

**IN THE COURT OF KALEEM ULLAH,  
ADDL: DISTRICT & SESSIONS JUDGE-X, MARDAN.**

**Appeal No. 27/13 of 2024**

Gul Nabi s/o Muhammad Rasool r/o Mohallah Qaim Ud Din, Shamshi Road  
Hoti, Tehsil & District Mardan .....(*Appellant*)

Versus

- |     |  |   |                            |
|-----|--|---|----------------------------|
| 1-  | Mst. Fozia widow of Neha ud Din                                  | } | r/o Shamshi Road House No. |
| 2-  | Muhammad Akif s/o Neha ud Din                                    |   | 2472 Mohallah Qaim Din     |
| 3-  | Muhammad Junaid s/o Neha ud Din                                  |   | Tehsil & District Mardan   |
| 4-  | Mst. Bano w/o Khani Zaman r/o Shamshi Road Hoti, District Mardan |   |                            |
| 5-  | Deputy Commissioner Revenue, Mardan.                             |   |                            |
| 6-  | Tehsildar Mardan Girdwar Circle, Mardan                          |   |                            |
| 7-  | Patwari Halqa Moza Bagh Aram, Mardan                             |   |                            |
| 8-  | Incharge Service Delivery Center, Mardan.                        |   |                            |
| 9-  | Sub Registrar, Mardan  |   |                            |
| 10- | Ilyas s/o Mehmood ud Din r/o Mohallah Qaim Din District Mardan.  |   |                            |
- .....(**Respondents**)

Date of Institution: 22.04.2024.  
Date of Transfer In: 26.06.2024.  
Date of Decision: 13.07.2024.

**JUDGMENT**  
**13.07.2024**

- 1- Appellants have preferred this appeal under section 104 CPC against the order dated 03.04.2024 in suit bearing No. 1/6 of 2023 vide which the learned trial court was dismissed.

**FACTS**

- 2- Facts are that; that in the main suit, plaintiff (hereinafter called appellant) seeks specific performance to the effect that he has

purchased the suit property measuring 01 Kanal and 05 Marla consisting of one house and 02 Quarter which are in the possession of defendant No. 1 to 5 (hereinafter called respondents) situated at Moza Bagh-e-Iram on the strength of Iqrar Nama dated 18.08.2022 in lieu of sale consideration Rs. 170,00,000/- and the defendant No. 1 to 3 received the sale consideration i.e. Rs. 51,00,000/- at the time of scribing of deed and the remaining 69,00,000/- received by them on 18.10.2022 in presence of marginal witnesses, detailed fully mentioned in the head note of the plaint. That the defendants No. 1 to 5 have got no concern with the suit property and has no right to pose themselves as owners of the suit property or to interfere in the same and entries in the revenue record are wrong, illegal against the law and facts and ineffective upon the right of plaintiff. He further sought possession, mandatory injunction or in its alternate recovery/mense profit. Hence, the present appeal.

- 3- The defendants were summoned by the trial court. The respondent/defendants No. 01 to 03 have turned up and submitted their written statement on 22.03.2023. After arguments over the status quo application; the learned trial court vide its order impugned here dated 03.04.2024 turned down the application of the appellant /plaintiff. Feeling aggrieved the appellant/plaintiff approached this court in the instant appeal and requested for acceptance of the instant appeal.
- 4- When summoned by this Court, the respondent/defendants No. 01 to 03 have turned up.

- 5- I have heard the arguments of the Learned Counsel for the parties and have sifted through the available record with a keen and inquisitive eye.
- 6- The learned counsel for the appellant contended that all the three ingredients for the grant of injunction lies in favour of the appellant as the suit for the appellant is for specific performance of agreement dated 18.08.2022 and a huge amount under the head of sale consideration with regard to property in dispute was paid by the plaintiff to the respondents in presence of marginal witnesses, in case injunction is not granted the appellant would suffered irreparable loss. Furthermore, there is every apprehension of property being disposed by the respondents which would create irreparable loss to the appellant/plaintiff. Moreover, it would create complication and multiplicity of suit and endless series of litigation would start. He further argued that the deed with regard to property in dispute has been properly executed by the respondents in favour of the appellant. Hence, prima facie case is available in favour of the appellant. Therefore, all the three ingredients i.e. prima facie, balance of convenience and irreparable loss lies in favour of the appellant and it would be appellant who would were suffer irreparable loss, if injunction is not granted. Therefore, requested that the impugned order dated 03.04.2024 of the learned trial court may kindly be set aside and instant appeal may kindly be accepted and the status quo may kindly be confirmed.

7- On the other hand, the learned counsel for the respondents opposed the stance of the appellant and contended that no prima facie case exists in favour the appellant nor the balance of connivance lies in favour of the appellant and in case injunction is granted the respondents would suffer irreparable loss as the appellant is not the owner nor occupier of the property in dispute. He further contended that the impugned deed dated 18.08.2022 is fake factious and has not been executed by the respondents; therefore, the same is ineffective upon the rights of appellant. He further contended that the property in dispute is the ownership of respondent and they are in possession of property in dispute as sole owners. He further contended that the alleged deed 18.08.2022 does not confer any title; therefore, the instant application has rightly been dismissed by the learned trial court vide its impugned order dated 03.04.2024. It is pertinent to mention herein that during the course of arguments; the learned counsel for the respondents contended that they would not be alienate the property in dispute; however, if the appellant be directed to expedite the proceedings of the main case towards the conclusion and further requested that the order to the extent of alienation should not be effective for longer period of time; rather, a direction may kindly be issued to the learned trial court to conclude the trial of within a span of 04 months.

- 8- Before passing any order on the merits; this court deem it proper, in the light of the consent/oral statement of the learned counsel of the respondents the appeal in hand is hereby allowed to the extent of further alienation for period of 06 months or till disposal of the main case whichever comes earlier. The learned trial court shall conclude the case as earlier as possible preferably within the span of 06 months; if the same is not concluded the trial court shall decide the stay application of the appellant after the expiry of 06 months on merits without being prejudice from the order of this court.
- 9- Needless to mention herein my tentative judgment will not effect the merits of the case nor shall the same prejudice the court.
- 10- Parties are left to bear their own cost.
- 11- Requisitioned record alongwith copy of this judgment be remitted back forthwith, while file of this Court be consigned to the Record Room after its necessary indexing, completion and compilation.

**ANNOUNCED**

13.07.2024

**Kaleem Ullah,**

Addl: District & Sessions Judge-X,  
Mardan

**CERTIFICATE**

Certified that this judgment consist of **05** pages, each has been read, checked, signed and corrected by me wherever it was necessary.

**Kaleem Ullah,**

Addl: District & Sessions Judge-X,  
Mardan

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**Order—10**  
13.07.2024.

- 1- Contesting parties present. Arguments already heard and record perused.
- 2- Vide my detailed judgment of today, consisting of 06 pages, placed on file, this court deem it proper, in the light of the consent/oral statement of the learned counsel of the respondents the appeal in hand is hereby allowed to the extent of further alienation for period of 06 months or till disposal of the main case whichever comes earlier. The learned trial court shall conclude the case as earlier as possible preferably within the span of 06 months; if the same is not concluded the trial court shall decide the stay application of the appellant after the expiry of 06 months on merits without being prejudice from the order of this court.
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**ANNOUNCED**

13.07.2024

**Kaleem Ullah,**  
Addl: District & Sessions Judge-X,  
Mardan

**Gul Nabi Vs Mst. Fozia (Civil Appeal No. 27/13 of 2024)**