

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-273 of 2023

‘Mst. Anisa Bano Wd/o Junaid Mohiuddin vs. Abdul Waheed S/o Abdul Majeed and others’

Petitioner	:	Through M/s Asif Ibrahim Memon & Syed Mukhtiar Advocates
Respondent Nos. 1 & 2	:	Through Mr. Muhammad Zareen Satti, Advocate
Respondent Nos. 3 & 4	:	Through Mr. Shariq Mubashir, Assistant Advocate General
Date of Hearing	:	27.04.2026
Date of Announcement	:	18.07.2026

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- The instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has been initiated against the concurrent Order dated 28.01.2023 passed by the learned District Judge, Karachi (Malir) in First Rent Appeal No. 48 of 2022, and the Order dated 26.08.2022 passed by the learned Rent Controller-III, Karachi (Malir) in Rent Case No. 21 of 2019 [**impugned Orders**] rejecting the petitioner’s Rent Case.

2. Heard learned counsel for the parties and perused the record. For brevity’s sake, the respective contentions of the parties will be discussed at the relevant portions in this Judgment.

3. Brief facts involved are that the deceased husband of the Petitioner was the owner of the premises bearing No. A-37, admeasuring 70 square yards, situated at Football Ground, Quaidabad, Landhi, Malir, Karachi. After his demise on 07.07.2012, the petitioner claims to have let out the said premises to Respondent No. 1, Abdul Waheed, who was a close friend of her deceased husband, through a verbal agreement in the year 2012, against monthly rent of Rs. 6,000/- which was later increased to Rs. 8,000/-. No written tenancy agreement was executed between the parties and the arrangement was purely oral. It is claimed that Respondent No.1 paid rent regularly up to July 2019, whereafter he stopped making payments. The Petitioner claims to have requested Respondent No.1 on several occasions to vacate the premises for her personal and bonafide use, but he continued to delay and evade the matter. A meeting was held on 28.09.2019 in the presence of witnesses, during which it came to the knowledge of the Petitioner that Respondent No.1 had sub-let the premises to Respondent No. 2. A legal notice dated 03.10.2019 was served upon Respondent No.1, which remained unanswered. This prompted the Petitioner to file Rent Case No. 21 of 2019 before the learned Rent Controller-III, Malir, Karachi under Section 15 of the Sindh Rented Premises Ordinance, 1979, seeking ejectment of the Respondents and recovery of arrears of rent.

4. The Respondents contested the application and took a preliminary objection that the ejectment application was not maintainable as there existed no landlord-tenant relationship between the parties. Their case was that Respondent No.1 had purchased the subject premises from the deceased Junaid Mohiuddin through a Sale Agreement dated 26.05.2011, and after the purchase, utility connections were installed in his name. It was further stated that Respondent No.1 was never a tenant of the Petitioner and never paid any rent to her. Respondent No.1 also claimed to have sold the premises to Respondent No.2 on 16.02.2018 and that physical possession along with original title documents were lying with Respondent No.2.

5. The learned trial Court, after framing the relevant points for determination, recorded evidence of both sides. The Petitioner examined herself and two witnesses, namely Almas and Kiran Amir. She produced a transcription of a CD recorded on 28.07.2019, a legal notice, three receipts, letters and the original CD as exhibits. The Respondents examined Respondent No. 1 and Respondent No. 2, along with two witnesses namely Abdul Sohail and Israr Ahmed. Respondent No. 1 produced a sale agreement dated 26.05.2011, an application for SSGC domestic connection, SSGC bill and other supporting documents.

6. After examining the entire evidence and hearing the learned counsel for both sides, the learned Rent Controller held that the Petitioner had failed to establish the relationship of landlord and tenant between herself and the Respondents. The trial Court found that no tenancy agreement, rent receipt, or counter foil of any receipt had been produced to show that Respondent No. 1 had been inducted as a tenant and had been paying rent. The Petitioner herself admitted during cross examination that no written tenancy agreement was executed and that no documentary evidence of tenancy existed. The Court found that the evidence of the Petitioner and her witnesses was below the required standard and could not be considered sufficient to establish a relationship of landlord and tenant. The ejectment application was accordingly dismissed.

7. The Petitioner preferred First Rent Appeal No. 48 of 2022 before the learned District Judge, Malir, Karachi. The learned District Judge, after examining the record and proceedings and after hearing the counsel for the Respondents, who appeared and argued the matter, noted that the Petitioner and her counsel remained absent on repeated dates of hearing without intimation, including the last date of hearing on 16.01.2023, despite opportunity having been given to argue. The learned District Judge affirmed the findings of the trial Court and held that the Petitioner had failed to establish the relationship of landlord and tenant. The first appeal was accordingly dismissed vide order dated 28.01.2023, maintaining the judgment of the learned Rent Controller.

