

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Muhammad Shafi Siddiqui
& Jawad Akbar Sarwana JJ

High Court Appeal No.397 of 2023

**Amir Khan s/o Nasir Ali Khan
v.
Province of Sindh and Six Others**

and

High Court Appeal No.420 of 2023

**Amir Khan s/o Nasir Ali Khan
v.
Province of Sindh and Six Others**

(Same Parties impleaded in both the high court appeals)

- Appellant: Amir Khan s/o Nasir Ali Khan, through his duly authorised Attorney, Mr Mohammad Feroze s/o Haji Shoukat ul Islam, through Mr Zia-ul-Haq Makhdoom, Zaheer-Ul-Hassan Minhas, Azhar Mehmood, Hira Agha, Fatima Ashfaq, Advocates
- Respondent No.1: Province of Sindh through Member L.U. Board of Revenue, Province of Sindh represented by Mr Asad Iftikhar, AAG, and L.U. Board of Revenue, through Legal Counsel, L.U. Mr Akhtar Ali Mastoi and Mushtaq Ali Wassan, Section Officer No.7 – Focal Person L.U.
- Respondent No.2: Deputy Commissioner, Malir, Karachi. Nemo.
- Respondent No.3: Additional Commissioner / Mukhtiarkar, Malir, Karachi. Nemo.
- Respondent No.4: Survey Superintendent, Survey Office, Karachi, represented by Dr. Mazahir Ali Survey Superintendent
- Respondent No.5: SHO Malir Cantonment, Malir, Karachi. Nemo.

Respondent No.6: Director / SSP Anti-Encroachment Cell, Karachi. Nemo.

Respondent No.7: M/s Pink Residency, through Partner Mohammad Shabbir s/o Mohammad Ishaq through Mr Ahmed Ali Hussain along with Syed Zeem Hyder and Kuldeep Kumar Advocates

Date of hearing: 18.12.2023 and 21.12.2023

Date of decision: 02.01.2024

J U D G M E N T

Jawad A. Sarwana, J.: These appeals arose out of continuing disputes from 2014 onwards till the date of filing of these appeals, i.e. on 08.11.2023, on the one hand, between Appellant/Plaintiff (“Amir Khan”) and the Government Official Respondents/Defendants, and on the other hand, between Amir Khan and the Intervenor/Respondent No.7 who is mentioned in Nazir’s Report dated 13.05.2022 in Amir Khan’s Second Suit, namely Suit No.2297/2021, generally, and specifically, the dispute between Amir Khan and Respondent No.7 (the partners, Muhammad Shabbir s/o Muhammad Ishaq and Abdul Jabbar s/o Rehmatullah, and the partnership firm of “Pink Residency”¹). The ongoing controversy is currently the subject matter of trial proceedings in Suit No.44 of 2023 and Suit No.45 of 2023, which appear tentatively to us to concern aspects/issues of (i) the title,² (ii) the description,³ (iii) the location,⁴ and, (iv) the possession⁵ of the Suit Property. In this judgment, we have used the term “ownership” to mean and include all the above-mentioned four

¹ Deed of Partnership of Pink Residency dated 22.05.2017 available on pages 315-323 of HCA No.397/2023.

² Reference to “title” means the legal instrument (be it a deed or a judgment or any other appropriate document), which records in the public records the legal link between the person who owns the property and the property itself.

³ Reference to “description” means the precise location and measurement of the immovable property described on paper.

⁴ Reference to “location” means the actual physical on-site at-the-ground location of the immovable property.

⁵ Reference to “possession” means the fact of having or holding property in one’s power.

aspects/issues regarding “the Suit Property” and/or “the Disputed Suit Lands”, as the case may be. “Suit Property” means and includes 7-00 Acres in Sector 40, Scheme 33 in Deh Safooran, Sub-Division Airport, Distt. Malir, Karachi; while the “Disputed Suit Lands” means and includes the immovable property in Sector 40, Scheme 33 in Deh Safooran, Sub-Division Airport, Distt. Malir, Karachi measuring (a) 1 Acre 10 Guntas, Survey No.339 (“Suit Land “A”)(described as “Suit Land” in Suit No.44/2023) and (b) 3 Acres and 20 Ghuntas, Survey No.349 (“Suit Land “B”)(described as “Suit Land” in Suit No.45 of 2023).

