

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

High Court Appeal No.335 of 2014

Appellants : Muhammad Akhter S/o (Late) Ghulam
Rasool & others through S. Abid Hussain
Shirazi, Advocate

Respondents : Muhammad Ashraf S/o Mian Karam Din
& others through Mr. Muhammad
Rehman, Advocate holding brief for Mr.
Farrukh Usman, Advocate for
Respondents No.1&2

Ms. Afsheen Aman, Advocate for the
Respondent No.4

Date of Hearing : 01.04.2026

Date of Judgment: 01.04.2026

J U D G M E N T

Amjad Ali Sahito, J. This High Court Appeal is directed against the order dated 20.11.2014 passed by learned Single Judge in Suit No.499 of 2005 with the following observation:

“I am therefore of the view that such subleases in favour of persons who are lawfully entitled may be executed. However, while executing subleases in favor of occupants/subsequent buyers/allottees, the Nazir may issue notices to the original allottees and if required a publication may be made in any newspaper having large circulation. Although such exercise whereby scrutiny was made has already been carried out however the sublessee shall indemnify the defendants from all consequences arising out of the execution of such subleases. Such subleases of course would be retained by the Nazir unless the issue of any outstanding amount or the entitlement of sublease would be resolved through evidence. Such exercise may be resolved by appointing a commissioner who may record

the evidence of individual occupants/allottees/sublessee expeditiously.”

2. Succinctly stated, the facts of the case are that late Ghulam Rasool, being the father of Plaintiffs No.1 and 3 and the husband of Plaintiff No.2, initiated and developed a project known as “Salala Apartment” constructed on Plot No.18/12, CL/7, Dr. Daudpota Road, Cantt., Karachi or the plot of land admeasuring 1991 square yards or thereabout. The said project was duly constructed, and the units therein were sold to various purchasers, who were also placed in possession thereof prior to the execution of formal sublease instruments. However, in the year 1988, the said Ghulam Rasool expired without executing, or causing to be executed, the requisite lease and/or sublease deeds in favour of the respective owners/occupants of the apartments and shops.

3. Subsequently, the respondents instituted the subject suit, accompanied by a list of occupants, owners, and allottees. During the pendency of the proceedings, an application under Order I Rule 8 of the Code of Civil Procedure, 1908 was filed and allowed, whereafter publication was effected in the daily “Jang” dated 29.09.2008, thereby rendering the suit a representative action. It further transpires that, pursuant to orders dated 05.09.2008 and 03.02.2011, a Commissioner was appointed to ascertain the identity of persons in actual possession of the units, the nature and basis of such possession, and the extent of any outstanding dues payable by them. Upon completion of the said exercise, a comprehensive report was submitted.

4. Thereafter, it was recorded in the proceedings that the respondents had no objection to the execution of subleases in favour of the allottees, subject to deposit of the requisite amounts before the Nazir, who was accordingly directed to execute the subleases. However, the said process could not be brought to fruition, as only two original allottees were available, while the remaining claimants comprised subsequent purchasers.

5. Learned counsel for the appellants contends that the impugned order suffers from serious legal infirmity and misapplication of settled principles of law; that the learned Single Judge failed to appreciate that subleases cannot be directed to be executed in favour of subsequent purchasers or occupants who are not original allottees, as no contract exists between such persons and the appellants; that the relationship, if any, remains strictly confined to the original allottees in terms of the allotment scheme, and any private arrangement or transfer does not bar the appellants; that the learned Single Judge erred in treating the proceedings under Order I Rule 8 CPC as conclusive determination of rights, whereas the representative character of the suit does not dispense with the requirement of strict proof of title and lawful entitlement, particularly in matters relating to immovable property. Learned counsel further submits that reliance placed upon the orders dated 05.09.2008 and 03.02.2011 is misconceived, as the said orders merely contemplated a preliminary exercise through the Commissioner and the Nazir and did not finally adjudicate upon the entitlement of subsequent purchasers. It is further contended that the directions issued expose the appellants to serious prejudice, as execution of subleases in favour of persons claiming through unverified or defective documents carries the risk of fraud, duplication of claims and multiplicity of litigation. It is also argued that the question of outstanding dues, liabilities and compliance of allotment conditions has not been conclusively determined, and in absence thereof, no direction for execution of subleases could have been issued. Learned counsel further submits that each claimant is required to establish independent entitlement through proper evidence, and the impugned order, even with conditions, amounts to a premature exercise of jurisdiction.

