

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P. No.D-6024 of 2025
(Syed Khalid Mahmud & others versus Muhammad Yaseen & others)

Date	Order with signature of Judge
	Mr. Justice Adnan-ul-Karim Memon
	Mr. Justice Zulfiqar Ali Sangi

Date of hearing and order:- 02.02.2026

Mr. Maaz Waheed advocate for the petitioner
Ms. Muneer Ahmed advocate for respondent No.1
Mr. Ali Safdar Depar AAG

O R D E R

Adnan-ul-Karim Memon, J. – The petitioner Syed Khalid Mahmud has filed the captioned Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer.

- a. *That this Court may be pleased to set aside the impugned order dated 26.03.2025, passed in suit No. 2859 of 2024.*
- b. *That this Court may be pleased to appoint the Nazir of this Court as a receiver of the subject property, with directions inter alia to take possession of the subject property, such that the subject property is preserved from being wasted or misappropriate/mismanaged, until the adjudication for the Suit No. 2859 of 2024.*
- c. *That this Court may be pleased to suspend the operation of the Impugned order dated 26.03.2025, passed in Suit No. 2859 of 2024, and appoint Nazir of this Court as a receiver of the subject property till the pendency of the instant miscellaneous appeal;*
- d. *That this Court may be pleased to award the costs of the miscellaneous appeal to the appellants.*
- e. *That this Court may be pleased to award another relief as it may deem appropriate in the facts and circumstances of the instant matter.*

2. Learned counsel for the petitioner submitted that the Impugned Order dated 26.03.2025 suffers from gross misreading of facts, non-application of judicial mind, and disregard of settled principles governing the appointment of a receiver under Order XL Rule 1 CPC. It was contended that the petitioners are the lawful owners of the subject property through a valid and subsisting chain of title originating from the Sub-Lease dated 15.11.1969, which stood lawfully mutated in their favour vide Letter of Mutation dated 04.06.2018, issued pursuant to orders passed by the this Court in S.M.A No.154 of 2008. The title of the petitioners is thus *prima facie* established, whereas the alleged ownership claim of Respondent No.1 is admittedly *sub judice* and yet to be determined. Learned counsel emphasized that despite subsisting status-quo orders dated 15.05.2018 and 15.05.2019, Respondent No.1, in blatant violation thereof, raised illegal construction upon the subject property and unlawfully inducted a third-party tenant in the year 2020. It is submitted that the Respondent No.1 has been

illegally enjoying rental proceeds while lacking any lawful entitlement to possession or income from the subject property. It was further submitted that the subject property is presently exposed to serious risk of waste, mismanagement, and misappropriation, as is evident from the multiplicity of rent, execution, FRA, and illegal dispossession proceedings pending between Respondent No.1 and the tenant. These litigations demonstrate that possession of the property is unstable, contested by force, and vulnerable to unlawful third-party interference. Learned counsel pointed out that Respondent No.1 deliberately chose not to file any counter-affidavit to the receiver application, despite due service, and was consequently debarred. The averments regarding illegal tenancy, rental income, and exposure of the property to wastage, therefore, remained uncontested and ought to have been accepted as admitted. It was argued that the learned Trial Court failed to appreciate that the appointment of a receiver does not determine title, but merely preserves the property during the pendency of litigation. The Impugned Order erroneously proceeds on the assumption that wastage must be conclusively proved, whereas the law only requires a reasonable apprehension of waste or mismanagement, a threshold clearly met in the present case. Learned counsel further submitted that the Trial Court failed to consider the cited judgments in their proper perspective and mechanically brushed them aside as “distinguishable” without assigning reasons, rendering the Impugned Order arbitrary and unsustainable. It was lastly contended that unless a receiver is appointed, Respondent No.1 will continue to unlawfully deal with the subject property, deprive the petitioners of rental income, frustrate the pending suit, and irreversibly alter the character of the property, thereby defeating the ends of justice. Accordingly, it was prayed that the Impugned Order be set aside and the receiver application be allowed to safeguard the subject property during the pendency of the suit. He prayed to allow the petition.