2. Amir Khan (Plaintiff) has challenged a common ex-parte ad-interim order dated 03.11.2023 passed by the learned Single Judge in Suit Nos.44/2023 on Pink Residency’s Application under Order 39 Rules 1 & 2 CPC to restrain Amir Khan and the Government Official Defendants from dispossessing Pink Residency from the Disputed Suit Lands (CMA No.17411/2023) in Appeal No.397/2023, and in Suit No. 45/2023 on Pink Residency’s Application under Order 39 Rules 1 & 2 CPC to restrain the Plaintiff and Government Official Defendants from dispossessing Pink Residency from the Disputed Suit Lands (CMA No.17414/2023) in Appeal No.420/2023, respectively.⁶ Amir Khan is aggrieved by some of the observations made by the learned Single Judge in the ad-interim Order dated 03.11.2023, particularly, without notice to the Appellant and without giving an opportunity of being heard, to the effect that Pink Residency had possession of the Disputed Suit Lands. Amir Khan claims he has been illegally dispossessed from the Disputed Suit Lands because of the impugned Order. The issue to be decided is whether Pink Residency could get an injunction when no final decree could be passed? We propose to decide Appeal Nos.397/2023 and 420/2023 by this common Judgment.

⁶ Impugned Order dated 03.11.2023 available on pages 21-25 and 289-293 of HCA No.397/2023. Pink Residency Application under Order 1 Rule 10 CPC r/w Section 151 CPC filed in Suit Nos.44 and 45 of 2023 available on pages 263-279 of HCA No.397/2023.

3. The brief facts as available from the appeal file are set out date-wise in chronological order in tabular format and are summarised herein below. This summary is neither conclusive nor final and remains subject to the trial proceedings between the impleaded parties.

S. No.	Date	Event	Comment
1.	xx.xx.1994 (date illegible)	Government of Sindh, Land Utilization Department, Allotment/Exchange of land in Scheme 33 of 36 Karachi East instead of private land 30-31 acres of Deh Karamittee / Karamtiani, Tapo Gadap through Attorney Nasir Sohail attorney of Muhammad Hassan, Muhammad Sharif, Shahnaz, Lal Khatoon and Soneya Zall instead of their private land. ⁷	Predecessors of Pink Residency's lands acquired at Serial no.10.
2.	27.06.1994	Corrigendum for above. ⁸	Predecessors of Pink Residency's lands acquired at Serial no.10.
3.	10.04.2012	Irrevocable Power of Attorney from Muhammad Hassan, Muhammad Sharif, Shahnaz, Lal Khatoon and Sohni appointing attorneys Muhammad Qasim and Rehmat Ellahi concerning 7-01 Acres land in Section 24-A, 25-B, 30 or any available corridor Sector of Scheme 33. ⁹	Predecessors of Pink Residency's lands acquired at Serial no.10.
4.	13.06.2012	Revocable Sub-Attorney. Muhammad Qasim and Rehmat Elliahi appoint sub-attorney Muhammad Aslam s/o Ghulam Muhammad in respect of above-mentioned property (Serial no.1)	Revocable Sub-attorney of the Attorney authorizing him to execute the Conveyance Deed with Pink Residency at Serial no.10.
5.	26.06.2014	Amir Khan executed: (i) Lease Deed dated 26.06.2014 with New Global Construction for the land measuring 1 Acre 10 Ghuntas in Survey No.339, Sector 40, Deh Safooran, Sub-Division Airport, District Mali, Karachi. ¹⁰ and (ii) Lease dated 26.06.2014 with Syed Mohammed Akhtar for the land measuring 3 Acres 20 Ghuntas in	

⁷ Page 395 of HCA No.397/2023

⁸ Page 397 of HCA No.397/2023

⁹ Pages 355-375 of HCA No.397/2023

¹⁰ Pages 27-37 of HCA No.397/2023 (Annex. "A/2")

