

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP No.D-1654 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
------	-----------------------------------

Before:
Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 28.04.2026

Mr. Mir Muhammad Ali Talpur, Advocate for the Petitioner.

M/s. Muhammad Nadeem Khan and Ansarullah, Advocates for Respondent No.1.

Mr. Abdul Jaleel Zubedi, Additional Advocate General Sindh.

ORDER

Adnan-ul-Karim Memon, J. – The Petitioner, being aggrieved by the Judgment and Decree dated 06.03.2026 passed by the Learned Special Court for Cooperative Societies, Karachi Division in Society Suit No. 543 of 2023, has invoked the constitutional jurisdiction of this Court. Through the impugned judgment, while the Learned Trial Court partly decreed the suit, it declined to grant the principal relief of declaration and cancellation of the subsequent lease, and instead awarded monetary compensation against the previous management of the Society.

2. The Petitioner’s counsel asserts that petitioner is the lawful owner of the suit property, Plot No. 1-A/28, situated in Madras Cooperative Housing Society, Karachi, by virtue of a registered lease dated 27.08.2008. His title is rooted in longstanding membership of the Society since 1970, followed by allotment through ballot, issuance of share certificate, possession order, and eventual execution of the registered lease. The Petitioner has remained in possession and has consistently fulfilled all financial obligations towards the Society. The dispute arose in 2022 when, upon seeking an NOC for construction, the Petitioner discovered that a subsequent lease dated 24.12.2021 had been issued in favour of Respondent No.1. Upon inquiry, it transpired that the said lease was based on a purported allotment made in 2015 to Respondent No.2, long after the Petitioner’s registered lease. The Petitioner maintains that such subsequent allotment and lease are illegal, void ab initio, and result from collusion and fraud, particularly as no lawful cancellation of his lease or membership was ever effected. The Petitioner approached the competent authorities and was directed to file a suit before the Special Court, which he pursued diligently. Evidence was led by both parties. The Trial Court, while acknowledging the validity of the Petitioner’s lease and the illegality of the purported cancellation, nonetheless granted relief to Respondent No.1 on the premise of her being a bonafide purchaser, and

effectively allowed her to retain the property. The Petitioner challenges this finding as legally unsustainable, arguing that Respondent No.1 could not qualify as a bonafide purchaser, as she admittedly had knowledge that the plot was previously allotted and “cancelled.” Moreover, her title is derived from documents subsequent in time to the Petitioner’s registered lease, and she failed to prove payment of consideration or lawful transfer. It is further contended that a registered instrument cannot be displaced except through proper legal proceedings for cancellation, which were never undertaken. The Petitioner also assails the impugned judgment on the ground that the Trial Court granted relief beyond the pleadings, failed to properly appreciate the evidence, and passed a decree which is practically inexecutable, as it directs recovery from unidentified “previous management.” It is contended that the judgment has resulted in grave miscarriage of justice by depriving the Petitioner of his lawful property despite clear and prior title. He prayed to allow this petition.

3. Respondent No.1, in her counter affidavit, submits that the constitutional petition is not maintainable and is liable to be dismissed with costs, alleging that the Petitioner has misrepresented facts. She submits that the impugned judgment dated 06.03.2026 is a reasoned and lawful decision requiring no interference. She claims to be a bonafide purchaser, having acquired the property from Kamal Khan, obtained mutation in 2018, and a registered lease in 2021 after due process. She further asserts that the Petitioner’s membership had already been cancelled and was never challenged, leaving him with no subsisting rights. Respondent No.1 maintains that she conducted due diligence, paid lawful consideration, and denies the Petitioner’s possession, stating instead that she exercised ownership rights, including approved construction. She also states that she subsequently sold the property to a third party after completing formalities. The Trial Court found that although the Petitioner had a prior registered title (2008) with supporting documents and possession, Respondent No.1 also held a complete chain of title and qualified as a bona fide purchaser. It held the Society responsible for issuing duplicate title and, instead of restoring possession, granted monetary compensation to the Petitioner.

4. The learned AAG is of the view that the matter needs to be remanded to the trial court for fresh decision after hearing all concerned parties due to unreasonable decision which has caused miscarriage of justice.

5. We have heard the heard counsel for the parties present in court and has perused the record with their assistance.

6. It appears that the learned trial Court partly decreed the petitioner’s/Plaintiff’s suit while dismissing it against respondent/ defendant No.1. It held that the dispute arising from issuance of two leases over the same property

