and the said investors and builder are hereinafter referred to as 'the partners'. The partnership firm was styled as 'Linkage Enterprises'. The building constructed on the suit plot is called 'Makkah City Tower'. Muhammad Naeem, one of the partners, runs a car showroom on the ground floor of the building and claims that he has been doing so ever since he was a tenant of the previous owner of the suit plot. Apart from being one of the Plot Owners, Muhammad Naeem claims also to have invested in the construction of the building.

4. A dispute arose between Muhammad Naeem and his partners when one of the partners, namely Hanif Rehmatullah, proceeded to execute registered sub-leases dated 13-05-2016 in respect of the suit plot in favor of third parties. This he did on the authority of an unregistered Power of Attorney dated 30-05-2012 said to have been executed by all the Partners authorizing both Hanif Rehmatullah and Muhammad Naeem to act "*jointly and severally*". Muhammad Naeem denies his signatures on said Power of Attorney both as executor and attorney, and alleges that the same is forged. Per Muhammad Naeem, the Plot Owners had empowered him exclusively to allot premises in the building by Power of Attorney dated 04-07-2011, and pursuant thereto he had already issued a number of allotment letters and possession orders to third parties.

Case of the majority partners and the sub-lessees claiming through them:

5. The Plaintiffs of Suit No. 2345/2016 are 6 of the sub-lessees of the suit plot through Hanif Rehmatullah. The case of these Plaintiffs is that due to the aforesaid dispute between the partners, Muhammad Naeem (Defendant No.1) is causing nuisance by impeding the Plaintiffs' ingress and egress to/from the building; hence the prayer for a permanent injunction against Muhammad Naeem. By CMA No. 15431/2016, the Plaintiffs pray for a temporary injunction to restrain Muhammad Naeem from causing nuisance. By an interim order dated 07-11-2016, Muhammad Naeem was restrained from doing so. CMA No. 17674/2016 alleges that Muhammad Naeem committed contempt of court. By CMA No. 10220/2017 the Plaintiffs pray for a receiver of the building, to take its possession and manage the same.

6. In the subsequent Suit No. 2576/2016, the majority partners (other than Muhammad Naeem) and 42 sub-lessees of the suit plot through Hanif Rehmatullah, have joined to sue Muhammad Naeem (Defendant No.1) and the allottees claiming through him (Defendants 5 to 38). In this suit, the majority partners contend that prior to the Partnership Deed dated 02-07-2012, all partners, including Muhammad Naeem had agreed *vide* MoU dated 01-03-2012 that Hanif Rehmatullah would be assigned authority to undertake construction of the building as well as to sell/allot premises therein; that the Partnership Deed dated 02-07-2012 was a reflection of said MoU; that contrary to the terms of partnership, Muhammad Naeem proceeded to take possession of certain premises in the building without the consent of the other partners, thus compelling them to withhold his share in profits; that in retaliation, Muhammad Naeem fabricated allotment letters to portray that he had already allotted premises in the building; that thereafter, Muhammad Naeem started to harass the sub-lessees inducted by the majority partners and created nuisance for them. The Plaintiffs pray *inter alia* for possession of premises in the building from Muhammad Naeem, for cancellation of allotment letters issued by him to the Defendants 5 to 38, and for settlement of accounts of partnership. By CMA No. 17186/2016 the

Plaintiffs pray for a direction to the parties to maintain status quo, and to that effect an interim order dated 07-12-2016 continues. By CMA No. 6708/2017 under Order XLI Rule 1 CPC, the Plaintiffs also pray for a receiver to take possession of the building pending suit.

Case of the opposing partner, Muhammad Naeem:

7. As noted above, Muhammad Naeem alleges that the Power of Attorney dated 30-05-2012 used by Hanif Rehmatullah to execute sub-leases of the suit plot, is a forgery. It is the case of Muhammad Naeem that though the Plot Owners had executed a power of attorney in favor of Hanif Rehmatullah, that was another document which had authorized Hanif Rehmatullah only to look after construction of the building and not to sell premises therein; that the MoU dated 01-03-2012 relied upon by the majority partners was also a fabricated document; that for the purposes of allotting premises in the building, the Plot Owners had authorized him (Muhammad Naeem) exclusively vide a Power of Attorney dated 04-07-2011; that though his Power of Attorney was presented for registration, it was adjourned for want of CVT and other documents and continues to be so; that nonetheless, on the basis of his Power of Attorney, Muhammad Naeem issued a number of allotment letters and possession orders of premises in the building as the original title documents of the suit plot were always with him; that the sub-leases executed by Hanif Rehmatullah were bogus, created to prejudice the allotments already made by Muhammad Naeem; that the sub-lessees were never delivered possession as the building is not connected with electricity or gas, nor had the Sindh Building Control Authority issued a completion certificate in respect thereof; and that the allegation of causing nuisance at the building was false.

