

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-674 of 2023

[Mst. Kaneez Fatima V. Syed Muhammad Taufiq and others]

Petitioner : Through Mr. Sikandar Khan, Advocate.
Respondent No.1 : Through Mr. Mian Ashfaq Ahmed, Advocate.
Respondent Nos.2 & 3. : Through Mr. Salahuddin Chandio, A.A.G.
Respondent No.4 : None present.
Date of Hearing : **21.09.2026**
Date of Decision : **26.10.2026**

Judgment

Abdul Hamid Bhurgri, J.- The present matter and connected Civil Revision Application No.83/2023, though arising out of the same property, were tagged together and heard simultaneously. However, having regard to the distinct nature of the proceedings, the questions involved and the separate jurisdictions exercised by the Civil Court and the Rent Controller, I consider it appropriate to decide both matters through separate judgments, so that the respective controversies may be examined independently in the light of the pleadings, evidence and applicable law, without overlapping the issues involved.

2. The petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, to assail the judgment dated 26.05.2023 passed by the learned Rent Appellate Court, Karachi-West, whereby the appeal preferred by respondent No.1 was allowed, the judgment dated 24.09.2020 passed by the learned Rent Controller in Rent Case No.204 of 2017 was set aside, and ejectment of the petitioner from the premises in question was ordered.

3. The controversy between the parties centres around House No.15/A (15/5), Block-A-1, Sector-E, Qasba Township, Manghopir Road, Orangi Town, Karachi. Respondent No.1 claims to have purchased the property through a registered sale deed dated 02.10.2014 for a consideration of Rs.10,00,000/-. According to him, the petitioner, who was previously occupying the property, subsequently entered into a tenancy agreement dated 05.11.2016

and agreed to occupy the premises as tenant. Alleging default in payment of rent, respondent No.1 instituted Rent Case No.204 of 2017 seeking ejectment of the petitioner under the Sindh Rented Premises Ordinance, 1979.

4. The petitioner contested the ejectment application, categorically denying the existence of any relationship of landlord and tenant. Her case was that she had never executed the alleged tenancy agreement and had continued occupying the premises in her own right. She also disputed the sale deed relied upon by respondent No.1, alleging that her signatures had been obtained through fraud and misrepresentation. The dispute concerning the sale deed became the subject of separate civil proceedings.

5. The learned Rent Controller, after recording evidence and hearing the parties, dismissed the ejectment application through judgment dated 24.09.2020, holding that the relationship of landlord and tenant had not been established. Respondent No.1 preferred an appeal, which was allowed by the learned Rent Appellate Court through the impugned judgment dated 26.05.2023. The petitioner, being aggrieved, has invoked the constitutional jurisdiction of this Court.

6. Learned counsel for the petitioner has assailed the impugned judgment principally on the ground that the learned Rent Appellate Court reversed the findings of the Rent Controller without independently examining the material oral and documentary evidence. It is contended that the alleged tenancy agreement was specifically disputed, its execution had not been established in accordance with law, and the Rent Controller had recorded findings after appreciating the evidence of the parties. According to learned counsel, the appellate Court, instead of examining the evidentiary basis of the alleged tenancy, relied substantially upon the outcome of the parallel civil proceedings and the alleged non-compliance with earlier directions concerning deposit of rent. It is submitted that the impugned judgment suffers from non-reading of material evidence and failure to exercise appellate jurisdiction in accordance with law.

7. Conversely, learned counsel for respondent No.1 has supported the impugned judgment, maintaining that respondent

No.1 acquired the property through a registered sale deed and that the petitioner subsequently occupied the premises as tenant under the tenancy agreement dated 05.11.2016. It is contended that the petitioner failed to comply with the directions concerning deposit of rent and that the learned Rent Appellate Court rightly allowed the appeal. Learned counsel submits that the disputed questions of fact cannot be reopened in constitutional jurisdiction and that no case for interference under Article 199 of the Constitution has been made out.

8. I have heard learned counsel for the parties and examined the judgments of the Courts below, the evidence available on record and the material relevant to the controversy.

9. The principal question requiring determination is whether the learned Rent Appellate Court, while reversing the judgment of the Rent Controller, discharged its appellate function in accordance with law by independently examining the material evidence concerning the existence of the relationship of landlord and tenant and assigning reasons for disagreeing with the findings recorded by the Rent Controller.

10. At the outset, it may be observed that the jurisdiction of this Court under Article 199 of the Constitution is supervisory in character. This Court does not ordinarily sit as a further appellate forum for reappraisal of evidence or substitution of its own conclusions on disputed questions of fact. Interference, however, is warranted where the impugned decision suffers from jurisdictional error, misreading or non-reading of material evidence, perversity, or failure to exercise jurisdiction in accordance with law. The distinction is material because the present controversy does not merely concern the correctness of one factual conclusion as against another, but the manner in which the learned Rent Appellate Court exercised its jurisdiction while reversing the judgment of the Rent Controller.