fell within its jurisdiction under the relevant provisions of the Specific Relief Act, 1877 and the Sindh Cooperative Societies Act, 2020. On merits, the trial Court found that the petitioner/Plaintiff had successfully established a valid and prior title through a complete documentary chain culminating in a registered lease dated 27.08.2008. This title was supported by longstanding membership, allotment, possession, and continuous payments, and was not effectively challenged by the respondents/defendants. The Court concluded that the petitioner's/Plaintiff's title was lawful, perfected, and earlier in time. At the same time, the Court held that Defendant No.1 had also established a facially valid chain of title based on subsequent allotment, transfers, mutation, and a registered lease dated 14.12.2021, along with official records and approvals. In the absence of proof of fraud or prior notice, she was treated as a bonafide purchaser for value without notice, entitled to legal protection. The Court trial attributed fault primarily to the Society, holding that it had acted malafide and beyond its authority by issuing a second lease over an already leased plot, without lawful cancellation of the petitioner's/Plaintiff's rights. However, considering the equities in favour of respondent/defendant No.1 as an innocent transferee, the trial Court declined to cancel her lease. Instead, the trial Court granted substitutionary relief to the petitioner/Plaintiff by directing the previous management of the Society to pay compensation equivalent to the prevailing market value of the suit property, along with markup at 12% per annum, and additional general damages of Rs. 2,000,000 for mental distress and litigation hardship. The claim for injunction against respondent/defendant No.1 was refused, and no damages were awarded against her due to lack of malafides. Accordingly, the suit was decreed only to the extent of monetary compensation against the Society's previous management, while the claim against respondent/defendant No.1 was dismissed.

7. It appears that although the learned trial Court correctly appreciated that the Petitioner held a prior, valid, and lawfully executed registered lease dated 27.08.2008, it fell into patent legal error in declining the consequential relief of declaration and cancellation of the subsequent lease. Once the trial Court returned a categorical finding that the Petitioner's title was "lawfully perfected" and "earlier in time," the inevitable legal consequence was to protect such title against any subsequent, inconsistent, or competing instrument.

8. It is a settled principle of law that a subsisting registered instrument cannot be defeated or rendered nugatory by issuance of a subsequent lease over the same property without its lawful cancellation through due process. Admittedly, no such lawful cancellation of the Petitioner's lease or membership was ever proved on record. The trial Court itself disbelieved the alleged cancellation relied upon by the Respondents, yet failed to draw the necessary legal inference flowing therefrom. The finding of the trial Court treating

Respondent No.1 as a bona fide purchaser is equally unsustainable. The protection of a bona fide purchaser under Section 27(b) of the Specific Relief Act, 1877, is conditional upon absence of notice actual or constructive of a prior interest.

9. In the present case, the record reflects that Respondent No.1 was aware that the plot in question was allegedly a “cancelled plot,” which by its very nature constituted notice of a pre-existing claim. Such knowledge imposes a duty of heightened inquiry, and failure to discharge such duty disentitles a purchaser from claiming protection as a bona fide transferee. Moreover, the entire chain of Respondent No.1 originates from documents subsequent in time to the Petitioner’s registered lease, which, in law, cannot override an earlier vested right. The Trial Court further misdirected itself in shifting the burden upon the Petitioner to prove fraud or collusion attributable to Respondent No.1, whereas in law, once a prior registered title is established, the burden shifts upon the subsequent claimant to justify the legality of the later transaction. The Respondent No.1 failed to establish a lawful foundation for issuance of a second lease during the subsistence of the Petitioner’s title. Additionally, the substitutionary relief granted by the trial Court is legally flawed and inequitable. The direction to recover compensation from the “previous management” of the Society, who were not properly before the Court, renders the decree largely in-executable. More importantly, monetary compensation cannot be treated as an adequate substitute for deprivation of immovable property where the petitioner/Plaintiff has established a clear legal title. The law consistently favors restoration of property rights rather than their forced conversion into damages, particularly in absence of any legal impediment. The trial Court also exceeded its jurisdiction by granting relief in favour of Respondent No.1 which was neither specifically pleaded nor prayed for, thereby travelling beyond the scope of pleadings in violation of settled principles of civil jurisprudence.

10. In these circumstances, the impugned judgment and Decree suffers from material misreading of evidence, misapplication of settled legal principles, and failure to exercise jurisdiction in accordance with law, resulting in grave miscarriage of justice. The findings regarding protection of Respondent No.1 as a bona fide purchaser, as well as denial of declaratory and injunctive relief to the Petitioner, are therefore not sustainable.

11. When confronted this legal position of the case, both sides after arguing the matter at some length, agreed that the impugned Judgment and Decree dated 06.03.2026 passed by the Learned Vth Senior Civil Judge, Karachi West, in Society Suit No. 543 of 2023, be set aside and the matter be remanded to the trial Court for fresh decision.

12. Consequently, with the consent of the parties present in court, the impugned Judgment and Decree dated 06.03.2026 cannot be allowed to stand and are set aside, with directions for fresh adjudication/decision strictly in accordance with law, after properly determining the competing claims of title in light of the principles governing priority of registered instruments and absence of lawful cancellation. The matter shall be decided expeditiously, preferably within a period of two month. In the meantime, the interim order already operating in the petition shall continue till final decision by the trial Court.

13. Accordingly, the petition along with pending application(s) stands disposed of in the above terms.

JUDGE

JUDGE

Shafi