		Survey No.349, Sector 40, Deh Safooran, Sub-Division Airport, District Mali, Karachi. ¹¹	
6.	09.12.2014	Amir Khan filed Suit No. 2424 / 2014 ("First Suit") ¹² against Government Official Respondents regarding Suit Land measuring 3 Acres 20 Ghuntas in Survey No.349 in Sector 40, Deh Safooran, Sub-Division Airport, District Mali, Karachi ("Suit Land "B").	Plaintiff obtained status quo order in respect of the Suit Land "B" (3-20 acres). ¹³
7.	31.05.2016	Government of Sindh, Land Utilization Department Regularization of 7-00 acres out of 30-31 acres situated in Sector 40, Scheme 33 Karachi into 99 years lease in favor of Muhammad Aslam (sub-attorney) in Sector 40, Taluka Airport (7-01 acres). ¹⁴	Predecessors of Pink Residency's lands acquired at Serial no.10.
8.	22.05.2017	Deed of Partnership of Pink Residency between Muhammad Shabir s/o Muhammad Ishaq and Abdul Jabbar s/o Rehmatullah. ¹⁵	
9.	24.05.2017 27.05.2017 02.06.2017	On 24.05.2017, Plaintiff filed an Application for an on-site inspection of Suit Land "B" by Nazir; Order passed, Nazir conducted an inspection and filed his Report dated 27.05.2017, which was taken on record vide Order dated 02.06.2017. ¹⁶	According to Nazir's Report Chowkidar present on Suit Land "B" confirms that he is an employee of Amir Khan. Property confirmed in possession of Amir Khan in the presence of Mukhtiarkar and Survey Superintendent, Board of Revenue.
10.	20.05.2017 ¹⁷ 07.06.2017 ¹⁸ 14.06.2017 ¹⁹	Conveyance Deed between Muhammad Aslam s/o Ghulam Muhammad (Revocable Sub-Attorney) and Pink Residency for 07-00 Acres in Sector 40, Scheme 33 in Deh Mehran, Tappo Mehran Taluka, Airport Distt. Malir Karachi and related documents.	
11.	12.06.2017	Court Orders Nazir to appoint two guards at the cost of the Plaintiff to save any manipulation, encroachment or creation of any third-party rights/interest in the Suit Land "B". ²⁰	

¹¹ Pages 29-43 of HCA No.420/2023 (Annex. "A/2")

¹² Page 95 of HCA No.397/2023 (Annex. "A/10")

¹³ Page 93 of HCA No.397/2023 (Annex. "A/9")

¹⁴ Page 401-403 of HCA No.397/2023 (Annex. "CA/9")

¹⁵ Pages 315-323 of HCA No.397/2023 (Annex. "CA/1").

¹⁶ Page 97-105 of HCA No.397/2023

¹⁷ NOC for Sale on page 385 of HCA No.397/2023

¹⁸ Conveyance Deed on pages 325-339 of HCA No.397/2023

¹⁹ Verification of Sale Certificate by Office of Sub-Registrar-I, Gadap Town, Karachi on page 387 of HCA No.397/2023

²⁰ Page 109 of HCA No.397/2023 (Annex "A/12")

