

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-971 of 2022

(Murtaza Jamil v. P.O Sindh and others)

DATE	ORDER WITH SIGNATURE OF JUDGE.
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1. For orders on CMA No.6349/25.
2. For orders on office objections 'A'.
3. For hearing of CMA No.6820/22.
4. For hearing of main case.

M/S Ahmed Madni and Peer Ali, Advocates for petitioner.

M/S Sawan Meghwar and Pervaiz Ali, Advocates for respondent No.4.

Mr. Naeem Suleman, Advocate for respondent No.7.

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Date of hearing: 22.12.2025

Date of Judgment: 12.01.2026

JUDGMENT

Abdul Hamid Bhurgri, J.- Through this constitutional petition, the petitioner has assailed the judgment dated 17.10.2022 passed by the learned Appellate Court in F.R.A. No.132 of 2022, as well as the orders dated 19.05.2022 and 27.10.2022 passed by the learned Rent Controller in Rent Case No.345 of 2019, whereby the ejectment application filed by the respondent-landlord was allowed and the appeal was dismissed.

2. The petitioner is an admitted tenant of a residential single-storey house bearing No. B-262, Block-L, North Nazimabad, Karachi, under a written tenancy agreement dated 11.04.2014 at a monthly rent of Rs.60,000/-, with agreed annual enhancement. It is not disputed that the petitioner continued in occupation after June 2018 but admittedly stopped paying rent on the plea that the landlord had entered into alleged sale transactions and that respondents Nos.6 & 7 had become entitled to the property. No notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 ("the Ordinance") regarding transfer of ownership was ever served upon the petitioner. Rent was deposited in Court for the first time in July 2019, after default had already accrued. The learned Rent Controller, upon appraisal of evidence, held the

petitioner to be a defaulter and ordered ejection, which findings were affirmed in appeal.

3. Learned counsel for the petitioner argued that the rent proceedings were not maintainable owing to pendency of civil litigation, including a suit for specific performance based on alleged agreements to sell dated 12-03-2018 and 04-07-2018. It was contended that rent had been paid to respondents Nos.6 & 7 and that possession was protected under Section 53-A of the Transfer of Property Act. Reliance was placed upon 2008 CLC 398.

4. Conversely, learned counsel for the respondents submitted that the pleas raised were legally misconceived. It was contended that Rent Courts exercise limited statutory jurisdiction and cannot adjudicate questions of title or ownership. Pendency of civil litigation does not bar rent proceedings, nor does Section 53-A override rent laws. Reliance was placed upon PLD 1988 SC 190, 2010 SCMR 1925 and 2009 MLD 367.

5. I have heard learned counsel and perused the record.

6. Now the points for determination are as under:-

P O I N T S

- i. Whether the petitioner committed default in payment of rent?
- ii. Whether alleged sale agreements justified non-payment of rent?
- iii. Whether the pendency of a Civil Suit or alleged Sale Agreement bar the Rent Controller from proceeding with the ejection application?
- iv. Whether concurrent findings of fact warrant interference under Article 199 of the Constitution?
- v. What should the Judgment be?

7. My findings on the above points with reasons thereof are as under:-

FINDINGS

Point No.1 In the affirmative.
Point No.2 In the negative.
Point No.3 In the negative.
Point No.4 In the negative.
Point No.5 Petition is dismissed.

REASONS

POINT NO.1

8. The record clearly establishes that rent was not paid from June 2018. The subsequent deposit made in July 2019 was after default had already accrued. It is settled law that subsequent payment or deposit of rent does not cure default once the statutory period has lapsed. The courts below have correctly held the petitioner to be a defaulter. Accordingly, Point No.1 is answered in the ***Affirmative***.

POINT NO.2

9. The defence that rent was withheld due to alleged sale agreements and competing ownership claims is legally untenable. No notice under Section 18 of the Ordinance was ever served upon the petitioner; therefore, he remained legally bound to tender rent to the admitted landlord. An agreement to sell does not confer title, which passes only through a valid registered conveyance. Payment of rent to persons not established as lawful landlords does not absolve a tenant from default. Accordingly, Point No.2 is answered in the ***Negative***.

