

IN THE HIGH COURT OF SINDH, KARACHI

HCA No.326 of 2024

Present:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Muhammad Osman Ali Hadi

1. For hearing of main case
2. For hearing of CMA No.2060/24

12.02.2025

Mr. Zeeshan Abdullah, advocate for appellant a/w Sidra Hussain.

Mr. Asad Kazmi, advocate for respondent No.1.

Syed Ali Mehdi, advocate for respondent No.2.

Ms. Bushra, advocate for respondent No.7.

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ORDER

MUHAMMAD IQBAL KALHORO, J:- A suit for administration was filed by the respondents in respect of three properties including Bungalow No.24-B/1, Circular Street, DHA Phase-II, Karachi. In the suit a preliminary decree had already been passed on 24.02.2023. For further proceedings, the matter was pending before the learned Single Judge of this Court, when on 28.08.2024 taking note of Nazir's report that aforementioned property, purportedly rented out to appellant, was being misused for commercial purpose as a guest house, learned Judge appointed Nazir of the Court as a receiver to take possession of the said property (after vacating the appellant).

2. Appellant has filed this appeal stating that this order has effected adversely his right as a tenant under the law which being special law has an overriding effect over the general law. His counsel further submits that at the time when this order was passed appellant was not even heard or given a notice. Meanwhile, while acting upon this order, Nazir has taken over possession of the said property for the appellant and sealed it.

3. On the other hand, learned counsel for respondent No.1 has opposed this appeal stating that the appeal is not maintainable and the appellant was issued several notices before the order but he did not attend the Court. However, respondent No.2, purportedly a co-owner, although as per record the property stands in the name of mother of respondents, has stated that the appellant is a tenant and he used to collect rent from him.

4. We have heard the parties. The most important aspect to us appears to be the fact that before passing the impugned order leading to taking over possession of the property, the appellant was neither issued a notice, nor heard by the learned Single Judge, although one of the co-owners before us

has admitted the appellant to be the tenant in the said premises. Even the learned Judge before ordering eviction from the property did not try to find out about its occupants and their occupancy and any right to occupy the said property. It is a settled proposition that tenant has some rights in law and unless he is heard, an order of the kind enforcing his eviction from the premises cannot be passed, and that too without even giving him a notice and hearing him. Nonetheless, in this case not only the order has been passed but it has been implemented and the possession of the property has been taken away from the appellant.

5. Therefore, without going into merits of the case or determining rights of the appellant, if any, we would like to remand the case to the learned Single Judge with direction to afford an opportunity of hearing to the appellant on the issue and then decide it. However, till such issue is decided by the learned Single Judge, the parties shall maintain status-quo. At this juncture, learned counsel for the appellant has submitted that his belongings and articles are lying in the said property, which he may be allowed to remove in presence of Nazir and respondents. Nazir for the purpose as above may desecrate the property and allow the appellant to remove his articles in presence of respondents and then re-seal the property as already ordered by the learned Single Judge till the issue is resolved.

6. This appeal is disposed of in the above terms alongwith listed application. However, this decision shall not affect the course of pending proceedings arising out of preliminary decree.

JUDGE

JUDGE