12.	22.01.2018	Deh Jo Form-II recording land measuring 7-00 acres situated at Sector 40 Scheme 33, Deh Mehran corrected for land situated at Deh Safooran. ²¹	
13.	03.08.2021	Amir Khan withdraws Suit No.2424/2014 ("First Suit") concerning Suit Land "B" (3-20 acres). ²²	AFTER WITHDRAWAL Nazir is no longer looking after the Suit Land "B" (3-20 acres).
14.	07.09.2021	Amir Khan filed Suit No.2297/2021 ("Second Suit") concerning Suit Land "B" (3-20 acres). ²³	
15.	11.10.2021	Amir Khan obtained an ad-interim stay order in the Second Suit (Suit No.2297/2021). ²⁴	Government Official Defendants restrained from causing any interference on the Suit Land "B" (3-20 acres)
16.	13.05.2022	Amir Khan, in the Second Suit, obtained an order for an onsite inspection (without notice) by the Nazir and to submit a Report as to who is in occupation thereof and on what basis.	
17.	16.05.2022	On 13.05.2022, Nazir carried out an inspection and submitted Nazir's Report dated 16.05.2022, which was filed in Court on 19.05.2022. ²⁵ Abubakar Rahimo, Supervising Tapedar, Qurban Ali "Senior Clerk Litigation" and Mehtab Ali, Tapedar appeared and informed Nazir that they had demolished the wall and deployed Police Squad at the site on the direction of the concerned Mukhtiarkar.	Nazir reported that he found the site of inspection to be occupied by the Police of anti-encroachment who had been deployed at the site by the concerned Mukhtiarkar and the Security of the Plaintiff. Further, the security guards of Muhammad Shabbir [Partner of Pink Residency] were also present.
18.	20.05.2022	Nazir's Report dated 19.05.2022 is taken up. Learned AAG seeks time to obtain instructions and to place on record documents to show the basis of the action taken by the Government Official Defendants in respect of the Suit Land. ²⁶	Court Orders that till such time, the security guards deployed by Plaintiff at the Suit Land "B" shall not be hindered by the Defendants. SHO to ensure the same.
19.	19.05.2022	Amir Khan filed Suit No.762 of 2022 against Government Official ("Third Suit") with respect to Suit Land "A" (1-10 acres). ²⁷ Nazir is appointed to conduct an on-site inspection of Suit Land "A" (1-10 acres) without notice.	Plaintiff obtains orders that till the next date, Plaintiff shall not be dispossessed from the Suit Land "A" (1-10 acres), and no further demolition shall take place. Plaintiff is directed to file copy of the approval granted by the Master Plan Department

²¹ Page 379 of HCA No.397/2023

²² Pages 123-125 of HCA No.397/2023 (Annex. "A/14")

²³ Plaint available on pages 127-135 of HCA No.397/2023 (Annex. "A/15")

²⁴ Page 139 of HCA No.397/2023

²⁵ Pages 145-149 of HCA No.397/2023 (Annex. "A/18")

²⁶ Page 143 of HCA No.397/2023 (Annex. "A/17")

²⁷ Plaint available on pages 159-173 of HCA No.397/2023 (Annex. "A/21")

			and the SBCA for Plaintiff's residential project on Suit Land "A" (1-10 acres). ²⁸
20.	25.05.2022	Amir Khan withdraws the Third Suit (Suit No.762 of 2022) with respect to Suit Land "A" (Survey No.339, 1-10 acres). ²⁹	
21.	26.05.2022	Amir Khan withdraws the Second Suit (Suit No.2297/2021) with respect to Suit Land "B" (Survey No.349, 3-20 acres). ³⁰	
22.	11.01.2023	Amir Khan files: (i) Suit No.44 of 2023 ("Fourth Suit") with respect to Suit Land "A" (Survey No.339, 1-10 acres), ³¹ and (ii) Suit No.45 of 2023 ("Fifth Suit") with respect to Suit Land "B" (Survey No.349, 3-20 acres). ³²	On 11.01.2023 and cross-referenced in Order dated 30.08.2023 in Suit Nos.44 and 45 of 2023 the trial court suspended the Court of Member (Land Utilization), Board of Revenue, letters dated 20.11.2020 and 26.10.2022 (<u>Serial No.5 of the Impugned Notice No.Reader/MBR/L.U./460/2022 dated 26.20.2022</u>) on the subject of Fake and Fictitious Sale Deed, which included the Suit Property.
23.	28.02.2023	Common Order passed in Suit Nos.44 and 45 of 2023 for onsite inspection so that the current physical possession of the Suit Lands "A" and "B" may come before the Court. ³³ Nazir, with the assistance of Revenue Officials, Government Official Defendants, and Survey Superintendent, will also demarcate the Suit Lands AFTER ownership and possession of Plaintiff is confirmed. No adverse action should be taken against the Plaintiff, including interference in their possession, which will be subject to the outcome of Nazir's Report.	
24.	14.03.2023 15.03.2023	Nazir's Report dated 14.03.2023 in Compliance with the Court's Order dated 28.02.2023 filed on 15.03.2023 in Suit Nos.44 and 45 of 2023. ³⁴	Nazir's Report was without any site inspection and none had been carried out as of 14.03.2023.

