



the suit property be transferred back to him by defendant No.1. Initially, defendant No.1 did not agree, but due to intervention by the family, the suit property was conveyed in favour of the plaintiff by defendant No.1 by executing a registered conveyance deed dated 25.08.2003. Thereafter, the plaintiff retained possession of only the ground floor of the suit property, and defendant No.1 took over possession of the upper floor thereof consisting of a factory, in contravention to the plaintiff's absolute ownership and title. Defendant No.1 allowed defendants 2 to 4 to carry on business at the said upper floor in consideration of Rs.70,000/- per month against the interest of the plaintiff causing financial loss to him. The plaintiff demanded peaceful possession of such portion of the suit property which was in the defendant No.1's possession, but defendant No.1 refused.

3. This Suit was filed by the plaintiff in the above background praying *inter alia* that defendants be directed to handover to him peaceful possession of the upper floor of the Suit property ; the defendants be directed to pay to him mesne profits at the rate of Rs.70,000/- per month as well as utility charges and property tax in respect of the upper floor ; and, the defendants be restrained from creating any impediment by way of lease, transfer, lien or alienation in respect of the upper floor. The listed applications have been filed by the plaintiff for the grant of temporary injunction and appointment of Receiver. Defendant No.1 was duly served, and he received notices on behalf of defendants 2 to 4 also as per the bailiff's report. On 03.12.2012, Mr. Ayaz Ali Chandio advocate appeared on behalf of the defendants, when he confirmed that he had received copies of the listed applications, and requested for time to file counter affidavits in reply thereto. On the said date, after granting 10 days' time to the learned counsel at his request to file counter affidavits and to supply copies thereof to the learned counsel for the plaintiff, the hearing of the listed applications was adjourned to 17.12.2012. However, when this matter was taken up on 17.12.2012, counter affidavits had not been filed by the learned counsel for the defendants, and he submitted that he was ready to make his submissions.

4. Mr. Habib-ur-Rehman, learned counsel for the plaintiff, submitted that defendant No.1 is in illegal possession of the upper floor of the suit property, as he occupied the same without the consent of the plaintiff and without any consideration. He further submitted that defendant No.1 is neither the owner / co-owner of the suit property, nor a tenant or licensee thereof, therefore, his status vis-à-vis the portion in his possession is that of a trespasser and

usurper. He urged that possession of defendants 2 to 4 is also illegal and they are also trespassers, as they were allowed to carry out business on the upper floor by defendant No.1, who himself is in illegal possession as a trespasser and usurper. The learned counsel contended that the plaintiff, being the sole and absolute owner of the suit property, is entitled not only to the possession of the upper floor, but also to the mesne profits and other amounts in respect thereof claimed in this Suit. It was pointed out by the learned counsel that, despite the *status quo* order passed in this Suit on 07.05.2012, the defendants made illegal structural changes and additions inside the upper floor and on the roof top. He submitted that the defendants are liable to be restrained, jointly and severally, from creating any type of third party interest whatsoever in the suit property, and also from carrying out further alterations / additions therein. It was urged that the appointment of a Receiver is the only way through which the suit property can be preserved and the plaintiff's valuable vested rights therein can be safeguarded during the pendency of the Suit, especially with regard to the mesne profits claimed by the plaintiff.

5. In support of his submissions, Mr. Habib-ur-Rehman relied upon (i) *Jehan Khan V/S Province of Sindh and others, PLD 2003 Karachi 691*, (ii) *Mst. Saeeda Khatoon V/S Haji Zangi Khan and others, 2009 YLR 175*, (iii) *Saeed ur Rehman V/S Ehsanullah Khan Afridi and 4 others, PLD 2007 Karachi 527*, (iv) *Aftab Ahmed Mufti and another V/S Mst. Seema alias Zareena, 1988 CLC 1567*, (v) *Muhammad Parial V/S Bashir Ahmed and others PLD 1957 (W.P.) Karachi 625*, and, (vi) *Parmanand Patel (D) L.Rs. and other V/S Sudha A. Chowgule and others, AIR 2009 Supreme Court 1593*.

