

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 1921 of 2023 : Malik Panjwani & Another vs.
Farooq Nasir and Others

Suit 2031 of 2023 : Farrukh Punjwani & Others vs.
Malik Khushal Khan & Others

Suit 211 of 2024 : Malik Khushal Khan vs.
Muhammad Hassan Nawaz and Others

Suit 355 of 2024 : Farooq Nasir vs.
Muhammad Hassan Nawaz and Others

For the Plaintiff/s : Mr. Muhammad Arif Shaikh, Advocate
Suit 211 of 2024

Mr. Jaffar Raza, Advocate
Suits 1921 of 2023 and 2031 of 2023

Mr. Ehtesham Zia, Advocate
Suit 355 of 2024

For the Defendant/s: Mr. Jaffar Raza, Advocate
Suit 211 of 2024

Mr. Muhammad Arif Shaikh, Advocate
Suit 1921 of 2023

Mr. Adil Khan Abbasi, Advocate
Suit 211 of 2024

Mr. Ehtesham Zia, Advocate
Suit 211 of 2024

Date/s of hearing : 16.04.2024 & 17.04.2024

Date of announcement : 17.04.2024

ORDER

Agha Faisal, J. The controversy seized herein pertains to the building and appurtenant land bearing Plot number 34, Zulfiqar Commercial Street 5 Phase VIII-A DHA Karachi, in particular Shops 1, 2 and 3 on the ground floor therein, (“Suit Property”).

Factual context

2. The uncontroverted record demonstrates that “C-Lease”¹ in respect of the Suit Property was held in the name of Muhammad Hassan Nawaz² (“MH

¹ Copy available at page 97 of Suit 1921 of 2023.

² Inter alia defendant no. 2 in Suit 211 of 2024.

Nawaz”) and he registered sub leases³ in favour of the Malik Punjwani⁴ (“M Punjwani”) in pursuance thereof. The record also demonstrates that mutation of the Suit Property was effected in the name of M Punjwani before the Military Estates Office, Cantonment Board Clifton and the Defense Housing Authority.

3. Suit 1921 of 2023 was preferred by M Punjwani for declaration, permanent injunction and damages and it was averred that the Suit Property was in the unlawful possession of strangers, hence, may be restored to the plaintiffs along with grant of ancillary relief. CMA 18975 of 2023 was filed seeking for appointment of a receiver in respect of the Suit Property.

4. Much thereafter, Suit 211 of 2024 was filed by Malik Khushal Khan (“MK Khan”) seeking specific performance of purported sale agreements dated 10.12.2019, with respect to the Suit Property, and cancellation of the registered sub leases executed in favour of M Punjwani. CMA 3820 of 2024 was filed seeking essentially a restraint upon interference in the MK Khan’s possession of the Suit Property.

5. The matter came before this Court on 28.03.2024 and the order observes that may be appropriate to determine CMA 3820 of 2024 in Suit 211 of 2024 and then consider CMA 18975 of 2023 in Suit 1921 of 2023. These applications, interwoven in nature, shall be determined vide this order.

CMA 3820 of 2024 in Suit 211 of 2024

6. This application essentially seeks a restraint upon interference in the MK Khan’s possession of the Suit Property, however, *admittedly* MK Khan is not in possession of the Suit Property.

7. MK Khan pleads reliance upon purported sale agreements dated 10.12.2019 (“Sale Agreements”) in order to assert title, however, did not elaborate as to why the suit seeking specific performance thereof was preferred almost five years late. The memorandum of plaint does not plead the existence of any financial instrument to corroborate consideration and even omits to mention or attach any title / conveyance in respect of property allegedly exchanged as consideration. Mr. Jaffar Raza has called Suit 211 of 2024 a collusive counterblast to Suit 1921 of 2023, however, the determination of whether the suit is time barred or otherwise infirm is eschewed presently.

³ Pages 53, 153 & 267 of Suit 1921 of 2023.

⁴ Inter alia plaintiff in Suit 1921 of 2023.

8. Be that as it may, MK Khan pleaded to having rented out the Suit Property to tenants, however, the said persons were not impleaded by MK Khan⁵. The purported tenant of the third constituent of the Suit Property was manifestly concealed in Suit 211 of 2024, however, upon Nazir inspection⁶ it was found to be MK Khan's wife. A fact admitted before this Court by his counsel.