11. The existence of a relationship of landlord and tenant is foundational to the exercise of jurisdiction under the Sindh Rented Premises Ordinance, 1979. Where such relationship is specifically denied, the forum exercising jurisdiction under the Ordinance is required to determine whether it has been established on the basis of legally admissible evidence. The production of a document of title

may be relevant to the claim of ownership, but ownership and tenancy are distinct legal concepts. Proof of ownership does not, by itself, establish that the person occupying the premises was inducted as tenant. Equally, denial of tenancy by an occupant does not automatically exclude the jurisdiction of the Rent Controller. The question must be determined upon examination of the evidence and the surrounding circumstances in accordance with law.

12. In the present case, respondent No.1 relied upon the alleged tenancy agreement dated 05.11.2016, whereas the petitioner specifically denied its execution. The record contains the oral evidence and cross-examination of the parties, including the circumstances concerning the alleged sale transaction, possession of the property, execution of the tenancy agreement and payment of rent. Respondent No.1 acknowledged that rent receipts had not been issued and that the marginal witnesses to the tenancy agreement had not been examined. The petitioner, on the other hand, maintained that she had never surrendered possession and continued occupying the premises in her own right. The witnesses examined on her behalf also made statements concerning the extent of their personal knowledge of the transactions. These matters were relevant to the determination of the disputed relationship and required consideration in their proper evidentiary perspective.

13. It is necessary to clarify that the non-examination of marginal witnesses to a disputed tenancy agreement does not, in every case, necessarily render the agreement inadmissible or incapable of proof. Its legal effect depends upon the nature of the document, the applicable rules of evidence and the other material available on record. Similarly, the absence of rent receipts or the continued physical occupation of the premises cannot, in isolation, conclusively establish or disprove tenancy. These circumstances must be considered collectively with the remaining evidence. It is precisely this exercise which the statutory appellate forum was required to undertake before reversing the Rent Controller's findings.

14. A perusal of the impugned appellate judgment reveals that the learned Rent Appellate Court did not undertake an independent examination of the material oral and documentary evidence concerning the disputed tenancy. The judgment

substantially proceeds upon the outcome of the parallel civil proceedings and the alleged non-compliance with earlier judicial directions concerning deposit of rent. The learned appellate Court did not adequately examine the evidentiary foundation of the alleged tenancy agreement, the material admissions and denials appearing in the depositions, or the reasons assigned by the Rent Controller for holding that the relationship of landlord and tenant had not been established. Nor does the impugned judgment disclose a reasoned basis for reversing that finding.

15. The earlier directions concerning deposit of rent were undoubtedly matters requiring consideration according to their terms and legal effect. However, a direction for deposit of rent during pending proceedings cannot, merely by reason of its existence, be treated as a substitute for determining the foundational relationship of landlord and tenant, unless the terms and binding effect of the particular order legally warrant such a conclusion. Likewise, any alleged non-compliance with such directions must be examined in the context of the applicable statutory provisions and the nature of the proceedings in which the directions were issued. The learned Rent Appellate Court was therefore required to determine the legal effect of those orders rather than proceeding upon an assumption that the disputed relationship and consequent default stood established.

16. It is a fundamental requirement of appellate adjudication that the appellate forum should address the material questions arising from the controversy, examine the evidence relevant to those questions and assign reasons for its conclusions. This obligation assumes particular significance where the appellate Court reverses findings recorded by the original forum after appreciation of evidence. A judgment which merely announces a contrary conclusion without addressing the material evidence and the reasoning under challenge does not adequately discharge that obligation.

17. In **Gul Rehman v. Gul Nawaz Khan**¹, the Honourable Supreme Court considered a situation where the first appellate Court had failed to independently examine the material evidence. The Honourable Supreme Court emphasized the distinction between

¹ *Gul Rehman v. Gul Nawaz Khan (2009 SCMR 589)*.

appellate and revisional jurisdiction and held that the High Court, instead of itself undertaking the factual exercise within its limited revisional jurisdiction, ought to have remitted the matter to the first appellate Court for a fresh decision. The case is instructive for the present controversy, not because the procedural provisions governing ordinary civil appeals are necessarily applicable in their entirety to rent appeals, but because of the broader principle that the statutory appellate forum must discharge its essential function of examining the material evidence and deciding the controversy through a reasoned judgment.

