

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.298 of 2023

[Ashraf Ali Vs. Sarfaraz Khamisani & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:

Mr. Justice Muhammad Shafi Siddiqui C.J.

Mr. Justice Jawad Akbar Sarwana

Hearing case (Priority)

1. For orders on office objections a/w reply at 'A'.
2. For hearing of CMA No.5228/2023 (Stay).
3. For hearing of main case.
4. For hearing of CMA No.3623/2023 (Stay).

05.11.2024

Mr. Zia Ul Haq Makhdoom, Advocate for the appellant.
Mr. Rehan Kayani, Advocate for respondents No.1 to 5.
Mr. Mehran Khan, A.A.G. Sindh.

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Muhammad Shafi Siddiqui, C.J: We have heard both learned counsels and perused the impugned order. It seems that two plaintiffs have filed their respective suits. The first suit was filed by respondents No.1 to 5 as Suit No.1246/2023 wherein a property was claimed and an injunctive order was passed on 03.08.2023 and inspection was carried out, pursuant to an order. Appellant was not party to this suit, as claimed.

2. The appellant also claimed to have filed a suit bearing No.1253/2023 wherein an injunctive order was passed on 07.08.2023 in respect of the same property and the respondents were impleaded in the later suit. In respect of the same property there are two claimants, indeed both have filed suits according to their respective pleadings. The earlier one was granted injunctive order on 03.08.2023 in absence of appellant being impleaded, whereas in the later one, the injunctive order was passed on 07.08.2023. Thereafter, on 23.08.2023, the ad-interim order dated

03.08.2023 was confirmed (impugned order). It is the claim of the respondents that in the light of the Nazir report that they were dispossessed which fact was disputed by the appellant. The appellant is now facing contempt charges in the shape of CMA No.11070/2023 whereas while it was pending the possession was ordered to be handed over / restored to the respondents.

3. We are of the view that through some tangible evidence, it is yet to be determined that the respondents were ever dispossessed and / or the appellant was in absolute possession of the subject property. Under such circumstances, on account of disputed questions of facts as to the possession of the property, as an interim measure the possession should not have been ordered to be restored or handed over to the respondents. The respondents deem it within their right in claiming and asserting that they were in possession of the subject property and so does by appellant and after all it is to be determined through evidence or at least on the basis of affidavit in support of their application. The appellant was not arrayed as party in Suit No.1246/2023 filed by the respondents; hence he filed this appeal as his valuable rights are at stake. The appellant has moved an application under Order I Rule 10 CPC to be considered as necessary and proper party which is yet to be decided.

4. We, therefore, are of the view that the order directing the appellant to hand over possession or restore possession to the respondents is a premature one and an order of restoration of possession or otherwise should have been passed after hearing the parties including the appellant on the strength of their affidavits or if at all any evidence required, which may be decided by learned Judge. To the extent of handing over possession at this

interlocutory stage, the order is set aside and the application bearing CMA No.10917/2023 which in fact is an injunction application is restored to be fixed alongwith the application of the appellant to be impleaded as a party in Suit No.1246/2023 to be decided on merits. The appellant is also at liberty to move any application which he may deem fit and proper under the circumstances, as requested. The appeal in view of the above stands disposed of alongwith pending applications. The two suits be tagged together and if convenient to the learned Judge be heard.

CHIEF JUSTICE

JUDGE

Asif