

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-1793 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:
Mr. Justice Omal Sial
Mr. Justice Syed Faiz ul Hasan Shah

Petitioner	:	Syed Asghar Imam through Mr. Naseer Nehal Hashmi, Advocate
Respondent No.1	:	Aftab Ahmed through Mr. Ahmed Ali Ghumro, Advocate
Respondents No.4-5:	:	Through Mr. Muhammad Kamran Khan, Assistant Advocate General Sindh
Date of hearing	:	01.09.2025
Date of decision	:	___.09.2025

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J. The petitioner has challenged the Order dated 27.01.2024, passed by the learned VII-Additional District Judge, Karachi East (Appellate Court), whereby Civil Revision Application No. 162/2023, filed by Respondent No.1, was allowed. Through the impugned Order, the Appellate Court set aside the interim injunction earlier granted in favor of the petitioner by the learned IV-Senior Civil Judge, Karachi East (Trial Court), vide Order dated 06.09.2023.

1. Brief facts of the case are that the Petitioner and Respondent No.3 were married according to Muslim Hanafi law. The Petitioner was employed as an Officer Grade-III with M/s. MCB Bank Ltd, earning a substantial salary. Respondent No.3 was a housewife, fulfilling her household responsibilities and did not earn an independent income. It is alleged that the Petitioner purchased two properties, Plot Nos. 571 and 572, N Category, Block-12, situated at Gulistan-e-Johar, Karachi, in the name of Respondent No.3, thereby making her the benamidar owner of the subject properties.
2. The original title documents of the subject properties were kept in locker No. 215 at M/s. Habib Metropolitan Bank Ltd., Gulistan-e-Johar Branch, Karachi. The locker was accessed through the joint bank account of the Petitioner and Respondent No.3. On or about 10.04.2016, the Petitioner was informed by an estate agent that Respondent No.3 was attempting to sell the subject properties without his consent. To prevent the sale, the Petitioner filed Civil Suit No. 621 of 2016 before the trial Court which granted an ad-interim injunction in favour of the Petitioner on 27.10.2016.
3. The interim injunction was temporarily vacated for non-prosecution on 11.09.2018. Subsequently, after hearing the Petitioner's application under Order XXXIX, Rules 1 and 2 CPC, the Learned trial court granted an interim injunction on 09.01.2019 in favour of the Petitioner until the final disposal of suit by confirming its earlier ad interim injunction.
4. Subsequently, the petitioner has come to know about the third party interest created by the Respondent No.1. The Petitioner filed applications under Order 1 Rule 10 CPC to implead Respondents No.1&2 as necessary parties after having knowledge that the subject properties had been transferred to Respondent No.1 by

Respondent No.3. These applications were allowed and the Petitioner filed an amended plaint including Respondents No.1 and 2 as Defendants.

5. The newly impleaded defendant who is Respondent No.1 before us now, he has challenged the order granting interim injunction by filing an application under Order XXXIX Rule 4 CPC, which was dismissed by the Learned trial court on 06.09.2023. Respondent No.1 preferred Civil Revision Application No. 162 of 2023 before the Appellate Court, challenging the dismissal order. The application was admitted and notices were issued to the Respondents. After hearing, the Appellate Court allowed the Civil Revision and passed the impugned order on 27.01.2024, wherein the orders dated 06.09.2023 and 09.01.2019 passed by the trial Court were recalled.
6. We have heard the Counsel for petitioner and Respondent No.3 and have perused the record with their assistance.
7. We have noted that the application under Order XXXIX Rule 4 CPC filed by the Respondent No.1 (as defendant No.5 before trial Court). The Respondent No.1 has admitted at para-2 of the said Application that the Contract was executed by and between the Respondent No.1 and 3 during the operation of Stay Order. The contents of para 2, are reproduced as under:

"2. That whereas the suit was presented on dated 16.04.2016, and in which interim order was passed on dated 27.10.2016, in which direction was given that to maintain the status quo to prevailing the current position of the subject property, thereafter, the plaintiff time to time given application for extend the interim order but on dated 11.09.2018, the interim order was recalled by this Honorable court, the main part of order reproduce as under:"

8. On the other hand, at para 3 of the application (which is wrongly typed as para-1, page 71 of court file) has admitted that Contract was executed on 15.01.2018 during the operation of stay order which was re-called on 11.09.2018 and subsequently confirmed by the trial Court vide Order dated 09.01.2019. The contents of para-3 are re-produced as under:

*"That the Defendant No 05, is owner of immoveable Residential property via (i) Plot No. 572-N, Category, Block - 12, admeasuring-55.sq.yds, situated at Gulistan-e-Jouhar, Karachi, (ii) Plot No. 571-N, Category, Block-12, admeasuring-55.sq.yds, situated at Gulistan-e-Jouhar, Karachi, by **bona fide and lawful purchaser through Sale Agreement dated: 15.01.2018**, total sale consideration of both plots Rs. 12,000,000/- (Hereafter called "plot in case"). After the purchasing the suit property from the Defendant No 01, thereafter the Defendant No. 05, made the application to Directorate of Land Management (KDA) for pre-lease transfer by joint Declaration on 27.02.2018, **and same has been transfer in the name of the Defendant No. 05, by the City District Government Karachi on 30.10.2018**, the Assistant Director Land Management Scheme-36, KDA, issued amalgamation of Residential Plot No. 571, admeasuring-5743.sq.yds, & Plot No. 572, admeasuring-55.07.sq.yds, Block-12, Scheme No.36, (Gulistan-e-Jouhar, Karachi) (Final Amalgamated plot No 571, total measuring 112.50 SQ. YDS) respectively, after the amalgamation the Director land Management KDA wrote the letter for execution of lease in respect of plot on 26.10.2020, thereafter the lease has been executed in the name of Defendant No. 05, (herein referred to "Lease")."*

