

# THE HIGH COURT OF SINDH, KARACHI

## Suit No. 1387 of 2019

[Mrs. Samina versus Faraz Tasneem & others]

Plaintiff : Mrs. Samina through M/s. Ayan Mustafa Memon and Faraz Nawaz Mahar, Advocates.

Defendants 1-3 : Nemo.

Defendant 4 : Sub-Registrar T Division I, Jamshed Town, Karachi, through Ms. Noushaba Haq Solangi, A.A.G Sindh.

## Suit No. 386 of 2019

[Faraz Tasneem versus Muhammad Hanif & others]

Plaintiff : Nemo.

Defendants 1, 3 & 5 : Muhammad Hanif, Sohail and Anas Hanif through M/s. Aamir Khoso and Muneer Iqbal, Advocates.

Defendant 4 : Mrs. Samina Hanif through M/s. Ayan Mustafa Memon and Faraz Nawaz Mahar, Advocate.

Defendants 2, 6 & 7 : Nemo.

Defendants 8-10 : Sub-Registrar-I, Jamshed Town, Karachi and others through Ms. Noushaba Haq Solangi, A.A.G Sindh.

Defendant 11 : Sindh Building Control Authority through M/s. Afsheen Aman and Nusrat Baig, Advocates.

Date of hearing : 15-09-2022

Date of decision : 27-09-2022.

## ORDER

**Adnan Iqbal Chaudhry J.** - Suit No. 1387/2019 by Samina is for possession of the ground floor of the suit property from Faraz (defendant No.1), for mesne profits, and for restraining him from interfering with her possession of the 1<sup>st</sup> and 2<sup>nd</sup> floors of the suit property. By CMA No. 11376/2019, Samina prays for a temporary injunction in terms of the latter prayer, and by CMA No. 11378/2019 she prays for a receiver of the ground floor of the suit property.

2. Suit No. 386/2019 is by Faraz against Samina, her husband Muhammad Hanif and others. The main relief sought against Samina is for specific performance of a verbal agreement to sell the suit property to him. By CMA No. 3205/2019 Faraz prays for a temporary injunction against his dispossession from the suit property and against the creation of third-party interest.

3. The suit property is Plot No. 29-D/II, measuring 600 square yards, Block-6, PECHS, Karachi, with a house comprising of ground + two floors. Samina is apparently the owner of the suit property under a registered conveyance deed dated 15-01-1998.

4. It is averred by Samina that in August 2017, when the ground floor of the suit property was lying vacant, Faraz trespassed and occupied the same unlawfully; that Faraz and Muhammad Hanif, who was Samina's husband, knew each other and hence she did not take legal action right away; that Faraz assured that he would vacate the property in 2/3 months; that subsequently, Faraz filed Suit No. 386/2019 for specific performance alleging that he had a verbal agreement with Muhammad Hanif (Samina's husband) for sale of the entire suit property to him.

5. Faraz has not filed written statement nor any counter affidavit in Suit No. 1387/2019. However, from the plaint of Suit No. 386/2019, the case set-up by Faraz with regards to the suit property is that in May 2016 Muhammad Hanif (Samina's husband) portrayed himself as owner of the suit property and verbally agreed to sell the entire suit property to him for Rs. 12,500,000/-; that in furtherance of such agreement Faraz was put in possession of the suit property, whereafter, he proceeded to renovate the same. The other leg of Faraz's suit is against Muhammad Hanif for enforcing their agreement of dissolution of partnership and distribution of partnership properties. Though Muhammad Hanif acknowledges that he and Faraz used to be business partners, he denies that he had

ever agreed to sell the suit property to Faraz or that he put him in possession thereof.

6. Heard the learned counsel and perused the record. The title of the suit property apparently vests in Samina. She has also filed tenancy agreements to show that she had let the ground, 1<sup>st</sup> and 2<sup>nd</sup> floors of the suit property to tenants from time to time. The Nazir's inspection revealed that the 2<sup>nd</sup> floor was occupied by a person who acknowledged that he was Samina's tenant, and who also had the key to the 1<sup>st</sup> floor lying vacant, although Faraz had a key to one room on the 1<sup>st</sup> floor.

7. Be that as it may, Faraz claims that he was put in possession of the suit property by Muhammad Hanif (Samina's husband) in furtherance of a verbal sale agreement with him. Though Muhammad Hanif denies the agreement and delivery of possession, the fact of the matter remains that Muhammad Hanif was not the owner of the suit property. It is not even Faraz's case that Samina had authorized Muhammad Hanif to sell the suit property or that he had paid the sale consideration to Samina. In fact, the plaint of Suit No. 386/2019 is silent as to how, when and to whom the sale consideration was paid, if it was paid at all. Rather, Faraz's case is that Muhammad Hanif had misrepresented to him that he was owner of the suit property. Thus, admittedly, Faraz never had any contract of sale with Samina who was the actual owner of the suit property. *Ex facie*, Faraz's possession of the suit property is unauthorized and not *bonafide*, and to the extent of sub-rule (2) of Order XL Rule 1 CPC, Samina's application for a Receiver to displace Faraz meets that test.

8. Adverting to the other test of Order XL Rule 1 CPC, viz. whether it will be 'just and convenient' to appoint a Receiver for the ground floor of the suit property, copies of tenancy agreements on the record demonstrate prima facie that prior to Faraz's possession, Samina was deriving rental income also from the ground floor of the suit property. On the other hand, and as already observed, it is not

Faraz's case that he had any contract with Samina or that he paid any sale consideration to her. In such circumstances, there is force in the submission of Samina's counsel that a Receiver is necessitated to prevent a further loss of rent from the property which loss may become irreparable by the time the suits reach their logical end.

9. It is settled law that the power to appoint a Receiver exists to meet the ends of justice. In the given circumstances, where it is admitted by the person in occupation of the property that he had no contract with the owner of the property to occupy the same, it would be a failure of justice to deprive the owner from the use of the property merely on the ground that the occupant has filed a suit for specific performance. In the event the occupant prevails, he can be put back in possession pursuant to a decree for specific performance. Therefore, I am inclined to appoint a Receiver.

10. For the foregoing reasons, CMA No. 3205/2019 in Suit No. 386/2019 is dismissed; whereas CMA No. 11376/2019 and CMA No. 11378/2019 in Suit No. 1387/2019 are allowed in the following terms:

- (i) The Nazir of this Court is appointed Receiver of the ground floor of the suit property.
- (ii) The Nazir shall notify Faraz to vacate the suit property within 20 days, failing which the Nazir may use police aid get the same vacated from Faraz.
- (iii) Thereafter, Samina may let the ground floor on rent with the approval of the Nazir by depositing the tenancy agreement and the monthly rent with the Nazir till further orders who shall invest the same for the benefit of the party that prevails in these suits.
- (iv) After the ground floor is vacated as aforesaid, Samina shall not be entitled to claim mesne profits for the period that follows.

**JUDGE**

Karachi  
Dated: 27-09-2022