6. Mr. Ayaz Ali Chandio, learned counsel for defendant No.1, submitted that all the allegations made by the plaintiff against defendant No.1, are incorrect, misleading and malafide. According to the learned counsel, the possession of defendant No.1 is not illegal, as he entered into the suit property and is carrying out his business on the upper floor thereof since long with the consent of the plaintiff. It was stated by him that such consent / permission was extended orally by the plaintiff, and defendant No.1 does not have any written document in this behalf. The ownership of the plaintiff in respect of the entire suit property, including the upper floor, was admitted by the learned counsel. It was also admitted that defendant No.1 has not paid nor is he paying any consideration to the plaintiff for the possession, use and occupation of the upper floor. The learned counsel submitted that the plaintiff never demanded from defendant No.1 possession of the upper floor, or any

amount in consideration thereof, prior to the filing of this Suit. He prayed that these applications be dismissed as the same are malafide, and have been filed by the plaintiff with ulterior motives.

7. In his rebuttal, the learned counsel for the plaintiff reiterated the submissions made by him. I have heard the learned counsel for the parties, and have also perused the record. It appears that, in pursuance of the order passed on 29.08.2012, the Nazir of this Court was directed to inspect the entire property (described in paragraph 4 of the plaint), and to submit his report with regard to possession thereof. In compliance of the said order, the Nazir submitted his report dated 06.09.2012 along with photographs. As per his said report, one Moula Bux was present at the site, who stated that he was the chowkidar for both, the plaintiff and defendant No.1, and that the ground floor was in possession of the plaintiff and the remaining property was in possession of defendant No.1 ; there were ground, mezzanine and one floor in the building ; there was one warehouse at the ground floor which was in the possession of the plaintiff with several workers working therein ; the son of the plaintiff's tenant was found at the said ground floor warehouse ; the door of the mezzanine floor was found locked, but the same was opened by defendant No.1, who stated that plaintiff also has its key ; two offices inside the mezzanine floor were found to be in possession of defendant No.1, and two offices therein were in possession of the plaintiff ; the plaintiff stated that the entire mezzanine floor was in his possession and he had given permission to defendant No.1 to use the same ; on the first floor, a stitching department was found with a large number of workers ; defendant No.1 stated that the first floor was in his possession ; defendant No.4, who was also present there, stated that he was the contractor for defendant No.1 and was working under him, which fact was also confirmed by one worker ; on the rooftop, two rooms were found, wherein the articles of defendant No.1 were found stored ; the construction of the said two rooms appeared to be new ; possession of these two rooms on the rooftop was claimed by defendant No.1 ; and, four bathrooms without roof were also found constructed on the rooftop. In his said report, it was concluded by the Nazir that the entire ground floor and two rooms at the mezzanine floor were in exclusive possession of the plaintiff, and defendant No.1 was in possession of the first floor, the rooftop, and two rooms at the mezzanine floor. It is to be noted that none of the parties filed objections to the Nazir's report.

8. It is well-established law that appointment of a Receiver is one of the harshest remedies under the civil law ; the appointment and removal of a Receiver is a matter that is purely discretionary ; and, such discretion must be exercised by the court judiciously with great caution keeping in view the facts and circumstances of the case. The submissions made by the learned counsel for defendant No.1 clearly indicate that defendant No.1 has not disputed the title of the plaintiff in respect of the entire property, including the portions that are in his possession ; and, defendant No.1 is enjoying possession without paying any consideration to the plaintiff. Defendant No.1 has claimed that he is carrying out his business on the upper floor of the suit property with the consent of the plaintiff, but he does not have any written document in this behalf as the plaintiff's purported consent was oral. This assertion has not only been strongly denied by the plaintiff, but he has also filed this Suit against defendant No.1 for possession and mesne profits. Under ordinary circumstances, there would have been no impediment in appointing a Receiver in this case for taking over the possession from defendant No.1. However, keeping in view the Nazir's report, I am of the view that the facts and circumstances of this case do not permit the exercise of discretionary relief of appointment of a Receiver for possession, as the question as to whether the possession of defendant No.1 is unauthorized and illegal, or he is in occupation with the plaintiff's consent, cannot be decided without evidence. It has to be kept in mind that the effect of appointing a Receiver is to dispossess the person in possession. Once a Receiver is appointed, the property comes into *custodia legis* for the benefit of all those who ultimately are found to be the true owners thereof. By appointment of a Receiver, the title of the property remains unaffected. It is to be noted that the title of the suit property is not disputed, and such question is not the subject matter of this Suit. In the cases relied upon by the learned counsel for the plaintiff, wherein Receiver had been appointed, the title of the suit property was disputed. Therefore, the said cases are not applicable to the instant case as far as the question of taking over possession by the Receiver is concerned.