3. Learned counsel for the private respondents raised the question of the maintainability of the petition and prayed for its dismissal.

4. We have heard the learned counsel for the parties and perused the record with their assistance.

5. Through an order dated 26-03-2025, the trial court disposed of the petitioners' application under Order XL, Rule 1, read with Sections 34 and 151 CPC. Notice was issued to the respondents, but no counter-affidavit was filed, and they were debarred. The petitioners prayed for the appointment of the Nazir as receiver to safeguard their interest, citing the violation of status quo orders dated 15-05-2018 and 15-09-2019. The suit property is claimed by the petitioners as co-owners and legal heirs, whereas respondent No.1 asserts possession under a

sub-lease dated 25-05-2016. The matter is still pending between the parties. Hence application was dismissed.

6. We have heard the learned counsel for the parties and perused the record with their assistance.

7. Under Order XL, Rule 1 CPC, a civil court may appoint a receiver only *where it appears just and convenient* to do so, and this discretion must be exercised judicially, sparingly, and not as a matter of course. The primary object of appointing a receiver is to preserve the property and prevent irreparable loss pending adjudication of rights, not to decide the title itself. Established jurisprudence holds that a court will not ordinarily appoint a receiver simply because a dispute exists between co-owners or contesting parties: it must be shown that there is actual danger of waste, mismanagement or loss of the property if interim relief is denied.

8. In the present case, the Trial Court correctly observed that nothing on the record establishes that the suit property was/ is in danger, being wasted or mismanaged. Mere assertions of possible loss or disagreement between the parties are insufficient. The law requires more that there must be convincing material showing that the property is at risk of deterioration, detriment, or dissipation if no receiver is appointed.

9. Moreover, the fact that there are status-quo orders and parallel proceedings (e.g., rent, execution, and dispossession suits) indicates the dispute is actively engaging the judicial process rather than evidencing imminent waste. The petitioners' allegations of third-party interference are at best indicative of contested possession, not actual threat of irreparable harm. However, it is for the trial Court to take decision on the subject issue at appropriate time.

10. One of the fundamental prerequisites for receiver appointment is that the applicant must demonstrate a strong *prima facie* case with a realistic prospect of succeeding in the main suit, especially over title and possession.

11. Here, the ownership and title are disputed. The petitioners claim title via mutation and an old sublease, whereas Respondent No.1 asserts possession based on a later sublease. This title conflict is precisely what the suit is meant to resolve. There is no decisive *prima facie* establishment of the petitioners' superior right that would justify prejudicial interim measures like displacing the present occupant via a receiver. However the trial Court can protect the party in accordance with law; subject to all just exceptions as provided under the law.

12. As a general principle, a receiver should not be appointed to deprive a party of de facto possession in the absence of compelling reasons such as waste, imminent danger, or mismanagement. Dislodging the current occupant (Respondent No.1) through appointment of a receiver without clear evidence of harm would result in undue hardship and could lead to injustice, precisely the situation courts are cautioned to avoid. However, at the same time if the Court finds something falsely can interfere under the law.

13. The petitioners' are already protected by subsisting status-quo orders and remedies such as claims for mesne profits, and they have not shown exceptional circumstances that would justify an extraordinary step of receiver appointment. Ordinary legal safeguards continue to operate pending adjudication within reasonable time.

14. For the reasons above, the Trial Court did not misread the law it applied settled principles governing the appointment of a receiver. There was/is no clear evidence of waste, mismanagement, or imminent loss that would justify appointing a receiver. The petitioners' failed to show a strong *prima facie* case for the aforesaid purpose. The discretionary relief of appointing a receiver was refused based on certain reasons. Accordingly, the impugned order dated 26-03-2025 is legally sound, and the petition seeking its setting aside is dismissed along with pending application(s). However the trial Court shall expedite the proceedings to its logical conclusion as per law.

JUDGE

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