

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**Present:**

Nadeem Akhtar, J  
Yousuf Ali Sayeed, J

**HCA No.68 of 2021**

Mian Parvez Akhtar.....Appellant

Versus

Province of Sindh and others.....Respondents

Ovais Ali Shah, Advocate, for the Appellant.  
Mehran Khan, Asstt. Advocate General, Sindh.

Date of hearing : 05.10.2023

**ORDER**

**YOUSUF ALI SAYEED, J.** - The captioned Appeal impugns the Order dated 18.03.2021 made by the learned Single Judge in Suit No.30 of 2012 pending before this Court on the Original Side, dismissing CMA No.143 of 2012 (the “**Subject Application**”) filed by the Appellant under Order 39 Rule 1 & 2 read with Section 151 CPC in his capacity as the plaintiff in that Suit, seeking imposition of a restraint against the creation of any third party interest in respect of the land admeasuring 17545 square yards, bearing Survey No. 436 and 445, situated at Deh Mehran, Tappo Malir, Taluka and District Malir, Karachi, and 2905 square yards situated at main gate of Malir Cantonment, as well as interference in his possession.

2. Learned counsel for the Appellant drew our attention to the impugned Order in order to point out that the same turned on a Report dated 31.01.2012 submitted by the Assistant Registrar, D-I Branch (the "**AR's Report**") following an inspection of the land that had taken place on 28.01.2012 in pursuance of an Order made on 24.01.2012. He argued that the learned Single Judge had erred in his reading of the AR's report, in as much as it was construed to reflect that possession rested with the Defendant No.14, hence had fallen into error in dismissing the Subject Application. Learned counsel submitted that the AR's Report was inconclusive on the point of possession, whereas another Report dated 17.06.2013 submitted by the Nazir in Suit No.1676 of 2012 (the "**Nazir's Report**") subsequently filed by the Defendant No.14 so as to assert its own claim in terms of an Indenture of Lease dated 22.06.2011 categorically reflected that possession lay with the Appellant, who had been arrayed as the Defendant No.1 in that matter.
  
3. We have examined the impugned Order, which reflects that the learned Single Judge relied upon the AR's Report and regarded the same to be conclusive of the fact that the Appellant was not in possession of the land in question, hence proceeded to dismiss the Subject Application accordingly. The relevant paragraph of the impugned Order reflecting such reasoning reads as follows:

"It appears from perusal of record that vide order dated 24th January, 2012 the Assistant Registrar, D-I Branch of this Court was appointed as Commissioner to inspect the suit lands in order to ascertain actual possession with regard to status thereof and construction, if any thereon, who submitted his report dated 1st February,

2012, mentioning therein that he conducted the inspection in presence of parties including Revenue Surveyor, during which it was found that the suit lands are infact in possession of defendant No. 14; hence, it is yet to be ascertained as to whether the plaintiff is the owner of the suit lands with possession as claimed by him. Plaintiff though claims that after purchasing suit lands, the same were demarcated by the concerned revenue officer, yet no demarcation report or sketch duly signed by the concerned revenue officer is annexed with the plaint. The plaintiff; therefore, has failed to make out prima facie case in his favour for the grant of interim injunctive relief, as there is no supporting documentary evidence available on the record with regard to possession of the suit land as claimed by him. On the contrary, it has come on record through Commissioner's report that the suit lands are in possession of defendant No. 14; hence, any interim injunctive order passed in favor of plaintiff may cause inconvenience to said defendant, who would also suffer irreparable loss in case interim order is passed in favour of the plaintiff. Accordingly, this application is dismissed with no order as to costs."

4. The relevant excerpt from the AR's Report on which reliance was placed by the learned Single Judge for purpose of deciding the Subject Application states that:-

"According to the statement of Defendant No.14 (M/s. Global Construction Company), the land is in their possession. Their statement was supported by who introduced himself by name of Hifzullah, Security Guard and some other persons, deputed on the land by Defendant No.14. Mr. Raza Naqvi, Manager of Plaintiff, claimed that the land was in their possession and Defendant No.14 has occupied the land forcibly."

5. On the other hand, the Nazir's Report, which was taken on record on 17.06.2013, states *inter alia* that:

“3. The inspection of suit land was carried out and noted that suit land has boundary wall having Iron Gate on North-East corner. Near the gate of Right side/Eastern side there is room. As such on Left side. i.e. west there are lying two container about 15ft backed from the limit of boundary wall of Suit property. Moreover two rooms on the same side i.e. west are built and leaving some space on the same side i.e. west there are two other rooms built with masonry blocks. It was noted that at center there is Masjid in shape of shade supported with iron angles and at little distance of the Masjid portion there are three ground water tanks, one water tank is covered with walls at the height of about 3 ft duly plastered and painted colors of white & dark-red and second water tank is covered with the piece of module and third water tank 5x3 ½ ft approximately which was plastered from inside and not in use. It was further noted that there are two bathrooms from northern side duly plastered having tin sheet doors each and painted colors of white & dark red.