8. Muhammad Naeem has also filed Suit No. 1234/2017 against his partners and the sub-lessees who claim through them. He prays for cancellation of the Power of Attorney dated 30-05-2012 held by Hanif Rehmatullah and the sub-leases executed by him; for accounts of the partnership; for restraining the defendants from creating third party interest in the building and from dispossessing the allottees

who claim through him. By CMA No. 7841/2017 a temporary injunction has also been sought in terms of the latter prayer. The other partners deny having executed the Power of Attorney dated 04-07-2011 in favor of Muhammad Naeem. Per the written statement of the Sub-Registrar-I, Jamshed Town, Karachi, filed in Suit No. 2576/2016, though a Power of Attorney dated 04-07-2011 bearing Serial No.2467 was presented for registration, but it was adjourned and continues to be so for want of CVT.

9. Barrister Abdur Rehman, learned counsel for the majority partners and the sub-lessees claiming through them (Plaintiffs in Suit No. 2345/2016 and Suit No. 2576/2016), submitted that nothing turns on Muhammad Naeem's denial of the MoU dated 01-03-2012 and the Power of Attorney dated 30-05-2012 when Muhammad Naeem does not deny the contents of the Partnership Deed dated 02-07-2012 which in turn shows that Hanif Rehmatullah was the partner authorized to sell premises in the building; therefore, the allotments allegedly made by Muhammad Naeem were unauthorized; and that reliance placed by him on a Power of Attorney dated 04-07-2011 was of no avail when such Power of Attorney is prior to the Partnership Deed dated 02-07-2012. Learned counsel submitted that the Partnership Deed manifests that the suit plot and the building constructed thereon, was the 'stock of the firm' within the meaning of section 14 of the Partnership Act, 1932, and thus in terms of section 12 of the Partnership Act and clause 4 of the Partnership Deed, only the majority partners could create third party rights in the building. Learned counsel submitted that Muhammad Naeem has taken control of the building to the prejudice of the majority partners and the sub-lessees, and thus circumstances merited the appointment of a receiver over the building.

10. Mr. Najeeb Jamali, learned counsel for Muhammad Naeem and for the allottees claiming through him (private Defendants in Suit No. 2345/2016 and Suit No. 2576/2016, and the Plaintiff in Suit No. 1234/2017), submitted that the MoU dated 01-03-2012 and the Power of Attorney dated 30-05-2012 relied upon by Hanif Rehmatullah were

ex facie forgeries; that the sub-leases executed by Hanif Rehmatullah were created only to prejudice the allotments made by Muhammad Naeem which is also established from the fact that Hanif Rehmatullah had not disbursed any money to the other partners; that the reason the Plot Owners had authorized Muhammad Naeem to make allotments in the building was that he was the only one out of the Plot Owners who had also invested in the construction of the building, and it was thus agreed that he would also be entitled to the showroom on the ground floor, but then Hanif Rehmatullah went ahead and executed a sub-lease of the show-room in favor of another party; that the majority partners are managing the building and the allegation that Muhammad Naeem has wrested control and is causing nuisance thereat, is false; that Muhammad Naeem is willing to disburse to his partners their share in the allotments made by him and to render accounts in that regard, and thus there was no basis for a receiver. Learned counsel further submitted that the disputed Power of Attorney dated 30-05-2012 in favor of Hanif Rehmatullah was an unregistered document which could not have been used to convey immovable property by way of registered sub-leases.

11. Heard the learned counsel and perused the record.

CMA No. 12373/2017 in Suit No. 2576/2016; CMA No. 16241/2018 in Suit No. 1234/2017; CMA No. 17674/2016 in Suit No. 2345/2016.

12. By CMA No. 12373/2017 in Suit No. 2576/2016, Muhammad Naeem (Defendant No.1) prays for summoning some of the sub-lessees who are Plaintiffs No. 34, 43 and 48. By that he intends to confront said sub-lessees with the question whether they have authorized filing of the suit, inasmuch as those sub-lessees have stated in complaints under the Illegal Dispossession Act, 2005 that they have not preferred any suit. Such application at this stage is premature. Same is dismissed with the observation that Muhammad Naeem will be free to move such application if need be when the matter is ripe for evidence.

By CMA No. 16241/2018 in Suit No. 1234/2017, the KMC, Defendant No.61 prays for deletion. Apparently, the KMC is not the

lessor of the suit plot. Therefore, it is neither a necessary nor proper party to the suit. Resultantly, the application is allowed. The office shall delete the KMC in red ink as Defendant No. 61 in Suit No. 1234/2017.