9. MK Khan's counsel was queried as to the competence of MK Khan to enter into such tenancy agreements, in the *prima facie* absence of title, and he responded that the same was done pursuant to the purported Sale Agreements. Learned counsel was queried as to whether the agreements qualified to confer title or contained any stipulation therein empowering MK Khan to rent out the Suit Property and the response on either count was in the negative. Learned counsel was also queried as to the reason for concealing the fact that a constituent of the Suit Property appeared to have been passed on to MK Khan's wife, however, he failed to justify such a material non-disclosure.

10. The pivot of MK Khan's case was that MH Nawaz and Farooq Nasir⁷ ("F Nasir") were supporting his averments.

MH Nawaz *admittedly* sold the Suit Property to M Punjwani and in pursuance thereof executed registered sub leases and appeared before the regulatory authorities, including the MEO, CBC & DHA, to seek mutation favoring M Punjwani. While he supports MK Khan herein, however, has never filed any legal proceedings seeking cancellation of the instruments admittedly executed by himself⁸.

F Nasir is a witness to the Sale Agreements, purportedly executed in 2019, and is also witness to the tenancy agreements, purportedly executed in 2022, however, notwithstanding the foregoing has filed Suit 355 of 2024 seeking to assert his title in respect of the Suit Property; predicated on purported sale agreement/s dated 28.04.2015.

Prima facie the assertions of MH Nawaz and F Nasir appear to be contradictory, however, the weightage thereof and / or whether independent proceedings are warranted upon allegations of perjury etc. may be evaluated

⁵ Arrayed as defendant nos. 3 and 4 in Suit 1921 of 2023 by M Punjwani.

⁶ Nazir Report dated 12.12.2023.

⁷ Plaintiff in Suit 355 of 2024 and defendant in the other suits.

⁸ As admitted by his counsel, Mr. Fareed Bilwani Advocate, during the hearing dated 16.04.2024.

subsequently. For purposes of adjudication of the present application/s, the same do not offer any credibility to MK Khan's case.

11. It is observed that unless the registered instruments of conveyance are cancelled and the discretionary relief of specific performance is granted, MK Khan could not demonstrate any existing title to the Suit Property. It is also noted that his parting of possession thereof to strangers, including his wife, could not be justified upon the anvil of the law. It is also imperative to denote that MK Khan also *consciously* omitted to even implead his purported tenants in his suit, being Suit 211 of 2024. However, most importantly the verbiage of CMA 3820 of 2024 primarily seeks to protect MK Khan's possession of the Suit Property. *Admittedly*, MK Khan is not in possession of the Suit Property. Therefore, on the anvil of settled law per *prima facie* case, balance of convenience and irreparable harm, no case could be set forth of allow CMA 3820 of 2024, hence, the same is hereby dismissed.

CMA 18975 of 2023 in Suit 1921 of 2023

12. It is M Punjwani case that his property has been unlawfully misappropriated by MK Khan, who is benefitting from the fruit of his illegality by purportedly obtaining rental income therefrom. The case is bulwarked with the submission that third party interests have already been attempted therein and it is reasonably apprehended that the Suit Property may be further wasted in order to thwart any remedy to which he may be entitled to. It is concluded that it is imperative that the Suit Property be subjected to receivership for the preservation of the *lis* until determination of the suit.

13. Suit 1921 of 2023⁹ has impleaded two of the purported tenants as defendant numbers 3 and 4. Notice thereupon has been served and Mr. Muhammad Arif Shaikh Advocate states that he is representing them; in addition to MK Khan. Notwithstanding any assertion of collusion between MK Khan and the purported tenants, *admittedly* the said persons have opted to file no written statement or counter affidavit to the application under scrutiny. The existence of a third purported tenant, being the wife of MK Khan, was not disclosed by MK Khan and such disclosure only came about as a consequence of the Nazir inspection. Concealment of such a material fact does no benefit to the case of MK Khan.

⁹ Filed by M Punjwani.

14. The CPC provisions for appointment of a receiver in Order XL¹⁰ thereof and the common law in such regard is well settled. *Saeed ur Rehman*¹¹ and *Asadullah Mirbahar*¹² are two time honored Division Bench edicts of this Court in such regard and *Zamir Ahmed Khan*¹³ is a recent reiteration of the law.

