

C.P No.S-1385 of 2023

Qasim

Vs.

Dawood & others

HIGH COURT OF SINDH

Composition of Bench. Single.

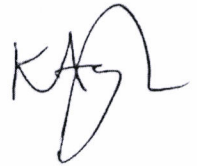
Mr. Justice Mohammad Karim Khan Agha

Dates of hearing : 19-08-2024

Decided on : 19-08-2024

(a) Judgment approved for Reporting

Yes



CERTIFICATE.

Certified that the judgment */Order is based upon or enunciates a principle of law
*/decides a question of law which is of first impression/distinguishes/. Over-rules/
reverses/explains a previous decision.

* Strike out whichever is not applicable.

NOTE: - (i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first
page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the
Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

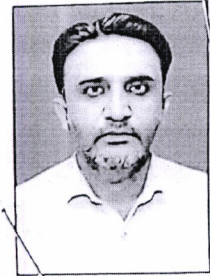
Presented on 19.12.2023

Additional Registrar (Writ)

BEFORE THE HON'BLE HIGH COURT OF SINDH AT KARACHI

Constitution Petition NO. S-1385 Of 2023

QASIM S/O GHANI BABRA
Muslim, Adult resident of
Flat No. B-11 5th Floor,
Maryam Garden, Plot No. 2202/A,
Street No.5, New Khumarwara,
Lyari Town, Karachi..... Petiti



VERSUS

1. **DAWOOD S/O USMAN**
Muslim, Adult, resident of,
Plot No. AK-24-6-S-24, Street
No.2, New Khumarwara,
Lyari Town, Karachi,
2. **LEARNED XII ADDL. DISTRICT & SESSIONS JUDGE**
South at Karachi.
3. **Learned 3rd SENIOR CIVIL JUDGE**
& RENT CONTROLLER
South at Karachi..... Respondents

CONSTITUTIONAL PETITION UNDER ARTICLE 199
OF ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Being aggrieved and dissatisfied with the order dated:-21-11-2023; passed by the Learned XII Additional District & Sessions Judge South at Karachi (respondent No.02), in F.R.A No.217/2023, and Order Dated:- 04-08-2023 passed by the learned 3rd S.C.J. / Rent Controller Karachi South at Karachi, in Rent Case No.143/2019, wherein the Hon'ble trial Court allowed application under Section 15 of Sindh rented ordinance 1979, filed by the respondent No.01 and issued directions to the Petitioner to deliver vacant and peaceful possession of premises i.e., Flat No.B-11, 5th Floor, Dawood B.D, compound, Plot No.2202/A, (AK-24-3-S-50) Street No. 5, New Kumharwara Lyari Town Karachi, within 30 days from the date of order, although Petitioner prefer FRA No.2017/2023, wherein 1st Petitioner Court

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ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
CP No.S-1385 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
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Hg. / priority

1. For hearing of MA No.10116/2023
2. For hearing of main case.

19.08.2024

Mr. Abdul Nabi, Advocate for the Petitioner.
Mr. Sheheryar Qazi, & S. Arshad Hussain Naqvi, Addl.
A.G.

MUHAMMAD KARIM KHAN AGHA.J., The landlord Dawood moved Rent Case No.143 of 2019 in the Court of IIIrd Rent Controller (South at Karachi for return of his Property known as Dawood B.D. Compound situated at Plot No.2202/A (AK-24-3-S-50), Gali No.5, New Kumhar Wara near Gabol Park, Lyari Town, Karachi (the Property) on the basis of default in payment of rent by the tenant.

2. The main ground raised by the tenant who is the petitioner in this case that there was no relationship of landlord and tenant between the parties. The trial Court vide judgment dated 04.8.2023 rejected his arguments and through the impugned judgment allowed the ejectment application.