²⁸ Pages 177-179 of HCA No.397/2023

²⁹ Pages 181-189 of HCA No.397/2023 (Annexes. "A/23" and "A/24")

³⁰ Pages 151-157 of HCA No.397/2023 (Annexes "A/19" and "A/20")

³¹ Plaint available on Pages 195-203 of HCA No.397/2023 (Annex. "A/26")

³² Plaint available on Pages 205-213 of HCA No.397/2023 (Annex. "A/27")

³³ Pages 223-225 of HCA No.397/2023

³⁴ Pages 229-231 of HCA No.397/2023 (Annex. "A/29")

25.	30.08.2023	<p>Court orders that, to date, Nazir has not done an inspection for reasons mentioned in Nazir's Report dated 14.03.2023; therefore, let site inspection be carried out as ordered earlier.³⁵</p> <p>Suits adjourned to 18.09.2023.</p>	
26.	08.09.2023	<p>Nazir conducted an onsite inspection on 08.09.2023 based on Court's Three (3) Orders dated 28.02.2023, 30.08.2023 and 05.09.2023 with the Nazir's Report signed-off dated 11.09.2023 was placed in the Suit File on 13.09.2023.³⁶</p>	<p>Nazir observed that the "neither Plaintiff nor any representative or counsel on his behalf was present outside or inside the premises to show any claim. . Mr Salman Hamid, the Learned Counsel for the Plaintiff...claimed that in the early morning on 08.09.2023, the day of inspection, the guards of the Plaintiff were forcibly removed from the premises".³⁷</p>
27.	31.10.2023 ³⁸	<p>Plaintiff moved applications (CMA Nos.17097/2023 and 17101/2023) in the two Suits seeking restraining orders from alleged Land Grabbers as well as yet another inspection of the Suit Lands by the Nazir.</p> <p>Nazir's Report dated 11.09.2023, placed in the Suit File on 13.09.2023, is not mentioned in the Order.</p>	<p>The learned Single Judge restrained the Government Official Defendants from interfering in the peaceful possession/business of the Plaintiff and also ordered that the Nazir conduct a surprise visit on the Suit Lands with regard to possession.</p>
28.	03.11.2023 ³⁹	<p>Court passed impugned Order in the two Suits based on Pink Residency's Urgent Application and other applications filed by Pink Residency listed for Orders.</p> <p>Although Nazir's Report dated 11.09.2023 was available in the Suit file (filed in the suit file on 13.09.2023), it was yet to be taken on record as the Plaintiff's two suits were listed (date by Court) for hearing on 18.09.2023.</p>	

4. The learned Counsel for the Appellant/Plaintiff ("Amir Khan") contended that due to the impugned Order dated 03.11.2023, Amir Khan's ownership in the Disputed Suit Lands had been shaken, which

³⁵ Page 233 of HCA No.397/2023 (Annex. "A/30")

³⁶ Pages 237-245 of HCA 397/2023 (Annex. "A/31")

³⁷ Objections of Plaintiff's Counsel available on pages 247-261 of HCA No.397/2023 (Annex. "A/32")

³⁸ Page 283 of HCA No.397/2023 (Annex "A/35")

³⁹ Impugned Order dated 03.11.2023 available on pages 21-25 and 289-293 of HCA No.397/2023

would come in his way during the trial. He further argued that the documents filed in the appeal demonstrated that Amir Khan had title and possession of the Disputed Suit Lands. Further, the location of the Disputed Suit Lands, as well as its description and possession, was clearly in favour of Amir Khan, as this was well recorded in the several reports filed by the Nazir and recorded by the Court in the suits filed against the Government Officials from time to time. He stressed that Amir Khan's security guards had been removed from the Disputed Suit Lands on the date of the site visit by Nazir, and as a result, an inaccurate and misleading Nazir's Report dated 11.09.2023 (was placed in the suit file on 13.09.2023) was placed in the two Suits when the Court took up the matter in the absence of the Appellant/Plaintiff. He contended that the learned Single Judge passed the impugned Order recording adverse remarks without allowing Amir Khan to be heard and without considering the objections filed by the Appellant/Plaintiff before the Nazir. Finally, he contended that Respondent No.7/Intervener ("Pink Residency") was a stranger who had yet to prove his ownership in the Disputed Suit Lands; Pink Residency had merely filed an application under Order 1 Rule 10 CPC to become a Party in the two Suits, which was listed for Order; and Nazir's Report dated 11.09.2023 (filed on 13.09.2023), yet the learned Single Judge passed the impugned Order without proper examination of the Plaint. The Counsel referred to several documents produced by Pink Residency available in the appeal file (noted in the tabular summary above) in support of his contention that these identifiable gaps, oversight, and lacunas in the official record created doubt about Pink Residency's ownership of the Disputed Suit Lands. He contended that the Government Officials, too, had made adverse remarks in their Written Statements regarding Pink Residency's ownership in the Disputed Suit Lands. He further contended that an injunction could not be issued in favor of the Intervener/"Pink Residency" (Respondent No.7) when under Order 1 Rule 10 CPC was yet to be heard, and no decree (permanent injunction) could be passed in its favor. In view of the foregoing, he pleaded that the impugned Order should be set aside and the Appellant/Plaintiff (Amir Khan) given