15. The judgment in *Saeed ur Rehman* was delivered under *pari materia* facts and circumstances and the Division Bench upheld the appointment of a receiver, while observing as follows:

“...it will be advantageous to observe that a Receiver appointed under Order XL, Rule I, C.P.C. is ordinarily an impartial and indifferent person between the parties to a cause, appointed by the court to receive and preserve the property or fund in litigation pendente lite, when it does not seem reasonable to the court that either party should hold it or where a party is incompetent to do so as in the case of an infant. Thus, a receiver is an officer of the court through whom equity takes possession of the property, preserves it from waste and destruction, secures and collects the proceeds and ultimately disposes of them according to the rights and priorities of those entitled thereto, whether regular parties in the cause or only coming before the court in a reasonable time and in the due course of procedure to assert and establish their claims. The effect of the Appointment of a receiver is not to prejudice the case in any way. The only object and effect of it is to maintain things in their present condition during the pendency of the suit. The main object of the appointment of a receiver is to protect the estate from unnecessary and expensive litigation, to preserve it for the equal benefit of those equally interested in its distribution and to keep the property at all times within the control of the court by which the receiver has been appointed. Thus, the receiver's possession is not a possession by any personal right. It is the possession of the court and he is totally devoid of any interest in the property. He is in the position of a stake-holder, who has custody of the property for the benefit of the

¹⁰ 1. - (1) Where it appears to the Court to be just and convenient, the Court may by order - a) appoint a receiver of any property, whether before or after decree; b) remove any person from the possession or custody of the property; c) commit the same to the possession, custody or management of the receiver; and d) confer upon the receiver all such powers as to bringing and defending suits and for the realization, management, protection, preservation and improvement of the property the collection of the rents and profits thereof, the application and disposal of such rents and profits, and the execution of documents as the owner himself has or such of those powers as the Court thinks fit...

¹¹ Per *Rehmat Hussain Jafferji* J in *Saeed ur Rehman vs. Ehsanullah Khan Afridi* reported as *PLD 2007 Karachi 527*.

¹² Per *Muhammad Ali Mazhar* J in *Asadullah Mirbahar vs. Ayesha Muzahir* reported as *PLD 2011 Karachi 151*.

¹³ Per *Adnan Iqbal Chaudhry* J in *Zamir Ahmed Khan vs. Muhammad Hassan Chiniyoon* reported as *2020 CLC 1189*.

true owner, hence the possession of the receiver is on behalf and for the B benefit of all the parties to the suit according to their rights in which he is appointed. Therefore, the property in the hands of receiver is in *custodia legis* for the person, who can make a title to it. No doubt through the appointment a change of possession takes place, but it has no effect upon the title of the property in any way and determines no right as between the parties, therefore, the possession of a receiver during the pendency of a suit should be regarded as possession for the party, who might ultimately turn out to be the true owner and entitled to possession as such. The effect of such possession by the receiver is to destroy the adverse possession.

It is pointed out that the issue of appointment of a receiver during pendency of suit and issue of injunctions, whether temporary or permanent, are a form of specific relief. Sir John Woodroffe in his Book "Law Relating to Receivers" observed that a relief by specific performance, injunction and receiver belongs to the same branch of the law. The appointment of a receiver operates as an injunction against the parties, their agents and persons claiming under them, restraining them from interfering with the possession of the receiver except by permission of the court and an order for an injunction is always more or less included in an order for a receiver, therefore, it is not necessary, if a receiver be appointed, to go on and grant an injunction in terms. He further observed that all the three forms of relief are dealt with by the Specific Relief Act. The relief granted by appointment of a receiver *pendente lite* bears in many respects a close analogy to that by temporary injunction, as such, both are essentially preventive in their nature being properly used only for the prevention of future injury, rather than for the redress of past grievances and both have one common object in so far as they seek to preserve the res or subject-matter of the litigation unimpaired, to be disposed of in accordance with the future decree or order of the Court.