3. Being aggrieved and dissatisfied by the impugned judgment mentioned above the tenant filed an Appeal in the Court of Addl. District Judge-XII/Model Civil Appellate Court Karachi-South, which in FRA No.217/2023 vide judgment dated 21.11.2023 upheld the impugned judgment. Hence the appellant has moved this petition against the impugned judgment and appellate judgment.

4. As noted facts of the case are that the petitioner / appellant was the tenant of the Property as claimed by the landlord who was in

default of rent. This led to the landlord filing an application for ejectment of the tenant / petitioner from the Property. Such ejectment was allowed by the impugned judgment and was maintained by the appellate judgment.

5. The main contention of the petitioner/appellant/tenant is that no relationship of landlord and tenant existed between him and the landlord and as such he could not have been ejected as a tenant based on a sale agreement.

6. Appellate judgment whilst addressing this point it held as under:-

"15. I have considered the arguments advanced by the learned Advocates for the Appellant. The findings and reasons recorded by the learned IIIrd Rent Controller Karachi South, qua relationship of landlord & tenant between Respondent No. 1 and Appellant and default in payment of rent and maintenance, has been juxtaposed with the evidence adduced by the Respondent No. 1 and Appellant and on careful analysis of evidence, I am of the view that Appellant has admitted his induction in the demised premises as Tenant in Para -2 of the written statement, however, has averred and deposed that he has purchased the demised premises through sale agreement dated 23.02.2018 in total sale consideration of Rs.20,00,000/= and after the purchase of the demised premises through sale agreement he became owner of the demised premises and was not liable to pay the rent to the Respondent No. 1. The stance and version taken by the Appellant qua termination of relationship of landlord and tenant on the basis of sale agreement, is not based on backing of law as agreement of sale is not a document of title/ownership rather it is a document to obtain another document from the seller. Suffice it to say that the sale agreement is not a title document but at the most grants a right to sue for such title as well as rights arising out of such sale agreement. More-over, in the context of claim of termination of relationship of landlord and tenant, it is trite law that where a person who has been inducted as a tenant in the demised premises and he/tenant claims that he has purchased the demised premises subsequently, then, such tenant has to vacate the demised premises first and obtain a decree of specific performance against the seller to entitle him to recover the possession of the demised premises. Scanning of the impugned judgment shows that this aspect has been considered and attended by the learned Ist Rent Controller Karachi South in Point No. 1 and in my considered view, the finding recorded by the learned Ist Rent Controller

Karachi South are inconsonance with the judgment with the Hon'ble Apex Court. Guidance may be sought from the principles laid-down in the case of **Syed Imran Ahmed v. Bilal and others** [PLD 2009 SC 546] wherein it was held as under:

"5. It is principle too well established by now that a sale agreement did not itself create any interest even a charge on the property in dispute that unlike the law in England, the law in Pakistan did not recognize any distinction between the real and equitable estates, that a sale agreement did not confer any title on the person in whose favour such an agreement was executed and in fact it only granted him the right to sue for such a title and further that such an agreement did not affect the rights of any third party involved in the matter. It may be added that till such time that a person suing for ownership of a property obtains a decree for specific performance in his favour, such a person cannot be heard to deny the title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the property which is the subject matter of the litigation. Postponing the ejectment proceedings to await the final outcome of a suit for specific performance would be causing serious prejudice to a landlord and such a practice, if approved by this Court, would only give a license to un-scrupulous tenants to defeat the interests of the landlords who may be filing suits for specific performance only to delay the inevitable and to throw spanners in the wheels of law and justice."

16. In another case of **Abdul Rasheed v. Maqbool Ahmed and others** [2011 SCMR 320] it has been held as under:

"5. It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist."

7. It is quite clear that the Appellate Court has rightly found that the tenant was indeed the tenant of the Property and relationship of landlord and tenant did exist between the parties as was also elucidated by various Supreme Court judgments.

8. Learned counsel for the petitioner / tenant has not been able to point out any legal infirmity in respect of the appellate judgment and as such this constitution petition is dismissed.

9. Petition stands disposed of in the above terms.