

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-846 of 2021

[Muhammad Afzal vs. Zahora Bibi & others]

Petitioner	Through Mian Muhammad Akram, Advocate.
Respondent-2	Through Mr. Qamar Abbas Khokar, Advocate.
Date of Hearing:	07.08.2025.
Date of Order:	07.08.2025.

ARSHAD HUSSAIN KHAN, J.- Through this Constitutional Petition the petitioner [Muhammad Afzal] has challenged the order dated 20.09.2021 (**Impugned Order**) passed by the District Judge Karachi [Malir] in First Rent Appeal No.03/2018, preferred by Zahid Nazeer Sindho, the respondent No.2 herein; whereby the Rent Application filed by respondent No.1 [Zahora Bibi] was allowed by setting aside the dismissal order dated **14.12.2017**, passed by the learned Rent Controller in Rent Case No.04/2016.

2. Concisely, the facts of the case, as per the rent application, are that respondent/applicant No. 1 [Mst. Zahora Bibi] was sole owner/lease holder of Bungalow No. 265, Haroon Bungalows, Phase I, Deh Dozan, situated in Sub Sector 38-A/3, Sector 38-A, KDA Scheme No. 33, Gulzar-e-Hijri, Karachi (**demised premises**), which was given on rent to the petitioner/opponent in the year of 1994 under a written tenancy agreement, and monthly rent was agreed by both the parties at Rs.6,000/- (Rupees Six Thousand only) per month with 10% enhancement after every three years. It was further claimed that respondent/applicant had lost copy of tenancy agreement while original is in custody of the petitioner /opponent. However, such arrangement continued upto December 2009, and thereafter, petitioner/opponent had stopped paying monthly rental and failed to pay monthly rent on one or other pretext. It is further claimed that in the year of 2013, respondent/applicant No. 1 [Mst. Zahora Bibi] had gifted the same premises to her real nephew respondent /applicant No. 2 through registered gift deed alongwith tenancy and respondent/applicant No. 2, was duly informed about non-payment of monthly rent by the petitioner/opponent. It is further revealed that on the change of ownership, the petitioner/opponent was served with notice under Section 18 of Sindh Rented Premises Ordinance, 1979, (**the Ordinance**) but to no avail. It

was also stated that respondent / applicant No.2 also requires the premises in question for personal bonafide need.

3. On the other hand, before the trial court, the petitioner / opponent Muhammad Afzal had filed written statement denying the relationship of landlord and tenant. He contended that there is no written or oral agreement between him and respondent/ applicant No. 1, and one Choudhary Nazeer Ahmed M. Yousuf given the keys of the same premises to him when the same was in possession of one unknown person, which was got vacated from clutches of the said occupier. It is further stated that the petitioner/opponent has no concern with respondent/applicant No. 1 and there is no relationship among the parties. It is added that one Chaudhary Nazeer Ahmed, who is father of respondent/applicant No. 2, had also handed over the copy of lease and general power of attorney and settled the sale consideration at Rs. 28,00,000/- (Twenty Eight Lacs) and received Rs. 65,000/- (Sixty Five Thousand only) in advance in the month of June, 2013. It was also contended that no notice had been served by respondent/applicant No. 2 upon the petitioner/opponent and no one came forwarded to inform the petitioner/opponent about the change of ownership/demand of rent, and rather respondent/applicant No. 2 declined to receive remaining amount of Rs.27,35,000/-whereas he was ready to pay the same to Chaudhary Nazeer Ahmed. It was also claimed that respondent/applicant No. 1 is no more owner and applicant No.2 has no concern with the petitioner/opponent. By raising such counter pleas, petitioner/opponent Muhammad Afzal had prayed for dismissal of eviction application.