The appointment as well as the removal of a receiver is also a matter which rests in the sound discretion of the Court. In exercising its discretion, the court should proceed with caution and be governed by a view of the whole circumstances of the case. It is pointed out that a receiver should not be appointed in supersession of a bona fide possessor of property in controversy unless there is some substantial ground for interference. Reference is invited to the case of *M. Ataur*

Rehman Alvi v. Inamur Rahman 1974 SCMR 54. It will be noticed that in Order XL, Ruled, C.P.C. the words "just and convenient" have been used, which mean that the Court should appoint a receiver for the protection of property or the prevention of injury, according to legal principle and not that the court can make such appointment because it thinks convenient to do so. References are invited to the cases of Habib v. Abtia (23 CLJ 567) and Bhupendra v. Monohar (28 CWN 86). as regards appointment of receiver, a receiver can be appointed, if it is found that the estate is in danger, because no longer properly managed or that difficulties have arisen in connection with litigation about the properties comprised in the estate or that there is good ground to apprehend that the defendant may misapply trust funds. The main principles upon which such discretion should be exercised have been laid down in the case of Owen v. Homan (94 RR 516) and those principles have been held to be equally applicable in Pakistan as in England, as observed by the then justice Cornelius in a case of Lala Roshan Lal v. Ch. Muhammad Afzal PLD 1949 Lah. 60. In the Owen's case Lord Cranworth said:

"The receiver, if appointed in this case, must be appointed on the principle on which the Court of Chancery acts, of preserving property pending the litigation, which is to decide the right of the litigant parties. In such cases the Court must of necessity exercise a discretion as to whether it will or will not interfere by this kind of interim protection of the property. Where, indeed, the property is as it were in medio, in the enjoyment of no one, the Court can hardly do wrong in taking possession. It is the common interest of all parties that the Court should prevent a scramble. Such is the case when a receiver of a property of a deceased person is appointed pending a litigation in the Ecclesiastical Court as to the right of probate or administration. (1) No one is in the actual lawful enjoyment of property so circumstanced, and no wrong can be done to anyone by taking it, and preserving it for the benefit of the successful litigant. But where the object of the plaintiff is to assert a right to property of which the defendant is in the enjoyment, the case is necessarily involved in further questions. The Court by taking possession at the instance of the plaintiff may be doing a wrong to the defendant; in some uses- an irreparable wrong. If the plaintiff should eventually fail in establishing his right against the defendant, the Court may by its interim interference have caused mischief to the defendant for which the subsequent restoration of the property may

afford no adequate compensation. In all cases, therefore, where the Court interferes by appointing a receiver property in the possession of the defendant before the title of the defendant is established by decree, it exercises a discretion to be governed by all the circumstances of the case."

... Thus, apparently the alleged possession of the appellant is not a bona fide possession, therefore, his possession cannot be protected in the present circumstances of the case as appearing at this stage...

As regards the appellant letting out the property to his tenant, the written-statement is silent, as no such plea was raised in it. It also appears that at the time of inspection of the property by the Nazir he did not mention such fact to him. In these circumstances, the learned advocate for the respondent No.1 has argued that the said plea was set up after filing the written-statement in order to protect the illegal possession of the property..."

16. It is paramount to bear in mind that in *Saeed ur Rehman* the fact that the possession of the property could not be demonstrated to be bona fide played a pivotal role in substantiating the appointment of a receiver.

17. In *Asadullah Mirbahar*¹⁴, *Muhammad Ali Mazhar J* encapsulated the salient principles for appointment of a receiver. It was observed as follows:

"15. The guiding principles for the appointment of Receiver under Order 40, Rule 1, C.P.C. are laid down as under:

(i) Appointment of receiver rests entirely with the discretion of the court, which is to be exercised judiciously, keeping in view the attending circumstances, to do justice between the parties;

(ii) Appointment of receiver should be to safeguard the interest of both parties, and to save disputed property from mismanagement and mischief ;

(iii) Plaintiff is bound to prove strong prima facie case in his favour to the effect that ultimately he will succeed in getting relief as prayed for;

¹⁴ Per *Muhammad Ali Mazhar J* in *Asadullah Mirbahar vs. Ayesha Muzahir* reported as *PLD 2011 Karachi 151*.

(iv) What are circumstances which warrant immediate appointment of Receiver;

(v) The purpose is not merely to dispossess someone but to prevent the property from waste. Material should be placed on record to show that the subject matter is in danger of waste and malversation;

(vi) Power to appoint Receiver should be sparingly used;

(vii) Possession of person bona fide in occupation of property should not be disturbed unless there are allegations of wastage or dissipation of property or apprehension of irreparable loss or injury.

