

IN THE HIGH COURT OF SINDH, KARACHI

HCA No.139 of 2022

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

1. For orders on office objection
2. For hearing of main case
3. For hearing of CMA No.1055/22

18.02.2025

Mr. Mirza Mehmood Baig, advocate for appellants.

Mr. Ayaz Ahmed Ansari, advocate for respondent No.1.

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J U D G M E N T

MUHAMMAD IQBAL KALHORO, J:- Appellants have challenged an order dated 06.04.2022, passed by the learned Single Judge of this court on original side in Suit No.1243 of 2025 pending between respondents No.1, 2, 3 and respondents No.4 to 28. It appears that by the impugned order learned Single Judge has directed the Nazir of this court to take possession of the suit property from the persons who have occupied the same, depute a permanent guard at the cost of the plaintiffs till the matter is finally decided and to achieve the same goal, he may seek police assistance.

2. It appears that directions were issued to the Nazir on filing of an application by the plaintiffs apprising the court that some persons had illegally occupied/encroached upon portion of the land held in possession by Nazir in compliance of order dated 08.07.2021 passed earlier by the learned Single Judge in the suit. On such application, the Nazir was directed to visit the area and submit the report. The order was complied with and Nazir submitted a report dated 08.07.2021, the concluding para of which reproduced as under:-

“On 28.08.2021 the officials of undersigned proceeded on site with plaintiff, firstly they reached at the police station Garden West for police aid, thereafter they reached at the site it was noted that the lock fixed over the main gate with seal was found removed and other lock was fixed over the said gate, hence the staff officials returned back for want of permission for break open the lock.”

3. The impugned order reflects that along with the order Nazir had enclosed photographs of the subject property in confirmation of his report.

Then on hearing the plaintiffs and respondents, aforesaid order was passed by the learned Single Judge.

4. The appellants have filed this appeal with the prayer to set aside the said order and direct the learned Single Judge to make appellant as a party, record evidence and suspend the proceedings of the Nazir. It appears that appellants are not party in the suit and they have filed this appeal by contending that under the garb of impugned order, their properties is intended to be occupied.

5. Learned counsel appearing for the appellants has reiterated the above facts and has submitted that the appellants were not heard before the impugned order was passed which is adverse to their interest in the suit property.

6. On the other hand, learned counsel for respondents No.1 to 3 has contended that possession of suit property with the Nazir had already been ordered by learned Single Judge vide order dated 08.07.2021. When some strangers occupied a portion of the property, the plaintiffs moved an application intimating the Court about such fact. The court on their application directed the Nazir to confirm the position on the plot. And only on his report proceeded to pass the impugned direction to him, hence no illegality has been committed.

7. We have heard the parties and perused the material available on record including the impugned order. Admittedly, the appellants are not the party in the suit. Their remedy lies in moving an application under order 1 Rule 10 CPC before the learned Single Judge in the suit to be impleaded as party enabling them to present their point of view by filing a written statement. And only if their application is dismissed, they have the remedy of filing appeal against such order before this bench. Until and unless they are impleaded as a party in the suit and their point of view comes on record, their claim over the property is but shallow without any substance. It is only on becoming the party in the suit, they can file the relevant papers confirming their title over and interest in the property and not otherwise.

8. Through the impugned order, the learned Single Judge has reiterated the directions to Nazir to keep in possession the suit property without any hindrance, which the learned Single Judge had already issued in the order dated 08.07.2021 in the same proceedings. Admittedly, the appellants did not challenge the said order dated 08.07.2021, in compliance of which, the Nazir had taken over possession of the suit property and sealed it. The impugned order was passed only when through an application by the plaintiffs,

encroachment on a portion of the property by some strangers was alleged which on report of the Nazir was confirmed. After such confirmation, the learned Single Judge had no recourse in law except to issue the same directions afresh to the Nazir to keep the suit property in his possession independent of any interference by any party. If the appellants feel aggrieved by it, they may file an appropriate application before the learned Single Judge for its recall on the grounds and facts to be proved by them, but only after succeeding in becoming the party in the suit. When the appellants are not party to the suit and apparently have not filed any title documents in respect of the property in this appeal, we while hearing an appeal against an interim order cannot appreciate their point of view and declare them as owner of the property or in lawful possession thereof, which patently is against the interest of the parties in the suit pending a trial.

9. Hence, we find no merits in the appeal and dismiss it accordingly along with listed application without any order as to costs.

JUDGE

JUDGE