8. The entire foundation of the ejectment application rested on the Petitioner's claim that she was the landlady of the demised premises and that Respondent No. 1 was inducted as her tenant through a verbal agreement in 2012. It is well settled that in proceedings under the Sindh Rented Premises Ordinance, 1979, the question of the existence of the relationship of landlord and tenant between the parties is a jurisdictional question. Unless

such relationship is established to the satisfaction of the Rent Controller, the Rent Controller has no authority to entertain or decide the application. This principle has been consistently affirmed by the superior Courts, including the case of '*Afzal Ahmad Qureshi v. Mursaleen*' (2001 SCMR 1434), wherein it was held that the Rent Controller cannot decide the question of relationship of landlord and tenant against the tenant when the landlord has not established his position as landlord, and that oral evidence alone is not sufficient to hold that a relationship of landlord and tenant exists between the parties.

9. The guidelines laid down by this Court in the case of '*Hafeezuddin and others v. Badaruddin and others*' (PLJ 2003 Karachi 134), which have been applied by both Courts below, are instructive and directly applicable to the facts of the present case wherein it was held in that case that a sale agreement does not by itself confer title in a property and merely confers the right to seek specific performance; that mere ownership of a building by one person and possession thereof by another does not create a relationship of landlord and tenant as envisaged under the Sindh Rented Premises Ordinance, 1979; that a verbal tenancy can exist but in order to establish it, evidence of a very high standard is required, from which the facts of tenancy are established on the principle of preponderance of probabilities; that there is no concept of any deemed tenancy; and that the Rent Controller has no jurisdiction to decide questions relating to ownership or title of property, which fall exclusively within the domain of the Civil Court.

10. Applying these principles to the facts of the present case, the position is clear. The Petitioner admittedly produced no tenancy agreement, no rent receipt, no counter foil of any receipt, no written correspondence acknowledging any tenancy and no document of any kind to show that Respondent No. 1 was ever inducted as her tenant or that he paid rent to her in that capacity. The Petitioner admitted during cross examination that she had not produced any forensic report to establish that the voice in the CD recording was that of Respondent No.1. She further admitted that the transcript of the CD does not show that Respondent No.1 was her tenant or how much rent he was paying. She also admitted that the transcript of the CD was written by her sister Kanwal, who was not produced as a witness. Her witness Almas admitted that no tenancy agreement was executed in his presence and that neither he nor the Petitioner had produced any rent agreement or rent receipt. He further admitted that the documents produced by the Petitioner could not show that the demised premises was owned by the Petitioner's husband. Her other witness Kiran Amir similarly admitted that no rent agreement or rent receipt had been produced before the Court and that the transcript of the CD does not specifically show that the premises was let out to Respondent No. 2 in the year 2012.

11. The Petitioner herself did not produce any title document in the name of her deceased husband or in her own name to establish ownership of the demised premises. This too was admitted by her in cross examination. Ownership by itself would not establish a landlord and tenant relationship under the law, but the complete absence of any title document further weakened the Petitioner's claim before the forums below.

12. On the other side, the Respondents denied the relationship of landlord and tenant

throughout and maintained that Respondent No. 1 had purchased the demised premises from the deceased Junaid Mohiuddin through a Sale Agreement dated 26.05.2011. The Respondents and their witnesses were cross examined at length but no admission of any tenancy came forward from their evidence. The cross examination of the Respondents' witnesses brought out that Respondent No. 2 is residing beside House No. A-37 and not within it, and that physical possession of House No. A-38 was handed over to Respondent No. 2, which are all consistent with the Respondents' own version. No statement came from any witness on the Respondents' side affirming the existence of a tenancy.

13. The burden of establishing the relationship of landlord and tenant rests squarely on the applicant which invokes the jurisdiction of the Rent Controller. That burden, in the present case, has not been discharged. The evidence produced by the Petitioner falls well short of the high standard required to establish a verbal tenancy. The learned Rent Controller correctly held that the applicant failed to prove any relationship of landlord and tenant, and the learned District Judge correctly affirmed that finding after independently examining the record.

14. It is by now settled law that the constitutional jurisdiction under Article 199 of the Constitution is a supervisory jurisdiction and is not available as a substitute for an appeal. This Court, while exercising constitutional jurisdiction, does not re-appreciate evidence or disturb concurrent findings of fact recorded by Courts below unless those findings suffer from a manifest error of law, an error apparent on the face of the record, a failure of jurisdiction, or a violation of a fundamental right. The concurrent findings of the two Courts below that no relationship of landlord and tenant has been established between the Petitioner and the Respondents are based on a proper reading of the evidence, a correct application of the legal principles governing the jurisdiction of the Rent Controller, and a careful consideration of the admissions made by the Petitioner and her witnesses. No jurisdictional error, no misreading or non-reading of evidence and no illegality or irregularity has been pointed out which could justify interference by this Court in constitutional jurisdiction.

15. In view of the foregoing discussion, this constitutional petition is without merit and is accordingly dismissed. There shall be no order as to costs.

J U D G E