

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-55 of 2023

C.P No.S-56 of 2023

C.P No.S-57 of 2023

(Ali Muhammad alias Babu Bhai v. Mst. Farzana Ghulam Nabi & others)

DATE	ORDER WITH SIGNATURE OF JUDGE.
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1. For orders on office objections as at 'A'.
2. For hearing of CMA No.1054/2023.
3. For hearing of main case.

Mr. Muhammad Shoaib, Advocate for the Petitioners.

Mr. Saifullah Abbasi, Advocate for Respondent No.1 a/w Mr. Muhammad Kamran Khan, Advocate.

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Date of hearing : 15.01.2026

Date of Decision : 30.01.2026

JUDGMENT

Abdul Hamid Bhurgri, J.- By this common judgment, the above-captioned three constitutional petitions are being disposed of, as they arise out of the same rent proceedings and challenge different judgments/ orders passed by the learned Rent Controller and the learned Appellate Court.

2. Through the leading Constitutional Petition No. S-55 of 2023, the petitioner/tenant has assailed the concurrent findings recorded by the learned XII-Rent Controller, Karachi East, vide judgment dated 30.04.2022 passed in Rent Case No.124 of 2019, whereby the ejectment application filed by Respondent No.1 (landlady) was allowed, as well as the judgment dated 03.12.2022 passed by the learned X-Additional District Judge, Karachi East, in F.R.A. No.142 of 2022, whereby the appeal was dismissed.

3. During the pendency of the appeal, Rent Execution No.08 of 2022 was allowed vide order dated 21.09.2022 and writ of possession was issued, pursuant whereto possession of the demised premises was handed over to Respondent No.1. The petitioner's application under Order IX Rule 13 CPC read with Section 151 CPC, seeking setting aside of the execution order, was dismissed on 07.01.2023. Both these orders are subject matter of Constitutional Petition No. S-57 of 2023.

4. The petitioner also filed an application under Section 144 CPC read with Section 151 CPC for restoration of possession, which was dismissed by the learned Rent Controller vide order dated 07.11.2022. The said order has been challenged through Constitutional Petition No. S-56 of 2023.

5. Briefly stated, Respondent No.1 is one of the legal heirs and co-owners of the subject property, inherited after the demise of her father, late Haji Gohar Rehman. The petitioner was inducted as tenant in the 3rd and 4th floors of the building. After a prior ejectment proceeding and subsequent compromise, the premises were re-let to the petitioner at an enhanced rent, which he paid till March 2019. Upon a family settlement dated 02.04.2019, the subject property fell to the share of Respondent No.1, who served notice upon the petitioner on the grounds of personal bona fide requirement and default in payment of rent. The rent application filed on these grounds was allowed, and the appeal thereagainst was dismissed.

6. The petitioner contested the ejectment proceedings by denying the ownership and locus standi of Respondent No.1, disputing the family settlement, alleging payment of pugri and construction over the rooftop, and asserting that rent was duly tendered and deposited. It was also contended that the plea of personal requirement was malafide.

7. Learned counsel for the petitioner reiterated these submissions and argued that Respondent No.1, not having established her ownership through a Family Registration Certificate, lacked locus standi to maintain the ejectment proceedings.

8. Conversely, learned counsel for Respondent No.1 submitted that a tenant has no right to challenge the title of the landlord, that Respondent No.1 is a lawful co-owner by inheritance and family settlement, and that the ejectment order had already been executed prior to filing of the petitions, rendering them infructuous. He prayed for dismissal of the petitions.

9. Heard learned counsel for the parties and perused the record with their assistance.

10. The learned counsel for the petitioner/tenant contends that the tenancy was originally created by the father of respondent No.1 and

that, after his demise, rent was paid to one of the legal heirs, namely Mr. Anwer Abbas. It is further contended that rent tendered for subsequent months was refused with a mala fide intention to create default, compelling the petitioner to deposit the same through M.R.C. No.69 of 2019. The petitioner also disputes the family settlement amongst the legal heirs and denies the ground of personal need set up by respondent No.1. It is further urged that during pendency of the appeal, execution proceedings were allowed, which were challenged through connected petitions.

It is, however, not disputed that the petitioner was inducted as a tenant by the father of respondent No.1 and that, after his death, rent was paid to one of the legal heirs, thereby acknowledging the jural relationship of landlord and tenant. The plea regarding refusal to accept rent was duly considered by both the Courts below.

11. As regards the challenge to the Iqrarnama/family settlement, there is no dispute that respondent No.1 is a legal heir of late Gohar Rehman. It is a settled principle that upon the death of an owner, the property devolves upon the legal heirs by operation of law, irrespective of mutation. The Courts below have concurrently held that the internal arrangement or settlement amongst the legal heirs could not be questioned by the petitioner, who admittedly holds the status of a tenant and, therefore, lacks locus to challenge such arrangement. This conclusion does not suffer from any legal infirmity.

Both the Courts below have also concurrently found that despite notice, the petitioner failed to tender rent to respondent No.1 and persisted in depositing the same through M.R.C., leading to a finding of willful default. No misreading or non-reading of evidence has been pointed out to warrant interference. It is settled law that constitutional jurisdiction under Article 199 cannot be invoked as a substitute for appeal. Reliance is placed in the case of **Shakeel Ahmed and another v. Muhammad Tariq Farogh and others, 2010 SCMR 1925**, wherein it was held as under:-

“8. We have carefully perused the impugned judgment passed by the learned Single Judge in chambers of High Court of Sindh and seen that not only the said judgment is outcome of misreading and non-reading of evidence, but also the learned single Judge in chambers failed to appreciate, that jurisdiction under Article 199 of the Constitution cannot be invoked as

substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order of the appellate Court, which is final authority in the hierarchy of rent laws i.e. Sindh Rented Premises Ordinance, 1979".

12. With respect to the ground of personal need, the Courts below have recorded concurrent findings that respondent No.1 established her bona fide requirement of the premises under Section 15 of the Sindh Rented Premises Ordinance, 1979. The contention of the petitioner based on the service card of the husband of respondent No.1 was duly considered and rejected, as no cogent evidence was produced to establish ownership of an alternative residential property. It is well settled that the choice of premises for personal use lies within the exclusive prerogative of the landlord, and the tenant cannot dictate such choice. These findings are based on evidence and settled legal principles and do not call for interference.

13. As regards Constitutional Petitions Nos.56 and 57 of 2023, the record reflects that no stay order was operating against the execution proceedings. The Executing Court acted within its lawful jurisdiction, and the orders passed therein were in consonance with law. The Courts below rightly held that the said petitions were not maintainable. No jurisdictional defect has been demonstrated.

14. In view of the above, this Court is of the considered opinion that the judgments and orders passed by the Courts below are based on concurrent findings of fact, arrived at after proper appreciation of evidence, and do not suffer from any illegality, jurisdictional error, or perversity warranting interference under Article 199 of the Constitution. The constitutional petitions are devoid of merit and are accordingly dismissed along with all pending applications, if any. There shall be no order as to costs.

JUDGE

Ayaz Gul