

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.74 of 2024

[Muhammad Javed Vs. Mrs. Shehnaz Bano & others]

H.C.A. No.199 of 2024

[Muhammad Javed Vs. Mrs. Shehnaz Bano & 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

H.C.A. No.74 of 2024

Hearing case (Priority)

1. For orders on CMA No.2001/2024 (COC).
2. For orders on CMA No.2002/2024 (COC).
3. For orders on office objection a/w reply as at 'A'.
4. For hearing of main case.
5. For hearing of CMA No.453/2024 (Stay).

H.C.A. No.199 of 2024

Hearing case (Priority)

1. For orders on office objection a/w reply as at 'A'.
2. For hearing of main case.
3. For hearing of CMA No.1185/2024 (Stay).

12.11.2024

Mr. Zia-ul-Haq Makhdoom, Advocate for the appellant in
H.C.A. No.74 of 2024.

Malik Altaf Hussain, Advocate for the appellant in
H.C.A. No.199 of 2024.

Mr. Salman Hamid, Advocate for respondent No.1 in
both the appeals.

Mr. Saifullah, A.A.G. Sindh.

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Jawad Akbar Sarwana, J: Appellant, Muhammad Javed s/o Haji Hassan (hereinafter referred to as "MJ"), has filed these two appeals against two impugned Orders, one dated 06.02.2024 ("First Impugned Order") and another dated 14.05.2024 ("Second Impugned Order") passed by the learned Single Judge in Suit No.1554/2023.¹ At the heart of the two impugned Orders is the quest to ascertain the identity of the person in possession of French Beach Hut(s) located on Plot No.71, situated at Deh Lal Bhakhar, Tapo Gabopat Taluka, District Karachi West (measuring 2,000 sq.ft. (222 sq.yds. approx.). The learned Single Judge has attempted to decide this matter (of possession) while avoiding passing any remarks which may impact the future determination of rights on the Suit Land regarding its

¹ The impugned Order dated 06.02.2024 shows two suits in its title, namely, Suit No.1091/2023 and Suit No.1554/2023.

ownership, title, maintainability of lis, the original civil jurisdiction of the High Court, and other legal points which may be yet to be articulated and/or determined by the Court. We are inclined to adopt the abovementioned framework for deciding these appeals set out by the learned Single Judge in the impugned Orders. Therefore, all observations made by us herein, which Counsels may seek to rely upon impliedly as potentially our opinion, are not so and are tentative, not binding on the adjudicating forum(s) which will ultimately decide the points of fact and law on which parties are at variance, and subject to evidence and final determination before the proper forum. Finally, the observations we have made herein are for the sole purpose of determining the issue of possession, if at all possible, between the disputants of the Suit Land as pleaded in these appeals so far.

Counsel for MJ contends that he is the true and rightful owner of the Suit Land and has always been in possession of it along with his family, including at present (on each date of filing of the appeals). He argued that Plaintiff/Respondent No.1 in the Suit, Mrs Shehnaz Bano, through her Attorney, Mr Shamoon Zaki (hereinafter referred to as “SB”), are allegedly trespasser on the Suit Land. Counsel for SB has vehemently opposed MJ’s Counsel’s contentions. SB claim that after the grant of the Suit Land, s/he constructed a house/hut in the year 1994-1996 and has remained in continuous possession since 1994, ever since its transfer in MJ’s name until June/July 2023, when there have been series of attempts to dispossess and illegally encroach upon SB’s Suit Land. Counsel claimed that SB was in possession of the Suit Land while the First Impugned Order was still in force, until MJ dispossessed him. The Second Impugned Order restored his (SB) possession.

Heard Counsels and perused the two appeal files. The impugned Orders have their genesis in Nazir’s Report dated 31.07.2023 concerning the site inspection of the Suit Land on even date.² When the Nazir inspected the Suit Land on 31.07.2023, the Appellant, MJ, was not impleaded as a party in the suit(s). He applied to become a party in the suit(s) on 19.08.2023.³ Regardless, according to Nazir’s Report, in paragraphs 2, 4 and 6, the Nazir noted as follows:

² Nazir’s Report dated 31.07.2023 is available on page 205 of HCA No.74/2024.