possession of the Dispute Suit Lands as he had been allegedly dispossessed by Pink Residency on 08.09.2023 when in the early morning of the onsite inspection, before the arrival of the Nazir, Amir Khan's security guards were apparently forcibly removed from the premises (serial nos./row 26 and 27 of the table above).

5. The learned Counsel for Respondent No.7 ("Pink Residency") argued that Pink Residency, in fact, was the true and lawful owner of the Disputed Suit Lands. He claimed that Pink Residency had filed a bundle of documents which evidenced Pink Residency's ownership, which the learned Single Judge had seen before passing the ex-parte ad interim order. He claimed that as per Nazir's Report of 14.03.2023 and 08.09.2023 available in Suit Nos.44 and 45 of 2023, Pink Residency arguably had title and possession of the Suit Property. The impugned Order was passed in accordance with law on proper consideration by the learned Single Judge and did not merit any interference.

6. The learned AAG also made submissions in the matter, which were divergent from those made by the Counsels of Amir Khan and Pink Residency. He argued that as of 06.04.2023, Respondent No.1 had already filed its Written Statement on behalf of the Government of Sindh, Land Utilization Department, disclosing that the perusal of the record available with the land registry showed that there was no record in respect of the allotment of the Suit Property.⁴⁰ He further alleged that based on the Written Statements filed by Respondent No.1, (Land Utilization Department), Respondent No.3 (Mukhtiarkar Airport), Respondent No.4 (Survey Superintendent, Karachi Division) and Respondent No.6 (the Anti-Encroachment Force, Sindh, Karachi), the parties impleaded in the suit, Amir Khan and Pink Residency, with the aid of the lower staff of the Revenue Authorities have been attempting to usurp the valuable land of the Government. He contended that the

⁴⁰ The Court of Member (Land Utilization), Board of Revenue, letters dated 20.11.2020 and 26.10.2022 (Serial No.5 of the Impugned Notice No.Reader/MBR/L.U./460/2022 dated 26.20.2022) on the subject of Fake and Fictitious Sale Deed, which included the Suit Property available on pages 191-193 of HCA 397/2023 was temporarily suspended in Suit Nos.44 and 45 of 2023 vide Orders dated 11.01.2023 and cross-referenced in Order dated 30.08.2023 in the said two suits.

earlier suits filed by Plaintiff, i.e., Suit No.2297/2021, 762/2022, and 2424/2014, all were withdrawn unconditionally by the Appellant/Plaintiff on each occasion when it came on record that the claims of the party were based on forged and fabricated documents. He submitted that the learned Single Judge may not have been properly assisted as no one was present on behalf of the Office of the AAG on 03.11.2023. Finally, the parties have raised no challenge against the Revenue hierarchy. The Revenue Authorities canceled the regularization of Amir Khan's property, which includes Respondent No.7/Intervener, Pink Residency's Suit Property, and the Disputed Suit Lands. However, the legal machinery provided under the Revenue laws to challenge such Orders passed by the Revenue Department was yet to be invoked/initiated. Hence, the impugned Order may be set aside, and the two Suits should proceed to trial so that the dispute between the parties is settled once and for all.

7. We have heard the learned Counsels, and the AAG, reviewed the record as available in the Appeal and read the Impugned Order.