4. It is respectfully pointed out that the suit land is in possession of defendant No.1 and in comparison with earlier report dated 27.05.2013 the following construction has been raised freshly;

i. Two bathrooms from northern side duly plastered and painted colors of white & dark-red

ii. Earlier there were two ground water tanks now there are three ground water tanks out of which one is duly plastered and painted second water tank is covered with the piece of module and third about 5x3 ½ ft approximately which was not in use.

iii. Masjid center flooring portion is freshly plastered having party slaps and its outer flooring found in progress of pavement of tiles.”

6. Learned counsel for the Appellant pointed out that both the aforementioned Suits had been proceeding in tandem, and submitted that the Report in Suit No.1676 of 2012 had thus been before the learned Single Judge on the date that the impugned Order had been made, but, per learned counsel, had been overlooked. He sought to argue that the Nazir's Report was material to the subject of possession and ought to have been considered.
  
7. Despite service through the normal modes and subsequently through publication, the Respondent No.14 failed to enter appearance, with an order for *ex parte* proceedings having then been made accordingly on 10.04.2023.
  
8. We have considered the arguments advanced in light of the material on record and also called for and examined the files of the two aforementioned Suits, which were tagged in terms of the Order dated 29.07.2013 made in Suit No.1676 of 2012 and have been proceeding together since.
  
9. What is discernible is that even prior to the Nazir's Report, it had been conceded by the Respondent No.14 in the plaint filed in Suit No. 1676 of 2012 that possession of the land in question lay with the Appellant. Paragraphs 13 and 14 of the plaint are of relevance, where it was stated that:

“13. In Suit No.30 of 2012, Nazir of this Court filed an Inspection Report dated 31.01.20212 showing therein possession of the Suit Land in favour of the Plaintiff, filed as Annexure P-17.

14. The Defendant No.1 now under the garb of aforementioned two suits, and despite the fact that the Plaintiff’s possession in the Suit Land by the aforesaid Nazir Report in Defendant’s No.1’s own Suit has been established, the Defendant No.1 with the active connivance of the police concerned, (particularly Defendants No.6 and 7) and other government functionaries/Defendants has removed the guards of the Plaintiff, posted on the Suit Land and has encroached upon it (Suit Land), though maintenance of status quo orders in respect of the Suit Land against all the parties in the two referred suits are operating. Appropriate contempt application(s) have been filed and are pending therein. The Defendants are now also making endeavors to disturb, change and/or manipulate record of the Suit Land and the Defendant No.1 is also approaching the Defendant No.4 for cancellation of the various approval and/or approval of the approved building plans of the Suit Land on the basis of the above two suits and also on the basis of other fake and fabricated documents which has become eminent which needs to curtailed and stopped forthwith inasmuch as the Defendants as an eye wash are also, in addition to the above, are now attempting to show that Goth was in existence on the Suit Land. Various Complaints made by the Plaintiff to different authorities concerned are filed as P-18, P-19 and P-20 respectively.”

10. As such, the first Order made in that Suit on 06.12.2012 proceeds in the same vein, the relevant excerpt of which reads as follows:

“It is inter-alia contended that the plaintiff acquired 15 acres land in deh Safoora/Mehran Sector 40-21-42A, Scheme 33, City District Government, Karachi, but the present controversy only confined to two acres 6 ghuntas of land and

grievance of the plaintiff is that he was in constructive possession of the plot in question after the indenture of lease, but at present the plot in question is in possession of defendant No.1 whose case is also pending in this Court. Learned counsel has pointed out the Nazir report, which was submitted in Suit No.30/2012 filed by the Defendant No.1 against the Province of Sindh and the present plaintiff who is defendant No.12. Through this Nazir Report the Nazir has submitted that the property belongs to New Global Construction Company, which is plaintiff in this suit. The learned counsel admits that though the defendant No.1 is in possession but the revenue authorities are also trying to cancel the original entries of the predecessor-in-interest of the plaintiff i.e. Entry No.6/2/12.”

11. Under the circumstances, the reliance placed so overwhelmingly on the AR's Report appears to be misplaced.
  
12. That being so, while allowing the present Appeal we hereby set aside the impugned Order and remand the matter for the underlying applications to be heard afresh whilst considering all other relevant material on record in the aforementioned Suits, including but not limited to the Nazir's Report and the pleadings in Suit No. 1676 of 2012.

JUDGE

JUDGE

Karachi  
Dated