9. The view expressed by me in the preceding paragraph does not mean that defendant No.1 should be given a free hand to enjoy the possession without any consideration, or the suit property should be allowed to be wasted during the pendency of the Suit. There are other equally effective measures that can be ordered by the Court to ensure that the Suit property is preserved and *status quo* is maintained in respect thereof during the pendency of the Suit ; and, also to secure the claim made in respect thereof by the plaintiff. Under Order XL Rule (1)(d) CPC, where it appears to the Court to be just and convenient, the Court may by order confer upon the Receiver powers *inter alia* for collecting rents and

profits in respect of the suit property. It is an admitted position that defendant No.1 is enjoying possession without paying any consideration to the plaintiff. It would be, therefore, just and convenient to appoint a Receiver to the extent of collecting a reasonable consideration from defendant No.1 for his admitted occupation, use and enjoyment of such portions of the suit property which are in his possession. The plaintiff has claimed in this Suit Rs.70,000/- per month as mesne profits. It is yet to be decided as to whether the plaintiff is entitled to mesne profits or not, and if so, to what extent and at what rate. Keeping in view the portions / area in possession of defendant No.1 and also the prevailing rate of rent, the amount of Rs.70,000/- per month for such portions / area, appears to be justified.

10. In the case of *Saeed-ur-Rahman* (supra), it was held *inter alia* by a learned Division Bench of this Court that the relief granted by appointment of a Receiver *pendente lite* bears in many respects a close analogy to that by temporary injunction, as such, both are essentially preventive in nature being properly used only for the prevention of future injury, rather than for the redress of past grievances, and both have one common object insofar as they seek to prevent the *res* or subject matter of the litigation unimpaired.

11. In view of the above discussion, it is my considered opinion that the plaintiff has made out a case for the grant of temporary injunction, and also for appointment of Receiver to the extent of collecting a reasonable consideration from defendant No.1 for the defendant No.1's admitted occupation, use and enjoyment of such portions of the suit property which are in his possession. Such an order will not only preserve the suit property during the pendency of the Suit, but will also secure the plaintiff's claim, if any, arising therefrom. Even otherwise, the factual averments and allegations made on oath by the plaintiff in the listed applications, have not been denied by any of the defendants. It is a settled law that in such a situation, the factual averments and allegations made on oath are to be accepted as true.

12. Accordingly, the defendants are restrained from selling, transferring, alienating or encumbering the first floor, the roof top, and the two rooms on the mezzanine floor of the suit property, or any part thereof, which are in possession of defendant No.1 as per the Nazir's report dated 06.09.2012 ; handing over the possession thereof to any third party ; raising any type of temporary or permanent construction, or carrying out any type of alteration, modification or addition in any of the above mentioned portions ; and, removing any of the plant, machines, equipment, furniture, assets, fixtures or fittings,

installed or lying at any of the above mentioned portions in possession of defendant No.1.

13. The Nazir is appointed as Receiver to collect a sum of Rs.70,000/- (Rupees seventy thousand only) per month from defendant No.1 regularly with effect from September 2013, and to invest all such amounts regularly in any profit bearing Government scheme.

14. To ensure compliance of this order, the Nazir / Receiver shall inspect the entire property once again, and shall submit his report within ten (10) days, wherein he shall state the latest position vis-à-vis the possession of defendant No.1 and further construction, alteration or modification, if any, carried out by him after the first inspection. Along with his report, the Nazir / Receiver shall submit an inventory of all the plant, machines, equipment, furniture, assets, fixtures and fittings, installed or lying at any of the portions in possession of defendant No.1. The fee of the Nazir / Receiver is fixed tentatively at Rs.25,000/- (Rupees twenty five thousand only), which shall be borne by the plaintiff and defendant No.1 in equal proportions.

The listed applications are allowed in the above terms. The observations made in this order are tentative in nature, which shall not affect the case of either of the parties.

**J U D G E**