8. It is apparent on the face of the record that there is a three-way difference of opinion on the facts as alleged by Amir Khan, Pink Residency and the Government Officials. Each claim to rely on selected documents and advanced their interpretation of the Court proceedings to prove their claims, including ownership of the Suit Property. The "title" of the Suit Property is disputed between the parties, including the Government Officials who have claimed that the Suit Property and the Disputed Suit Lands are allegedly Government Land. The Suit Property's description, including the entire chain of title, is unavailable before us and remains to be proved at the trial. How the predecessors of Amir Khan and Pink Residency acquired their title in the Disputed Suit Lands is also not understood and cannot be determined at the appellate stage. The pleadings in Suit Nos.44 and 45 of 2023 remain Plaintiff's case to prove. The parties will have to lead evidence to prove their claim/defence as set out in the Complaint and Written Statements and issues eventually settled by the Court, notwithstanding that Pink Residency is

yet to be arrayed as a Defendant in the two Suits and its Applications under Order 1 Rule 10 CPC (CMA Nos. 17410/2023 and 17413/2023) are still pending hearing in the two Suit filed by Amir Khan.

9. Notwithstanding the above issues, which remain undecided on the trial side, we now turn to the issue of possession, i.e. who had possession of the Disputed Suit Lands at the location as per its description relied upon by Amir Khan and Pink Residency and which party (either Amir Khan or Government Officials or Pink Residency) will retain possession of the Dispute Suit Lands during the pendency of the trial proceedings in the two Suits. From 09.12.2014 to 03.08.2021, Appellant/Plaintiff had initiated proceedings in Suit No.2424/2014 and obtained a status quo Order dated 12.06.2017 and, thereafter, another Order for Nazir to appoint security guards of Suit Land "B" (3-20 acres). It is assumed that at this stage, Suit Land "B" (3-20 acres) was handed over by the Plaintiff to the Nazir, and when Suit No.2424/2014 was withdrawn, presumably, the person who handed the possession to the Nazir was delivered the possession by the Nazir. We do not know if a Representative from Nazir's Office was present at the time of handing over/taking over, and on what date did the security guards appointed by Nazir leave the site? There is no information available in the Appeal file on this point. The Counsels requested time to find out; however, this may not be relevant at this late stage. Suffice to say that this Court, without prejudice to the rights of the parties and subject to proof at the trial, assumes that as of 03.08.2021, Plaintiff was delivered possession of the Suit Land "B" (3-20 acres, Survey No.349) of the Disputed Suit Lands and was in possession of Suit Land "B" (3-20 acres, Survey No.349) on the said date. No such assumption can be made for Suit Land "A" (1-10 acres, Survey No.339) as there was no Court Order for the appointment of security guards on Suit Land "A" (1-10 acres, Survey No.339). Based on the documents in the appeal, what happened next is unclear. After 03.08.2021, Amir Khan, in his Second and Third Suits, neither moved any application seeking possession of the Disputed Suit Lands nor did Nazir conduct any onsite inspection. It was in his Fourth and Fifth Suit, i.e. Suit Nos.44 and 45 of 2023, respectively, that he

eventually obtained orders for an onsite inspection and sought an ad-interim injunction not to be dispossessed. It appears that at some stage, between 03.08.2021 and after the filing of Suit Nos.44 and 45 of 2021, Pink Residency obtained possession of the Suit Property, which included Suit Land "B" (3-20 acres). Further by the Nazir's Report dated 14/15.03.2023, Pink Residency was asserting title and possession in the Disputed Suit Lands, including Suit Land "B" (3-20 acres). While the true and correct position is subject to determination at the trial after recording of evidence and final arguments, yet the trial court has to decide the issue of possession (read: Amir Khan's Injunction Application) in the interim period. Thus, we leave this issue (who had possession and its materiality to the dispute) to be settled by the trial judge, including the question that in the facts and circumstances of the case, whether the Respondent No.7/Intervener ("Pink Residency") could be granted an injunction when no such decree could be passed in its favor in the subject lis?

