

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI

**H.C.A. No.248 of 2024**  
[Raja Hafeez Khan Vs. KDA & others]  
**H.C.A. No.249 of 2024**  
[Muhammad Tariq Vs. KDA & others]

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Present:  
Mr. Justice Muhammad Shafi Siddiqui C.J.  
Mr. Justice Jawad Akbar Sarwana

**22.11.2024**

Mr. Asim Iqbal, Advocate for the appellant in  
H.C.A. No.248 of 2024 a/w Mr. Farmanullah and  
Syed Naseebullah Advocates.  
Mr. Rehman Aziz Malik, Advocate for the appellant in  
H.C.A. No.249 of 2024.  
Mr. Fahad Ali Hashmi, Advocate for respondent No.6.  
Mr. Abbas Rasheed Razvi, Advocate for  
respondent No.11 a/w M/s. Shoaib Khatiyani and  
Nabeel Ahmed Khan Advocates.  
Mr. Mehran Khan, A.A.G. Sindh.

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**Muhammad Shafi Siddiqui, C.J.** Before us two individuals namely Raja Hafeez Khan through his attorney Muhammad Nawaz and Muhammad Tariq himself filed appeals wherein an order of 12.06.2024 is impugned. There are some claimants of the land in question, some were parties and some were not. All claim ownership on the basis of some title as they claimed to have drawn via predecessors. While the title of the parties is not being traced and / or adjudicated at this point in time as it requires deeper probe through evidence, the controversy, that brought these appeals is when the Nazir was ordered to take over possession of the subject property in view of the report (reports) and plaintiff or his nominee was handed over the same, as the plaintiff (in the suit), in consideration of reasons contained therein alongwith his age of 75 years (which seems to have pushed the cause). The officials were also ordered to assist the Nazir in achieving such objects.

2. We have heard the learned counsel and perused the material available on record. It seems that originally Suit No.369/2021 filed by Raja Hafeez Khan and Suit No.460/2021 filed by Muhammad Tariq were pending claiming rights in respect of the same property; being a claim at least earlier than the two suits out of which the appeals have arisen i.e. Suit Nos.51/2023 filed by Syed Laiq Ahmed as authorized representative of M/s. Al-Azmat Construction (Pvt.) Ltd. and Suit No.1771/2022 filed by Abdul Rahim through attorney Muhammad Waseem Khan. It is surprising to note that the site was inspected through Nazir and the report is available at page 231 which has attempted to give details of the land in question and the pending litigation and the claimed possession. This report *prima facie* suggests some of the occupants and keeping the contents of those reports in mind an injunctive order ought to have been passed and not otherwise, if at all it was found inevitable.

3. The impugned order has assumed the shape of a mandatory injunction whereby prior to hearing of those who were in physical occupation (whatever the status may be) an order of handing over and taking over possession was passed. This could not have been done in a suit wherein issues were yet to be framed and in fact the parties who are claiming the possession were yet to be arrayed as defendants and were yet to be heard. This mandatory injunction of the nature as discussed above seems to be a remote possibility under Order XXXIX Rules 1 and 2 CPC, and even Section 151 CPC would not come to rescue a party in a case where rival parties have claimed their possession over it. This is not a case of restoration of status-quo ante where such provision could enable the Court to exercise discretionary powers to restore status-quo ante. Where

competing claims require a trial and deep probe not only in respect of rival claims of the parties but also of the demarcation and identification of the land itself then before granting a mandatory injunction the Court had to ensure high degree satisfaction that matched the requirement and the prerequisite of granting mandatory injunction<sup>1</sup>. In our understanding this mandatory injunction is not sustainable to the extent whereby the Nazir was ordered to hand over possession to some individuals who may have been arrayed as contesting parties in the suit claiming interest over land via alleged title.

4. Without commenting as to the title of the parties, we deem it appropriate to set aside the subject portion of the order whereby the possession was ordered to be handed over to the plaintiff who is arrayed as respondent No.11. The Nazir will restore it (possession) back to a position / stage which is reflected in his report dated 16.02.2023 within two weeks. With this understanding, the appeals are allowed alongwith listed applications. Office to place a copy of this order in the above connected appeal.

CHIEF JUSTICE

JUDGE

Asif

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<sup>1</sup> 2023 PLD Kar. 11 (Haji Ibrahim Vs. Abdul Qadir Lakhani)