Emphasized added

9. Moreover, such facts have also been admitted in a Civil Revision Application No.162/2003 before the Appellate Court. The relevant portion is reproduced as under:

*"5. That the Applicant is owner of immoveable Residential property via (1) Plot No. 572-N, Category, Block 12, admeasuring-55.sq.yds, situated at Gulistan-e-Jouhar, Karachi, (ii) Plot No. 571-N, Category, Block-12, admeasuring-55.sq.yds, situated at Gulistan-e-Jouhar, Karachi, by **bona fide and lawful purchaser through Sale Agreement dated: 16.01.2018**, total sale consideration of both plots Rs. 12,000,000/- (Hereafter called "plot in case"). After the purchasing the suit property from the Shama Rukhsana, **thereafter the Applicant made the application to Directorate of Land Management (KDA) for pre-lease transfer by joint Declaration on 27.02.2018, and same has been transfer in the name of the Applicant**, by the City District Government Karachi on 30.10.2018, the Assistant Director Land Management Scheme-36, KDA."*

Emphasized added

10. In view of the categorical admission by Respondent No.1 that he entered into negotiations and executed a contract with Respondent No.3 on 16.01.2018 concerning the suit property—at a time when the ad-interim injunction order dated 27.10.2017 was operative and remained in force until its recall on 11.09.2018—the said transaction stands in clear violation of the subsisting stay order. Such conduct is subject to judicial scrutiny and cannot be condoned. The Appellate Court, while passing the impugned order, failed to take cognizance of this material fact and did not address the legal implications of entering into a contractual arrangement during the pendency of an injunctive restraint. The omission to consider this grave procedural irregularity amounts to a serious illegality and reflects non-application of judicial mind. The impugned order, therefore, suffers from a fundamental defect and warrants interference.

11. It is a well-settled principle of law governing the grant of interim injunction that the applicant must establish: (i) a prima facie case; (ii) that the balance of convenience lies in their favor; and (iii) that they would suffer irreparable loss if the relief is denied. In the present matter, the petitioner has instituted the suit against Respondent No.3 (ex-wife), asserting that he is a Grade-3 Officer at MCB Bank and that the suit property was purchased solely from his income. It is further alleged that Respondent No.3, being a homemaker without any independent source of income, could not have acquired the property on her own. Conversely, Respondent No.3 has denied the petitioner's claim and contended that the property was purchased using financial assistance from her family. The trial Court observed:

"According to him, the original title documents of the suit der According property are lying in a joint locker at Habib Metropolitan Bank Gulistan-e-Jouhar. While the defendant No.1 has denied this case. She claimed that she had purchased the suit property out of her own funds and from financial assistance provided by her in-laws. According to her the suit property has already been sold to one Muhammad Aslam Usmani on 18-7-2015. From perusal of the record, it transpires that the plaintiff has claimed the suit property as having been purchased by him. It is alleged that the title documents for the suit property are lying in joint locker. On the other hand, the defendant, Shama Parveen has not denied this aspect of the case either in written statement or objections filed to the application for an injunction.

12. However, a perusal of the pleadings reveals that Respondent No.3 has failed to offer any cogent or verifiable explanation regarding the source of funds used for the purchase. Moreover, the execution of the sale contract by Respondent No.3 during the subsistence of a judicial stay order constitutes a serious procedural impropriety, thereby strengthening the petitioner's claim. In light of these facts,

the petitioner has successfully demonstrated all three essential ingredients for the grant of interim injunction.

13. Accordingly, the Order dated 09.01.2019 passed by the learned Trial Court is found to be well-reasoned and legally sound, having rightly concluded that the petitioner has established a prima facie case, and that the balance of convenience and the likelihood of irreparable harm weigh in his favor.

14. The Appellate Court overlooked the critical fact that Respondent No.3 had executed a sale of the suit property during the subsistence of an ad-interim injunction order, thereby violating the operative restraint. It also failed to appreciate that Respondents No.1 and 2, the subsequent purchasers, were not only aware of the pendency of the suit but had admitted knowledge of the interim order, as reflected in the record and previously referred to in this judgment. Consequently, the impugned order dated 27.01.2024 has been passed without due consideration of the material record and is manifestly perverse, being contrary to the settled principles governing the grant of interim injunctions in pending suits. The Appellate Court failed to apply the three foundational tests—prima facie case, balance of convenience, and irreparable loss—which are essential for adjudicating such applications.

15. In view of the foregoing, the petition is allowed and the Order dated 06.09.2023 passed by the Appellate Court is hereby set aside. Consequently, the application seeking vacation of interim relief is dismissed, and the order dated 09.01.2019 passed by the learned Trial Court granting interim injunction shall stand restored and remain operative until final adjudication of the suit.

16. Petition stands disposed of accordingly.

JUDGE

JUDGE

asim/PA