10. As discussed earlier, there also appears to be a contest for title, description, location and possession at play. The four aspects overlap each other, and while the subject matter of the impugned Order is principally the issue of possession, if we were to determine this in these appeals, we would prejudice the remaining three issues. It is difficult to decide the issue of possession in isolation from the issues of title, description and location. The Intervener/Pink Residency claims title of the Suit Property of 7 acres by way of Allotment/Re-allotment/Exchange from Karamitte, Tapo Gadap to Deh Mehran, Tapo Mehran to Deh Safooran, District Malir. The chain of title requires the trial court's scrutiny. Amir Khan claims title of two pieces of the Disputed Suit Lands: (a) 1 Acre 10 Guntas, Survey No.339 ("Suit Land "A")(described as "Suit Land" in Suit No.44/2023) and (b) 3 Acres and 20 Ghuntas, Survey No.349 ("Suit Land "B")(described as "Suit Land" in Suit No.45 of 2023). Finally, the Government Officials claim that the entire Suit Property are Government Lands. Further, the Government Notification which cancelled the Registration of Amir Khan's property, which included the

Suit Property, stands suspended by the trial court's Order dated 11.01.2023 and cross-referenced in another Order dated 30.08.2023 passed in the Suit Nos.44 and 45/2023. Yet even if we do not recognize the title of any of the party in the Disputed Suit Lands, the matter of temporary injunction (possession) still remains to be heard and decided in the two suits. It would not be proper to decide the entire matter at the appellate stage and curtail the right of appeal with regard to determining the injunction relating to possession/dispossession.

11. Given the facts and circumstances and the litigation background, we would not like to prejudice any party's rights regarding ownership of the Suit Property, i.e., Amir Khan, Pink Residency, and the Government of Sindh. The Appellant/Plaintiff claims that he has preferred this appeal because of adverse remarks made by the learned Single Judge in the impugned Order; however, the observation of the learned Single Judge is, prima facie, tentative. We do not think this merits an appeal. The matter was scheduled for hearing on 18.11.2023 when the learned Counsel for the Appellant/Plaintiff was to make his submissions before the learned Single Judge.

12. There is another aspect that we must also consider while deciding these appeals, and that is that the main Injunction Applications (CMA Nos.377/2023 in Suit No.44/2023 and 380/2023 in Suit No.45/2023) have yet to be heard. The Appellant/Plaintiff has pleaded several interlocutory reliefs in the said Injunction Applications, which include prayers not to dispossess him from the Disputed Suit Lands. It would be proper for the learned Single Judge to decide the Injunction Application after hearing the parties so that the right of appeal available to the aggrieved party remains preserved. The impugned Order dated 03.11.2023 is not a final order, and no observation is/was made by the learned Single Judge in the said Order that it was final. It is in the nature of an ad-interim order subject to the Appellant/Plaintiff being heard. The Appellant/Plaintiff's Injunction Applications seeking restraining orders that he should not be dispossessed during the pendency of the two Suits is still pending. Pink Residency also has to show how it acquired "lawful"

possession of the Disputed Suit Lands, including the Suit Land "B" (3-20 acres, Survey No.349) after it was no longer in the care of the Nazir as of 03.08.2021? Further, if Respondent No.7/Intervener, Pink Residency's possession is not shown to have been legally acquired, could it claim injunction as an Intervenor?

13. In view of the above, we find that the impugned Order dated 03.11.2023 for the time being, does not require, any interference, and the parties are directed to maintain the status quo in Suit Nos.44 and 45 of 2023 subject to the outcome of the Appellant/Plaintiff's Injunction Application pending hearing. The trial court remains at liberty to mould the interim relief that is to prevail during the pendency of suits after the hearing of the injunction applications. The Office is directed to list all the pending applications on the next hearing date. The learned Counsels have informed us that the parties have already exchanged counter-affidavits and rejoinders to the injunction applications. The Government Officials have also filed their Counter-Affidavits/Written Statements. The Injunction Applications may be decided within a period of two months from the date of this Judgment.

14. Our observations should not influence the learned Single Judge/trial court who will decide the Appellant/Plaintiff's Injunction Application independently, keeping in the above frame, and strictly in accordance with law.

15. The Appeals, HCA Nos.397 and 420/2023, are dismissed along with all listed applications in the above terms. These appeals are being dismissed, too, as we consider the impugned Order dated 03.11.2023 as an ad-interim Order, and the parties impleaded herein will have the right of appeal when the application(s) are finally decided.

16. The parties are left to bear their own costs.

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