POINT NO.3

10. The contention that rent proceedings were not maintainable due to pendency of civil suits is devoid of merit. Rent Courts exercise limited and special jurisdiction and are neither competent nor required to adjudicate questions of title or ownership. Pendency of a suit for specific performance does not confer upon a tenant any right to retain possession, nor does it operate as a bar to eviction proceedings. The consistent view of the Hon'ble Supreme Court is that a tenant asserting rights under an alleged sale agreement must first vacate the premises and pursue civil remedies independently. Reliance is placed in the case of *Salahuddin Ahmed v. Khurram Sultan Abbasi*, reported in 2025 SCMR 1691, wherein it was held as under:-

“3. So far as the claim of the petitioner that he has entered into an agreement with the vendor and has purchased the

demised premises, for which he has instituted suit for specific performance, is concerned, it is an established principle that if a tenant denies the proprietary rights of the landlord on the ground of any agreement to sell, then he is bound to first of all deliver the possession of the premises in question and then to contest his proprietary rights in the property and if ultimately he succeeds in getting relief from the Court of competent jurisdiction and decree is passed in his favour he can enforce the same according to law with all its consequences".

Similar view was taken in the case of *Abdul Rasheed v. Maqbool Ahmed and others*, 2011 SCMR 320, as follows:-

*"5. We have heard both the learned Advocates Supreme Court. 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. In this regard reference can be made to *Shameem Akhtar v. Muhammad Rashid* (PLD 1989 SC 575), *Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi* (PLD 1991 SC 242), *Muhammad Rafique v. Messrs Habib Bank Ltd.* (1994 SCMR 1012) and *Mst. Bor Bibi v. Abdul Qadir* (1996 SCMR 877)".*

Reliance is also placed in the case of *Haji Jumma Khan v. Haji Zarin Khan*, PLD 1999 S.C 1101, wherein following observations were made:-

*"6. We have carefully perused entire record in the light of above submissions. It is an admitted feature of the case that petitioner was occupying the shop in dispute as tenant. This fact is also incorporated in the sale-agreement dated 20-1-1989. The question about genuineness or otherwise of said sale-agreement is obviously dependent upon final determination by Civil Court of competent jurisdiction. At this stage the validity of sale agreement relied upon by the petitioner/tenant is vigorously challenged by respondent/landlord. Therefore, till the time that petitioner is able to establish his claim for specific performance on the basis of alleged sale-agreement, respondent-landlord would continue to enjoy the status of being owner and landlord of the premises. Relationship between the parties till such time would be regulated by the terms of tenancy. This Court in similar circumstances while examining dispute between the landlord and tenant where the ejectment proceedings were contested on the ground of sale-agreement in case of *Mst. Azeemun Nisa Begum v. Ali Muhammad* PLD 1990 SC 382 has opined that ejectment proceedings could not be resisted by taking shelter under section 53-A of the Transfer of Property Act. Relevant observations read as under:-*

"For the foregoing reasons I am unable to subscribe to the conclusions arrived at by the learned Single Judge and hold that the respondent was not entitled to protect

his possession and resist ejection, under the provisions of section 53-A of the Transfer of Property Act and the relationship of landlord and tenant continued to exist between the parties even after the execution of the agreement of sale. As admittedly the respondent had failed to tender rent to the appellant the eviction order passed against him by the Rent Controller was fully justified. I would, therefore, allow this appeal, set aside the judgment of the learned Single Judge of the High Court and restore the order passed by the Rent Controller. There will be no order as to costs.”

The above view has been reiterated in case *Iqbal v. Mst. Rabia Bibi*, PLD 1991 SC 242. Relevant observations read, thus:

“Be that as it may, in some recent judgments this Court has taken the view that in cases like the present one, where the sale agreement or any other transaction relied upon by a tenant is seriously and bona fide disputed by the landlord, the appellant/tenant cannot be allowed to retain the possession during the litigation; where he continues to deny the ownership of the landlord who had inducted him as a tenant, without any condition and/or reservation. It has been ruled that in such cases although the tenant has a right to adduce evidence and take a short time for that purpose to remain in occupation despite having set up a hostile title which is denied by the landlord; but on the well-known bar of estoppel in this behalf he (the tenant) cannot be permitted to remain in occupation and fight the litigation for long time—even for decades. In this case it is more than a decade that the appellants have been able to keep the possession on a claim which the landlord asserts is false. Accordingly, as held in those cases in fairness to both sides, while the tenant is at liberty to prosecute the litigation wherein he should try to establish his claim but it should not be at the cost of Landlord/owner. It should be at the cost of himself and he must vacate—though of course he would be entitled to an easy and free entry as soon as he finally succeeds in establishing his title, against his own landlord. See *Makhan Bano v. Haji Abdul Ghani* PLD 1984 SC 17, *Allah Yar and others v. Additional District Judge and others* 1984 SCMR 741 and *Province of Punjab v. Mufti Abdul Ghani* PLD 1985 SC 1.