4. Learned counsel for the petitioner has argued that the judgment of the appellate court suffers from misreading and non-reading of the pleadings and evidence on the record. He has argued that respondent No.1 filed the rent case in respect of the property, which was sub leased in favour of respondent No.1 through her attorney namely; Chaudhry Nazeer Ahmed and the said lease documents were signed by Chaudhry Nazeer Ahmed in the capacity of the attorney of respondent No.1. He has argued that respondent No.1 took the plea that she had gifted the property (demised premises) to respondent No.2-Zahid Nazeer son of Choudhry Nazeer Ahmed and interestingly the said document was not executed by her attorney. He has further argued that neither respondent No.1 nor respondent No.2 were in possession of the property then how the gift can

be executed and the gift deed does not create any right or title until and unless the possession is delivered. Learned counsel has further argued that the ejectment proceedings were filed on the basis of the said Gift Deed and the document which itself is under the cloud that cannot be treated as a valid document. He has argued that the demised premises was handed over by the father of respondent No.2 and the petitioner never paid the rent hence there exists no relationship between the parties and even the rebuttal about the payment of the amount made by the petitioner to Chaudhry Nazeer Ahmed has not been refuted.

5. Learned counsel for respondent No.2 has argued that the petitioner Muhammad Afzal has no title documents in his favour in respect of the property in question and even the civil suit for specific performance filed by the petitioner was dismissed. He has argued that the Rent Controller has erred in law and passed the judgment in hasty manner. Further argued that the respondent's father Chaudhry Nazeer Ahmed never sold out the property in question to the petitioner. It is also urged that the petitioner despite having notice that respondent No.2 has become the owner of the property did not pay any monthly rental to him. Lastly, learned counsel has prayed for dismissal of the petition as the appellate court has discussed each and every aspect of the matter and has rightly passed the impugned order, as such the same does not warrant interference by this Court in the instant proceedings.

6. Heard learned counsel for the parties, perused the record and the relevant law.

From perusal of the record and the submissions of the learned counsel for the parties, it is evident that the controversy primarily revolves around the existence or otherwise of a landlord & tenant relationship between the parties. The petitioner has categorically denied such relationship asserting that the possession was handed over to him by one Chaudhry Nazeer Ahmed, father of respondent No.2, in connection with the sale transaction and that partial payment towards the sale consideration was also made. The petitioner also challenged the validity of the registered gift executed by respondent No.1 in favour of respondent No.2. Conversely, the respondents rely upon the registered gift by respondent No.1 to respondent No.2 and assert a claim of ownership along with the right to seek eviction for personal bona fide need. The record shows no written tenancy agreement between the petitioner and either

respondent, nor is there any cogent evidence of regular payment of rent by the petitioner. Furthermore, the petitioner's civil suit for specific performance and the subsequent civil appeal were also dismissed, weakening his ownership claim.

7. It is also a well settled principle of law that where the tenant asserts ownership of the property, the legally mandated procedure requires the tenant to vacate the premises, pursue the civil remedy, and upon a favorable judgment by the competent court, regain possession of the property¹. In the instant case, the petitioner, who is in occupation of the premises, neither vacated the premises before filing the civil suit nor succeeded in the said civil suit, which was dismissed and even the appeal against the dismissal of the civil suit was dismissed.

8. It is also settled principle of law that a person who is in possession or occupation of a premises owned by someone else although he may not undertake to pay rent to the owner is normally bound to pay rent to him as consideration for being in possession or in occupation of that premises. Such a person shall be treated to be a tenant for the purpose of the Ordinance². It is also settled law that a person who is not the owner of the premises but occupies any portion thereon and has set up no title, which is adverse to the owner of the premises, then such person by fiction of law becomes a tenant of the premises³.

9. Insofar as the petitioner's arguments challenging the validity of the gift deed and the ownership rights are concerned, the same are beyond the ambit of rent proceedings, which focus on possession and tenancy rather than title disputes. It may be observed that the status of the 'tenant' does not give him any right other than to retain possession of the premises during the subsistence of the tenancy hence the tenant, in absence of any other direct or indirect legal character, cannot question the title of the landlord particularly in rent proceedings. A reference to Section 18 of Sindh Rented Premises Ordinance, 1979, shall put to rest the misconceived plea of the petitioner that since the possession was with him (tenant) hence the gift was never complete. The proviso reads as:-

¹ *Rehmatullah v. Ali Muhammad and another* [1983 SCMR 1064], *Muhammad Nisar v. Izhar Ahmed Shaikh and others* [PLD 2014 SC 347] *Nasir Khan v. Nadia Ali Butt and others*, [2024 SCMR 452].

