

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

H. C. A. No. 327 of 2023

Date	Order with Signature of Judge
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Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Yousuf Ali Sayeed

Fresh case :

For orders on CMA No.4025/2023 (Urgency) :

For orders on office objections and reply at 'A' :

For orders on CMA No.4026/2023 (Exemption) :

For orders on CMA No.4027/2023 (Stay)

For hearing of main case :

**03.10.2023 :**

Mr. Shafiq Ahmed Lanjar, Advocate for the appellant.

Mr. Danish Nayyer, Advocate for respondent No.1.

Urgency granted.

Mr. Danish Nayyer files power on behalf of respondent No.1 who is on notice under Rule 3 of Order XLIII CPC.

**NADEEM AKHTAR, J.** – The appellant has impugned the order passed by a learned Single Judge of this Court in Suit No.2120/2020 instituted at the original side of this Court by respondent No.1 against him and other respondents for declaration and permanent injunction in respect of Sub-Plot No.2, measuring 3,830.5 sq. ft., New Sabzi Mandi, Block-C, Super Highway, Karachi ('suit property'). Through the impugned order, the defendants in the Suit have been directed to restore the possession of the suit property to respondent No.1. The operative part of the impugned order passed on a contempt application bearing CMA No.6367/2021 filed by respondent No.1 reads as under :

*“ From the above official record, it is quite apparent that the plaintiff is the lawful transferee of the subject plot and his dispossession therefrom despite restraining order is completely illegal. Possession should be restored within two days by the Defendants. Whereas alleged contemnor shall be present on next date for further proceeding.”*

2. The facts of the case, as averred in the plaint and relevant for deciding the instant appeal, are that the suit property was allotted by the appellant (Market Committee Karachi) to one Abdul Ghaffar Khan ('allottee') vide allotment order dated

10.09.2002 and possession order was issued in his favour on the same day. The allottee filed Suit No.118/2004 against the appellant and respondent No.2 / Government of Sindh for specific performance and permanent injunction which was decreed on 16.12.2009 by the trial Court viz. 1<sup>st</sup> Senior Civil Judge Malir. Pursuant to the said decree, the Nazir of the trial Court executed a registered sale deed in respect of the suit property on 26.05.2010 in favour of the allottee. Subsequently, the suit property was sold to respondent No.1 by the legal heirs of the allottee vide registered sale deed dated 19.07.2017. It was the case of respondent No.1 in his Suit No.2120/2020, out of which the present appeal has arisen, that he is the lawful and absolute owner of the suit property by virtue of the aforesaid sale deed executed and registered in his favour. By claiming in his Suit that he was in possession of the suit property, it was alleged by him that defendant No.2 / appellant was harassing him and was trying to dispossess him from the suit property. In this background, the Suit was filed by him against the appellant and respondents 2 to 4 for declaration and permanent injunction. Vide ad-interim order passed on 23.12.2020 in his Suit, the defendants were restrained by the learned Single Judge from interfering in his possession relating to the suit property. In his CMA No.6367/2021, it was alleged by him that he was forcibly dispossessed from the suit property by the appellant in complete disregard and violation of the ad-interim order ; and, it was prayed by him that contempt proceedings be initiated against the appellant.

3. It is contended by learned counsel for the appellant that the allotment and possession orders in favour of the allottee were fake and fabricated documents that did not create any right, title and or interest in the suit property in his favour ; the decree was obtained by the allottee through fraud and misrepresentation ; in these circumstances, the execution and registration of sale deed by the Nazir of the trial court in favour of the allottee was illegal ; consequently, the sale deed executed in favour of respondent No.1 by the legal heirs of the allottee was also illegal ; the appellant has filed an application under Section 12(2) CPC for setting aside the decree, which application is pending before the trial court ; the suit property does not exist in the Master Layout Plan of the subject market ; the piece of land that is claimed by respondent No.1 falls within the amenity plot of the market which is reserved for parking of vehicles ; and, respondent No.1 was never in possession of the suit property. It is further contended by the learned counsel that the impugned order is unjustified as the suit property cannot be handed over to respondent No.1 due to the aforesaid reasons.

4. On the other hand, learned counsel for respondent No.1 contends that the said respondent was forcibly and illegally dispossessed from the suit property by the appellant despite the ad-interim order passed in the Suit. He further contends that possession of respondent No.1 had been confirmed by the Nazir of this Court after

inspecting the suit property in pursuance of the order passed in the Suit, and the chain of title documents showing his title to the suit property were on record. He submits that the impugned order is fully justified in the facts and circumstances of the case and especially in view of the deliberate and willful violation of the ad-interim order by the appellant.

5. We have heard learned counsel for the parties at considerable length and have also examined the record. The Site Plan attached to the registered sale deed executed by the Nazir of the trial court in favour of the allottee and the Layout Plan of the subject market, *prima facie*, show that the suit property is shown and described therein. The question as to whether the suit property does not exist and the plot claimed by respondent No.1 falls within the amenity plot / parking area, as alleged by the appellant, or is available and is situated elsewhere, as claimed by respondent No.1, can be decided in the Suit only after examining the evidence led by the parties. Thus, the dispute relating to the location and title of the piece of land in dispute is yet to be decided in the Suit. Regarding possession of the suit property, the record shows that an inspection thereof was ordered in the respondent No.1's Suit by appointing the Nazir of this Court as Commissioner who submitted his report dated 15.12.2022 stating that respondent No.1 was in possession. Perusal of the impugned order shows that the above factors were taken into account by the learned Single Judge while directing the defendants to restore the possession of respondent No.1 as, admittedly, an ad-interim order, securing the latter's possession, was in the field at the relevant time. Therefore, the impugned order does not require any interference to the extent of restoration of the respondent No.1's possession.

6. It is an admitted position that the decree in respect of the suit property passed in favour of the allottee and the registered sale deeds executed in pursuance thereof in favour of the allottee and respondent No.1 are still in the field. However, the dispute involved in the Suit relating to the location and title of the piece of land in dispute is yet to be decided as noted above. Due to this reason, we are of the considered view, with utmost respect, that the finding in the impugned order that respondent No.1 / plaintiff is apparently the lawful transferee of the suit property, is premature and could at best be tentative. Be that as it may, we are also of the view that if the subject matter of the *lis* is not preserved till the final disposal of the Suit, not only will the purpose of filing the Suit be defeated, but there will also be multiplicity of proceedings between the parties.

7. On behalf of respondent No.1, his counsel has given an undertaking before us that if possession of the suit property is restored to him, he shall construct a boundary wall around it at his own cost to save it from encroachment, and shall not raise any other

construction thereon till the final disposal of his Suit. The undertaking appears to be reasonable and suitable for preserving the subject matter of the *lis*, and equitable for protecting the interest of the contesting parties during pendency of the Suit. In view of the above, the impugned order is modified in terms of the above undertaking and the appeal and listed applications stand disposed of accordingly with no order as to costs.

JUDGE

JUDGE

Asif