6. Mr. Muhammad Rehman, Advocate holding brief for Mr. Farrukh Usman, Advocate for Respondents No.1&2, who is reported to be unwell. However, Ms. Afsheen Aman, learned counsel for the Respondent No.4 is present and she contends

that the learned Single Judge rightly treated the suit as a representative one under Order I Rule 8 CPC, and all persons in occupation, including subsequent purchasers who have acquired rights from the original allottees, were duly represented. It is submitted that pursuant to the orders dated 05.09.2008 and 03.02.2011, a comprehensive exercise was carried out by the Commissioner and the Nazir to ascertain actual possession, entitlement, and outstanding dues of occupants, and the respondents fully cooperated in such proceedings. Learned counsel further submits that the impugned order correctly recognizes the rights of lawful occupants and subsequent purchasers who have invested in the property and are in physical possession, and denial of subleases would cause injustice. It is also contended that the safeguards provided in the impugned order, including issuance of notices to original allottees, publication in a newspaper if necessary, and indemnification in favour of the appellants, adequately protect the appellants from any prejudice or legal consequences. It is further submitted that the respondents' position is consistent with the principles of equity and justice, and no legal bar exists to prevent the execution of subleases in favour of persons who are lawfully entitled.

7. We have heard learned counsel for the parties and have carefully examined the record.

8. The dispute, in essence, pertains to the entitlement of occupants, including subsequent purchasers, to seek execution of subleases in respect of Salala Apartment, a project admittedly conceived and initiated by late Ghulam Rasool, who, during his lifetime, constructed the building, alienated its units, and delivered possession thereof, but expired prior to completion of the requisite formalities concerning lease and sublease documentation. The record further demonstrates that the suit was appropriately treated as a representative action under Order I Rule 8 of the Code of Civil Procedure, 1908. It is also evident that, vide order dated 05.09.2008, the learned Single Judge, before proceeding further in the matter, considered it

expedient to appoint a Commissioner to undertake a comprehensive factual inquiry for the purposes of ascertaining the identity of persons in actual possession of the subject units, the nature and basis of such possession, and the extent of any outstanding liabilities payable by them. The said order further acknowledged the pendency of an application under Order I Rule 8 CPC and directed its disposal through publication, thereby ensuring that all stakeholders, including occupants and claimants, were duly encompassed within the ambit of the representative proceedings. Subsequently, through order dated 03.03.2011, the statement made on behalf of the defendants, indicating no objection to the execution of subleases in favour of the allottees, subject to deposit of requisite amounts and observance of prescribed safeguards, was recorded, and a structured mechanism was devised through the Nazir for execution of subleases, while simultaneously securing the amounts and documents pending final adjudication of the issues involved.

9. In the aforesaid backdrop, the contention advanced by the appellants, that the impugned order travels beyond the scope of the earlier directions or that it unlawfully confers rights upon subsequent purchasers, does not merit acceptance. The order dated 05.09.2008 itself envisaged a comprehensive verification process, not restricted to the original allottees but extending to actual occupants and persons claiming through them, whereas the subsequent order dated 03.03.2011 delineated a conditional framework for execution of subleases. The impugned order, therefore, constitutes a logical and lawful continuation of the earlier proceedings, whereby the learned Single Judge, upon receipt of the Commissioner's report and completion of the procedural requirements under Order I Rule 8 CPC, has sought to regulate and enforce the rights of persons found in possession, subject to due verification, discharge of outstanding dues, issuance of notice to original allottees, and furnishing of indemnities. Indeed, the impugned order effectively addresses the appellants' concerns relating to absence of privity, potential risk of fraud, and unresolved liabilities.

10. It is pertinent to observe that the predecessor-in-interest of the appellants had, during his lifetime, already parted with possession of the subject units. Thereafter, possession inter se the occupants, owners, and transferees has been transferred over time, a circumstance which cannot be disregarded, particularly in view of their long-standing possession and the fact that their status has been duly verified through a court-supervised process. The proceedings having been instituted in a representative capacity, with due notice and participation ensured, the interests of all affected parties stood adequately safeguarded. The impugned order neither dispenses with the requirement of establishing lawful entitlement nor confers ownership per se; rather, it provides a structured and transparent mechanism for determination and enforcement of rights in consonance with the earlier judicial pronouncements.

11. For the foregoing reasons, we find no illegality or material irregularity in the impugned order warranting interference of this Court. Consequently, this appeal is dismissed being devoid of merits.

JUDGE

JUDGE

KAMRAN/PS