² *Muhammad Shabbir v. Hamed Begum* [1992 MLD 323]

³ *Saifullah and another v. Chaudhry Ghulam Ghous* [2000 CLC 1841]

“18. Change in ownership. Where the ownership of premises in possession of the tenant has been transferred by sale, gift, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post, to the tenant and the tenant shall not be deemed to have defaulted in payment of rent.....”

The inclusion of gift in the said section also affirms that validity of a gift cannot be questioned merely on the ground of absence of physical delivery of possession of premises, which otherwise was / is under tenancy but constructive delivery of possession would be sufficient on transfer of title. A reference to Section 152(2) of Muhammadan Law makes the position unambiguous.

“(2) Where property is in the occupation of tenants.—A gift of immovable property which is in the occupation of tenants may be completed by a request by the donor to the tenants to attorn to the donee, or by delivery of the title deed or by mutation in the Revenue Register or the landlord’s Sherista. But if the husband reserves to himself the right to receive rents during his lifetime and also undertakes to pay Municipal dues, a mere recital in the deed that delivery of possession has been given to the donee will not make the gift complete.”

[Emphasis supplied]

Even otherwise, a tenant is not legally entitled to challenge the change of ownership. Once a notice, within the meaning of Section 18 of the Ordinance, is served, the tenant is bound to honour his obligations and cannot legally question such change of ownership, whether it be through sale, gift, or any other mode. In the present case, since respondent No.1 (the owner of the property) admitted that she had gifted the property to respondent No.2, the petitioner was, and still is, not legally justified in raising such a plea.

10. Upon careful examination of the record, pleadings, and relevant law, it is clear that the learned appellate court has thoroughly scrutinized the evidence and legal contentions. Its conclusion affirming the existence of landlord & tenant relationship is well founded and supported by the record. Although the Rent Controller found no such relationship exists between the parties, yet, the appellate court’s reappraisal of the evidence cannot be impugned as it falls within its jurisdiction.

Moreover, the petitioner has failed to establish any jurisdictional error, procedural irregularity, or manifest illegality by the appellate court that would justify this Court’s interference under constitutional jurisdiction. There is no material to suggest miscarriage of justice or

violation of legal principles warranting setting aside the appellate court's well-reasoned order.

11. It is settled proposition of law that in the event of conflict of judgments, view expressed by the appellate court should ordinarily be preferred unless the same is contrary to evidence on record or in violation of the settled principles for administration of justice.

12. Besides, the jurisdiction conferred under Article 199 of the Constitution is discretionary with the objects to foster justice in aid of justice and not to perpetuate injustice⁴. It may also be observed that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided⁵, and is restricted inter alia to appreciate whether any manifest illegality is apparent from the order impugned. It is also well settled that where the fora of subordinate jurisdiction had exercised its discretion in one way and that discretion had been judicially exercised on sound principles the supervisory forum would not interfere with that discretion, unless same was contrary to law or usage having the force of law.

13. In view of the foregoing discussion, no case for interference is made out. The instant constitutional petition, being devoid of merit, is hereby dismissed. Consequently, the impugned order dated 20.09.2021, passed by the appellate court in First Rent Appeal No. 03/2018, is maintained.

The above are the reasons of my short order passed on **07.08.2025**.

JUDGE

18.08.2025

Jamil

⁴ Muslim Commercial Bank Ltd. through Attorney v. Abdul Waheed Abro and 2 others [2015 PLC 259]

⁵ Shajar Islam v. Muhammad Siddique [PLD 2007 SC 45] & Arif Fareed v. Bibi Sara and others [2023 SCMR 413].