For reasons that will become apparent *infra*, the contempt application in Suit No. 2345/2016, being CMA No. 17674/2016, is dismissed.

I now advert to the receiver and injunction applications.

CMA No. 15431/2016 and CMA No. 10220/2017 in Suit No. 2345/2016; CMA No. 17186/2016 and CMA No. 6708/2017 in Suit No. 2576/2016; and CMA No. 7841/2017 in Suit No. 1234/2017

13. The Partnership Deed filed by the majority partners is dated 02-07-2012, printed on stamp papers dated 31-05-2012; whereas the Partnership Deed filed by Muhammad Naeem is un-dated and on a stamp paper dated 07-05-2012. The attesting witnesses to both Deeds are different. Mr. Najeeb Jamali Advocate had submitted that the signature of Muhammad Naeem on the Partnership Deed produced by the majority partners, was forged. Which of the two documents is the actual Partnership Deed, is a question that has yet to be determined. However, and for the present, since the contents/clauses of both said Deeds seem to be the same, any one of those can be examined to assess the agreement of partnership between the partners.

14. It is accepted that the Power of Attorney dated 30-05-2012 used by Hanif Rehmatullah to execute registered sub-leases in favor of the sub-lessees was an unregistered document. While submitting that such unregistered power of attorney could not have been used to execute registered sub-leases, Mr. Najeeb Jamali Advocate did not advert to section 17 of the Registration Act, 1908 to specify which of its provisions required such a power of attorney to be registered compulsorily. Be that as it may, for the time being that aspect of the matter is secondary as one of executants of said Power of Attorney i.e., Muhammad Naeem, denies his signature thereon.

15. From the documents produced by the majority partners and the sub-lessees claiming through them (Plaintiffs of Suit No. 2345/2016 and Suit No. 2576/2016) the following facts discernable are as yet unexplained :

(i) Power of Attorney dated 30-05-2012 relied upon by Hanif Rehmatullah as authority to execute sub-leases, is drafted in different fonts with different spacing;

(ii) In its opening recital, the said Power of Attorney dated 30-05-2012 makes a reference to the '*Partnership Deed*' of Linkage Enterprises. But that Partnership Deed, per the majority partners, came about afterwards on 02-07-2012;

(iii) Though the Partnership Deed nominated Hanif Rehmatullah as Managing Partner, it does not expressly say that Hanif Rehmatullah is authorized to sell premises in the building. Rather, clause-4 of the Partnership Deed is : "*That only the firm shall be entitled to construct and sale the showrooms, apartments etc. on this plot of land*". As per clause 12 of the Partnership Deed, the authority of Hanif Rehmatullah was "*..... to engage the staff including labours and contractors or whatever may be necessary for the purpose of business of the partnership more fully specified in an instrument of General Power executed by Partners No. 1 to 5 in his favour*". Those '*Partners No. 1 to 5*' are apparently the 5 Plot Owners, whereas the Power of Attorney dated 30-05-2012 in favor of Hanif Rehmatullah is purportedly executed by all 7 partners.

(iv) All of the 42 or so sub-leases executed by Hanif Rehmatullah on the basis of the disputed Power of Attorney are on the same date, ie., 13-05-2016. Interestingly and unusually, the sub-leases do not appear to be of built-up premises in the building which are "*proposed to be constructed*", but appear to be sub-leases only of undivided portions of the suit plot. The consideration mentioned in all these sub-leases is only Rs. 5000/- as occupancy value and Rs. 25/- as one year's ground rent. The plaint of Suit No. 2576/2016 does not give any other account of payments received by the majority partners from the sub-lessees.

16. The case set up by Muhammad Naeem is also not free from controversy. The Power of Attorney dated 04-07-2011 relied upon by him as having been executed in his favor by the other Plot Owners

authorizing him to sell/allot premises in the building, is also an unregistered document. Though it was presented for registration but was adjourned and continues to be so for want of original title documents, photographs, CVT and NIC. The other Plot Owners deny that they had executed such Power of Attorney. If Muhammad Naeem was indeed so authorized by the other Plot Owners, there is no explanation as to why the requirements for registering such Power of Attorney could not be fulfilled in the years preceding the dispute. The Partnership Deed which was admittedly made after the Power of Attorney dated 04-07-2011, also does not indicate that Muhammad Naeem was authorized by the partners to allot premises in the building.