³ Muhammad Javed’s Application under Order 1 Rule 10 CPC (CMA No.11923/2023) is available on pages 231-243 of HCA 74/2024.

“ . . .

2. A hut was found constructed and JC-65/A was written on the outer wall of the subject plot which is prima facie, freshly written; however, plaintiff claimed that the actual number of this Plot is 71. Mukhtiarkar claimed that plot JC-65/A is at his genuine position and Plot No.JC-71/A is situated in continuation.

3. . . .

4. In the subject plot, persons were found present inside upon calling Mr. Javeed S/o Haji Hassan bearing CNIC No.42401-96026589-3 appeared and claimed to be the owner of the subject plot and he showed the copies of title document which were provided to the Mukhtiarkar for verification and directed to submit his report during the course of the day...

6. . . .Plaintiff claimed that the outer boundary wall is recently constructed and also claimed that he has been recently evicted from the hut and the same hut is being used by their families for more than 20 years.

8. Adjoining properties were also inspected and observed as following:

S#	Plot No.	Remarks
1	JC-64/A	Found locked.
2	JC-65/A	Disputed Property
...
...
8	JC-71/A	Found empty and vacant, Mr Javeed S/o Haji Hassan claimed that this Hut belongs to the Plaintiff

“”

According to the learned Single Judge in the First Impugned Order based on the record perused by him, which presumably also included the Nazir’s Report mentioned above, it was ordered that “possession of the plaintiff [SB] in Suit No.1554/2023. . .for the. . .hut[s] is not liable to be disturbed and in case same is disturbed without due course of law coercive orders shall be passed”. MJ impugned this Order vide HCA No.74/2024, and obtained from the Division Bench ad-interim Order dated 23.02.2024 that:

“ . . .The relevant part of the impugned order at page 2, paragraph 2 perhaps gives an impression as if the subject Huts are in possession of respondent/plaintiffs or is being handed over. If that interpretation is sustained, per learned counsel, it would cause serious prejudice to the rights of the intervener/appellant. . .In the meantime in all fairness the parties to maintain status quo till next date.”

According to the record available in HCA No.199/2024, it appears that on 06.05.2024,⁴ SB obtained orders from the learned Single Judge for yet another site inspection of the Suit Land to be carried out by the Nazir. According to the Nazir's Report dated 11.05.2024,⁵ when he concluded the inspection of the Suit Land on 10.05.2024, he noted that:

“Conclusion: - It is pointed out that there is dispute regarding actual Hut No.71 or 65 as mentioned in earlier Nazir's Report dated 31.07.2023. However, the disputed Hut (subject property) was found totally demolished except one small room on rear side of the hut.”

Based on the series of events narrated above, in the facts and circumstances of the case, quite apart from who had possession of the Suit Land when the suits(s) were filed, we are unable to confirm without doubt that this matter (of possession) has gained any clarity even after the filing of the suit(s). The Nazir's two Reports concerning Suit Land possession are also unclear/vague. Suffice it to say that as per Nazir's Report dated 11.05.2025, it appears that the Suit Land, which was inspected by Nazir on 31.07.2024, as of 10.05.2024, has been totally demolished.

In the circumstances, the First Impugned Order dated 06.02.2024 and the Second Impugned Order dated 14.05.2024 are both set aside to the extent of possession of the Suit Land with a direction to all parties, i.e., the Appellant, Plaintiff/Respondent No.1, Private Respondent(s), and the Official Respondents—all parties—to maintain the status quo with respect to the disputed Suit Land that was found as of 11.05.2024 to be “totally destroyed”. The status quo in the Suit Land is to be maintained in terms hereof.

The two appeals are disposed of in the above terms.

JUDGE

CHIEF JUSTICE

⁴ Copy of the Court's Order dated 06.05.2024 passed in Suit No.1554/2023 is available on page 333 of HCA No,199/2024.

⁵ Nazir's Report dated 11.05.2024 in Suit No.1554/2023 is available on pages 349-351 of HCA No.199/2024.