18. The principle that remand is not to be ordered as a matter of routine is equally well established. In **Mst. Shahida Zareen v. Iqrar Ahmed Siddiqui**², the Honourable Supreme Court emphasized that remand is appropriate in exceptional circumstances and should ordinarily be avoided where the competent appellate forum can itself decide the controversy on the evidence already available. The object of this principle is to prevent unnecessary prolongation of litigation and to ensure that remand is employed only where genuinely required for proper adjudication.

19. The present case, however, stands on a different footing. The evidence has already been recorded, and the learned Rent Controller has decided the controversy. The deficiency lies in the appellate adjudication, where the material evidence and the findings under challenge have not received the consideration required by law. This Court is not called upon to decide whether the Rent Controller's appreciation of evidence was preferable to that of the Rent Appellate Court. Rather, the question is whether the learned appellate Court performed the judicial exercise necessary for reversing the finding concerning the foundational relationship of landlord and tenant. For the reasons already discussed, the impugned judgment does not disclose such an exercise.

20. Ordinarily, remand is not to be encouraged, particularly where litigation has remained pending for several years. Nevertheless, where the statutory appellate forum has failed to address the central controversy and has reversed the original decision without proper consideration of the material evidence, remand may become

² *Mst. Shahida Zareen v. Iqrar Ahmed Siddiqui (2010 SCMR 1119).*

necessary to secure a lawful appellate determination. In the present circumstances, this Court, exercising its limited constitutional jurisdiction, would not be justified in undertaking a fresh and comprehensive appraisal of the disputed evidence in substitution for the statutory appellate Court. The appropriate course is therefore to remit the appeal for fresh decision on the existing record. Such remand is not intended to provide either party another opportunity to improve its case, but solely to ensure that the appellate jurisdiction is exercised in accordance with law.

21. There is another aspect requiring clarification. The parties are also engaged in civil proceedings concerning the validity of the registered sale deed dated 02.10.2014 and their competing claims relating to the property. The judgment and decree passed in those proceedings were separately challenged in Civil Revision Application No.S-83 of 2023, wherein the civil appeal has been remanded to the learned first appellate Court for fresh determination in accordance with law. Consequently, the findings recorded in the civil proceedings cannot be treated as a final and conclusive adjudication of the disputed title for purposes of the present controversy. The learned Rent Appellate Court shall determine the question of tenancy independently, within the jurisdiction conferred by the Sindh Rented Premises Ordinance, 1979, without undertaking a final adjudication of the competing claims of ownership.

22. For the foregoing reasons, the impugned judgment dated 26.05.2023 passed by the learned Rent Appellate Court, Karachi-West, is set aside, and the rent appeal is remanded to the learned appellate Court for fresh decision in accordance with law, subject to the following directions:

- (i) The learned Rent Appellate Court shall independently examine and appreciate the oral and documentary evidence already available on record and determine whether the relationship of landlord and tenant has been established in accordance with law.
- (ii) The learned appellate Court shall specifically address the material findings recorded by the Rent Controller, including the evidentiary value and proof of the alleged

tenancy agreement dated 05.11.2016, the relevant admissions and denials appearing in the depositions, and the other circumstances bearing upon the alleged relationship.

- (iii) The earlier judicial orders concerning deposit of rent and the alleged non-compliance therewith shall be examined according to their actual terms and legal effect, without treating them as conclusive proof of tenancy unless such consequence is warranted in law.
- (iv) If the relationship of landlord and tenant is found to have been established, the learned appellate Court shall thereafter determine the grounds of ejectment, including the alleged default, upon independent examination of the relevant evidence and the applicable statutory provisions.
- (v) The appeal shall be decided on the basis of the evidence and material already available on record. The proceedings shall not be reopened for recording fresh evidence merely to enable either party to fill lacunae or overcome deficiencies in its case.

23. Considering that the ejectment proceedings were instituted in 2017 and that the matter now requires only hearing of arguments and delivery of a reasoned appellate judgment, the learned Rent Appellate Court is directed to decide the appeal preferably within sixty (60) days from the date of receipt of a certified copy of this judgment, after affording the parties a reasonable opportunity of hearing and without granting unnecessary adjournments.

24. It is clarified that this Court has expressed no opinion on the ultimate existence or otherwise of the relationship of landlord and tenant, the validity or genuineness of the disputed tenancy agreement, or the alleged default in payment of rent. Likewise, no finding has been recorded concerning the validity of the registered sale deed, the alleged payment of consideration, fraud, misrepresentation or the competing claims of ownership and entitlement to possession. All such questions shall remain open for

determination by the competent forum, to the extent falling within its jurisdiction, strictly in accordance with law and uninfluenced by any observations made herein.

25. The constitutional petition is accordingly allowed to the extent indicated above, and the rent appeal is remanded to the learned Rent Appellate Court for fresh decision in the terms stated herein. There shall be no order as to costs.

JUDGE

Ayaz Gul