16. A relief by specific performance, injunction and receiver belongs to the same branch of the law. The relief granted by appointment of a receiver pendente lite bears in many respects a close analogy to that by temporary injunction, as such, both are essentially preventive in their nature being properly used only for the prevention of future injury, rather than for the redress of past grievances and both have one common object insofar as they seek to preserve the res or subject matter of the litigation unimpaired, to be disposed of in accordance with the future decree or order of the Court...

18. The receiver appointed under Order 40 Rule 1, C.P.C. is ordinarily an impartial and indifferent person between the parties to a cause, appointed by the Court to receive and preserve the property in litigation, thus a receiver is an officer of the court through whom equity takes possession of the property, preserves it from waste and destruction, secures and collects the proceeds and ultimately disposes them of according to the rights and priorities of those entitled thereto...

19. The effect of appointment of receiver by the learned Single Judge was not to prejudice the case of any party but the only object was to maintain the situation intact during the pendency of the suit..."

18. Encapsulating the discussion, it is observed that M Punjwani has *admitted* registered title to the Suit Property and despite the said factum he remains dispossessed therefrom. It is apparent that notwithstanding the manifest absence of any rights / title having crystallized in favor of MK Khan, he not only gained possession of the Suit Property but has *prima facie* sought

to create apparently unjustifiable third party interests therein. There appear to be three conflicting claims to the Property, i.e. that of M Punjwani, MK Khan and also F Nasir, and it is imperative for the *lis* to be preserved pending adjudication of the respective claims. The purported tenants have notice of the present proceedings and have opted to refrain from presenting their case. The arguments articulated by the legal counsel for MK Khan, also representing the said purported tenants, have not provided any arguable sanction for the possession of the Suit Property by the said persons. *Prima facie* Mr. Jaffar Raza's apprehension, of the stated defendants colluding to deprive M Punjwani of his property, appears reasonably borne from the record and conduct of the relevant parties. A fit case has been set forth before this Court to substantiate that unless this application is granted, the Suit Property is in imminent danger of possibly irreparable dissipation *inter alia* through creation of further third party interests.

19. On the anvil of the law, including as illumined vide *Saeed ur Rehman*¹⁵, *Asadullah Mirbahar*¹⁶ *Zamir Ahmed Khan*¹⁷, it appears just and convenient for a receiver be appointed in respect of the Suit Property¹⁸. Therefore, this application is allowed in the following terms:

- i. The Nazir of this Court is hereby appointed receiver of the Suit Property, which shall remain in his exclusive possession and custody until further orders.
- ii. The Receiver shall cause the Suit Property to be vacated and in such regard may obtain the assistance of any law enforcement agency / regulatory body deemed expedient. The vacated Suit Property shall be sealed pending further orders of this Court.
- iii. The Receiver's remuneration shall be Rs. 100,000/- to be paid in advance by the plaintiffs in Suit 1921 of 2023. The Receiver shall be entitled to recover any expenses incurred in discharge of duty from the said plaintiffs.

¹⁵ Per *Rehmat Hussain Jafferri J* in *Saeed ur Rehman vs. Ehsanullah Khan Afridi* reported as *PLD 2007 Karachi 527*.

¹⁶ Per *Muhammad Ali Mazhar J* in *Asadullah Mirbahar vs. Ayesha Muzahir* reported as *PLD 2011 Karachi 151*.

¹⁷ Per *Adnan Iqbal Chaudhry J* in *Zamir Ahmed Khan vs. Muhammad Hassan Chiniyoon* reported as *2020 CLC 1189*.

¹⁸ Mr. Muhammad Arif Shaikh Advocate had sought to rely on *PLD 2023 SC 506*, however the authority is distinguishable in the present facts and circumstances *inter alia* as it pertains to unregistered sale deeds and not purported sale agreements.

- iv. The Receiver, appointed herein, shall remain at liberty to require further orders from this Court to undertake its task herein conferred and shall make a reference as and when considered expedient.
- v. The Pakistan Defense Officers' Housing Authority and the Sub Registrar I Clifton Town, defendants 5 and 6 herein, shall cause this order to be noted in the respective record of rights and shall ensure that no alienation takes place in respect of the Suit Property until further orders of this Court.

Summation

20. In summation, CMA 3820 of 2024 in Suit 211 of 2024 is dismissed and CMA 18975 of 2023 in Suit 1921 of 2023 is allowed in terms aforesaid. The office is instructed to place a copy hereof in each connected suit.

Judge