

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

H.C.A. No.227, 250 and 251 of 2018

[Ghulam Mustafa v. Muhammad Younis, Mst. Nasreen & others]

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

Hearing case (priority)

1. For orders on CMA No.540/2022 (U/S 151 CPC).
2. For orders on office objection/reply at "A".
3. For hearing of main case.
4. For hearing of CMA No.2057/2018 (stay).

.....

Dated 26.10.2023

Mr. Ovais Ali Shah, Advocate for appellant.
Mr. Nadeem Ahmed Pirzada, Advocate for Respondent No.1.
Mr. Samiullah Soomro, Advocate for Respondent No.2.
Mr. Sandeep Malani, Assistant Advocate General Sindh.

.....

These Appeals impugn an order dated 15.08.2018 whereby on an application under Order-I Rule 10 CPC to implead a party having interest in the property, a receiver was appointed. Counsels have taken us to injunctive order which is only to the extent of creating third party interest in respect of suit property. While suit was pending, appellant moved an application under Order-I Rule 10 CPC to be impleaded as having interest in the property. Although the contempt application along with injunction application was pending, however this order for appointment of receiver was passed on an application under Order-I Rule 10 CPC, in second portion of para-4 of the impugned order. Nazir's report is only to the extent that perhaps some construction was going on as some new construction was found by the Nazir; however it (report) does not demonstrate prima facie if the order of not creating third party interest was violated. Nazir's Report does not even discuss such aspect of the case as to whether third party interest was created or being created. Be that as it may, crux of the Nazir's report was that the fresh construction could be seen. There is no such order which could restrain the appellants or

anyone else claimed interest in the property from raising construction hence the order of appointing Receiver on the allegation of construction is questioned by appellant.

In view of the above facts and circumstances, the appointment of receiver seems to be a harsh order. Although the contempt application and other miscellaneous applications are pending, the parties should have been provided an opportunity to respond and to assist the Court and a final conclusion could have been drawn in this regard, prima facie not as an interim measure for appointing Receiver when it is not warranted in view of no such restraining order regarding construction.

We, therefore, deem it appropriate to set aside the order dated 15.08.2018 only to the extent of appointment of Nazir for taking over the property as Receiver. The pending applications in the suits shall be heard and decided, as agreed, preferably in six weeks' time.

With the above understanding, all the three Appeals are disposed of along with pending applications.

JUDGE

JUDGE

Ayaz Gul