17. As regards possession of premises in the building allegedly delivered by any partner to any sub-lessee or allottee, it was averred by Muhammad Naeem, and not denied by the majority partners that the Sindh Building Control Authority has not issued a completion plan, and hence no occupancy certificate in respect of the building. Sub-section (2) of section 6 of the Sindh Building Control Ordinance, 1979 stipulates that: "No building mentioned in sub-section (1) shall be occupied by any person or shall be allowed by the builder to be occupied, before the Authority has, on application of the occupant or owner, issued occupancy certificate, in such manner as may be prescribed." Also, nothing has been placed before the Court to show compliance by the partners of Chapter 5 of the Karachi Building & Town Planning Regulations, 2002 before issuing the sub-leases or allotment letters.

18. The upshot of the above discussion is that neither side has come forth with a *prima facie* case. Furthermore, documents relied upon by one side are denied by the other, and there are allegations and counter-allegations which cannot be addressed without recording evidence. In such circumstances it would not be safe to alter the status quo which was ordered on 07-12-2016.

19. Per clause-3 of the partnership deed, "*Partnership shall continue till such time that the rights, interests related to the plot of land and its*

disposal through construction and sale the showrooms, apartments etc. has been completed". Therefore, the partnership is not at will, but until conclusion of business, viz. the disposal of all premises in the building. It is perhaps for this reason that none of the partners have sued for dissolution of partnership. Therefore, the general principle applicable to suits for dissolution of partnership that a receiver is appointed as a matter of course, is not applicable to the present suits. The case of *Muhammad Yousuf Burney v. S. Muhammad Ali* (1983 CLC 1498) relied upon by Mr. Abdur Rehman Advocate, was a case where partnership had been dissolved; hence distinguishable. The case of *Asghar Ali v. Abdul Hussain* (PLD 1977 Karachi 280) is also distinguishable on its facts. In *Bhupendra Nath Mookerjee v. Monohar Mukherjee* (AIR 1924 Calcutta 456), also cited by Mr. Abdur Rehman Advocate, it was observed that where the property was in medio, ie., in the enjoyment of no one, then the Court can hardly do wrong in appointing a receiver to take possession of the property, because it was in the common interest of the parties that the Court should prevent a scramble. However, the Bench went on to hold that no positive unvarying rule could be laid down as to whether the Court will or will not interfere by such kind of interim protection of the property, and in all cases where the Court does interfere by appointing a receiver, it exercises a discretion to be governed by all the circumstances of the case. In the subject suits, it is not the case of either side that the building is in medio. Rather, the inspection report dated 15-12-2016 shows that :

- (i) 1 flat was in the occupation of Muhammad Naeem and his family;
- (ii) 26 flats were locked, and as per Muhammad Naeem, these were under the lock and key of the allottees who claim through him;
- (iii) 5 flats were vacant, although the keys thereof were with the representative of Muhammad Naeem;
- (iv) 5 flats were in the possession of certain Plaintiffs of Suit No. 2576/2016 ie., sub-lessees claiming through Hanif Rahmatullah;

- (v) 4 flats were in the possession of persons who are not identified in the report either as Plaintiffs or Defendants of Suit No. 2576/2016;
- (vi) 1 showroom on the ground floor was in the possession of a sub-lessee who claims through Hanif Rahmatullah, whereas the other showroom was in the possession of Muhammad Adil, the son of Muhammad Naeem.

20. In view of the above, I do not see what purpose would a receiver serve at this stage. Until it is determined which of the partners, whether Hanif Rehmatullah or Muhammad Naeem, was authorized to create third party rights in the suit plot or the building, it would be premature to appoint a receiver, in other words, not just or convenient. In *Naseem-ul-Haq v. Raes Aftab Ali Lashari* (2015 YLR 550) it was observed by a learned single judge of this Court that where the situation can be addressed by an injunction, then a receivership order is uncalled for. In my view, for the time being, an injunction would suffice to preserve the rights of the parties, as indeed the Plaintiffs of both Suit 2345/2016 and Suit No. 2576/2916 have also moved applications for a temporary injunction. However, this is not to say that the inspection report reflects authorized occupation, which fact, as noted above, has yet to be determined.

21. Therefore, the receiver applications being CMA No. 10220/2017 in Suit No. 2345/2016 and CMA No. 6708/2017 in Suit No. 2576/2016, are dismissed. CMA No. 15431/2016 in Suit No. 2345/2016, CMA No. 17186/2016 in Suit No. 2576/2016, and CMA No. 7841/2017 in Suit 1234/2017 are disposed of by directing that all partners of Linkage Enterprises and all sub-lessees and/or allottees of Makkah City Towers, situated on Plot No. 150-M, Khalid Bin Waleed Road, Block-2, PECHS, Karachi, shall maintain status quo. The concerned Sub-Registrar shall not register any further document with regards to said plot or any premises in said building. The office shall communicate this order to the concerned Sub-Registrar.

JUDGE

Karachi:
Dated: 21-06-2021