

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

**Present:**  
**Mr. Justice Muhammad Shafi Siddiqui, CJ**  
**Mr. Justice Jawad Akbar Sarwana**  
HCA 54 of 2015  
Abdul Rashid & another  
Versus  
Muhammad Usman & others

Hearing case

1. For order on CMA No.40/2024 (U/O VI R 17 CPC).
2. For hearing of CMA No.1497/2021 .
3. For hearing of CMA No.789/2020.
4. For hearing of CMA No.24/2020 (U/O I R 10 CPC).
5. For hearing of CMA No.1189/2019.
6. For hearing of CMA No.433/2015.
7. For regular hearing.

**Dated 15.01.2025**

Mr. Arshad Tayebaly, Advocate for the Appellants a/w  
Mr. Sameer Tayebaly Advocate.

Mr. Shafiuddin, Advocate for Respondent No.1.

Respondent No.11/16 Muhammad Ali Tak Cheepa Advocate  
present in person.

Mr. Khurram Abbas, Advocate for the intervenor.

Mr. Naeem Akhtar Talpur, Addl. Advocate General Sindh.

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**Muhammad Shafi Siddiqui, CJ.** - This appeal arises out of following order dated 06.02.2015 passed by learned Single Judge in Suit No.1010 of 2004:-

*“Through CMA 2677/2012 Defendants No.12 and 13 seeks appointment of Nazir as Receiver of the property bearing Plot No.E-16, SITE Karachi, to receive rent from the tenant and distribute the same amount amongst the co-sharers of the suit property. Counsel for the plaintiff has filed no objection to this application, dated 26.01.2015.*

*In view of no objection given by the counsel for the plaintiff, Nazir of this Court is appointed as Commissioner to collect the rent in respect of the said aforesaid property, and submit his report within a period of two weeks, after which question of distribution will be decided.*

*Adjourned to a date in office.”*

We have heard learned counsel for the parties and perused material available on record.

A suit for declaration, cancellation of documents, mandatory and permanent injunction was filed. Pleadings of plaint were amended whereby a property was added, which in terms of the impugned order is subjected to the recovery of rent via Nazir of this Court as commissioner.

Mr. Arshad Tayebaly has serious submissions regarding title of the subject property as according to him the title in no way provide any benefit to defendants No.12 and 13 who are disclosed as respondents No.11 and 12 in this appeal. It is their (appellants') case that the impugned order was passed only with the consent of those respondents whose interest is not obvious as per the title whereas the consent of the appellants being contesting defendants in the suit was never obtained. The impugned order is claimed to be without any reasoning.

The respondents' counsel on the other hand submit that by virtue of a supplementary deed a portion measuring 2.25 Acres of land was passed on to another buyer whereas rest of the portion is retained by all including the respondents. The original lease is available on record which discloses a total area of more than what was passed on to another set of individuals by way a supplementary deed hence their (respondents') interest was/is at stake when the impugned order was passed whereby an attempt was made to secure financial interest, however the benefits were not drawn by the respondents as the impugned order was suspended on 20.04.2015 i.e. on the first date of hearing when this appeal was taken up.

It seems that the impugned order is qualified only as an injunctive order whereby the pleadings of the parties, including those of defendants No.12 and 13 in the suit who are shown as respondents No.11 and 12 in this appeal, was taken into consideration; the application

bearing No.2677/2012, on which impugned order is passed, is yet to be disposed of as agreed by both learned counsel for both the parties.

It would be also unjustified if on the basis of arguments and pleadings of the parties in this appeal a firm view is taken by this Bench as it might deprive any of them from right of appeal vis-à-vis merits of the case. At best the initial adjudication of the application be made by the learned Single Judge, which may be termed as tentative in nature so that the aggrieved party may have a right of appeal, if so desire.

We therefore deem it appropriate, without commenting on merits of the case, to leave it to learned Single Judge to decide the application on the basis of the pleadings available on record and arguments of the parties that may be advanced before him at the earliest as a considerable time of ten years has lapsed on account of pendency of this appeal. Similarly, the parties may also take steps as far as recording of evidence in the matter is concerned and recording of evidence by way of commission shall also be taken into consideration by the parties and the learned Single Judge.

With the above understanding, instant High Court Appeal is disposed of along with listed applications.

**Chief Justice**

**Judge**