Similarly following view has been taken in case *Mst. Bor Bibi and others v. Abdul Qadir and others* 1996 SCMR 877:-

“However, the Judge in Chambers of the High Court has taken pain and elaborately discussed the issues and assessed the value of the agreement deed and other documents. He has referred to various authorities in that respect and has come to the conclusion that a tenant cannot be allowed to retain his possession, on such agreement till decision of their title by a Civil Court of competent jurisdiction. We do not find any defect with his observations and conclusion. The factum of default of the payment of the rent and the requirement of the landlord has been proved. We have neither been

persuaded nor satisfied that any defect lies with the judgment of the Judge in Chambers of the High Court which may call for interference of this Court in its appellate jurisdiction. The appeal fails which is dismissed accordingly with costs.”

“On the basis of dictum laid in aforequoted reports we unhesitatingly, hold that petitioner cannot legitimately resist maintainability of ejectment proceedings pending against him on the ground of sale-agreement. Suffice it to observe that genuineness or otherwise of such agreement and its consequential effect will be independently determined by the Civil Court. However, in the instant case we are satisfied that issue regarding relationship of tenancy and personal bona fide requirement of respondent-landlord has been correctly decided by the Courts below. There does not appear any material defect or legal infirmity with regard to conclusions drawn in the impugned judgments. Accordingly the petition having no merit is dismissed and leave to appeal is refused. Petition dismissed”.

Reliance is also placed in the case of Mst. Samina Begum v. Muhammad Haq Nawaz Khan and 2 others, 2023 MLD 103, wherein court held as under:-

“7. It is well-settled that if the tenant asserts that he is no more a tenant as he had purchased the rented premises, even then he has to vacate the premises and file a Suit for specific performance of the sale agreement; he would be entitled to possession of the premises in accordance with law only if he succeeds in his Suit; till such time the Civil Court passes a decree against the landlord in a Suit for specific performance, the landlord would be entitled to recover rent; and, till the time that the tenant is able to establish his claim for specific performance on the basis of a sale agreement, the landlord would continue to enjoy the status of being owner and landlord of the premises, and till such time the relationship between the parties would be regulated by the terms of the tenancy. The above view is fortified by Haji Jumma Khan v. Haji Zarin Khan (PLD 1999 SC 1101), Kassim and another v. S. Rahim Shah (1990 SCMR 647), Muhammad Iqbal Haider and another v. Vth Rent Controller/Senior Civil Judge, Karachi Central and others (2009 SCMR 1396), Syed Imran Ahmed v. Bilal and another (PLD 2009 SC 546) and Abdul Rasheed v. Mqbool Ahmed and others (2011 SCMR 320). In the instant case, it is an admitted position that no decree has been passed up till now in the Suit for specific performance filed by the petitioner”.

Similarly in the case of Iqbal and 6 others v. Mst. Rabia Bibi and another, PLD 1991 S.C 242, it was held as under:-

“It appeared to be a well received rule inasmuch as in Allay Yar and others v. Additional District Judge and others (1984 S.C.M.R. 741) and Mian Muhammad Abdullah v. District Judge, Sahiwal and 6 others (PLD 1985 Lah. 467) it was laid

down unambiguously that ejection proceedings could not be stayed or stalled on a plea that the tenant in possession holds such an agreement. Even pendency of a suit for specific performance of the agreement was held no ground to avoid eviction of the tenant by the Rent Controller. Since the plea raised in defence by the appellants was not effective, the next order to be passed was one for eviction. Muhammad Idrees vis. Mst. Safia Begum and others (1986 SCMR 795) was an instance where straightaway ejection was ordered on failure of such a defence.”

11. In view of above discussion, the point under discussion is answered in the ***Negative***.

POINT NO.4

12. Both the learned Rent Controller and the learned Appellate Court have returned concurrent findings of fact holding the petitioner to be a defaulter. No perversity, misreading, or non-reading of evidence has been pointed out so as 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”.

13. In view of the admitted default, absence of statutory notice under Section 18 of the Ordinance, settled legal position regarding sale agreements, limited jurisdiction of Rent Courts, and concurrent findings of fact, no lawful justification is made out for interference. Accordingly, the point is answered in the ***Negative***.

POINT NO.5

14. What has been discussed above, instant petition is ***dismissed*** along with all pending applications. The civil suits pending between the parties shall be decided independently by the competent courts in accordance with law, without being influenced by any observation made herein.

15. The case law relied upon by learned counsel for the petitioner is distinguishable and affords no assistance in the facts and circumstances of the present case.

JUDGE