

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-1400 of 2025

(M/S S.S Enterprises v. Muhammad Ahmed Ahsanullah & another)

DATE	ORDER WITH SIGNATURE OF JUDGE.
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1. For orders on office objection No.1 a/w reply as at "A".
2. For hearing of CMA No.8896/2025.
3. For hearing of main case.

Mr. Syed Muhammad Saulat Rizvi, Advocate for the Petitioner.
Mr. Mian Haad A.M. Pagawala, Advocate for Respondent No.1.
Mr. Imran Ahmed Abro, A.A.G.

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Date of hearing : 30.01.2026
Date of Order : 19.02.2026

ORDER

Abdul Hamid Bhurgri, J.- Through the instant constitutional petition, the petitioner/tenant has impugned the order dated 28.11.2025 passed by the learned appellate Court in F.R.A. No.137/2025, whereby the First Rent Appeal filed by the respondent/landlord was allowed and the order dated 30.07.2025 passed by the learned Rent Controller in Rent Case No.122/2024 consolidating a Civil Suit No.235/2025 for Specific Performance of Contract, Cancellation and Permanent Injunction with a Rent Application was set aside and both the cases were restored to their respective positions.

2. The petitioner's case is that the consolidation order dated 30.07.2025 was interlocutory in nature; that a First Rent Appeal against such order was not maintainable under the Sindh Rented Premises Ordinance, 1979 ("the Ordinance"); and that consolidation was permissible since both matters were pending before the same judicial officer exercising powers as Senior Civil Judge as well as Rent Controller.

3. Learned counsel for the petitioner contended that consolidation was intended to avoid multiplicity of proceedings and was lawful as the parties and subject matter were identical. He relied upon 2000 YLR 1207, 2015 CLC 1383, PLD 2021 Balochistan 59, and 2002 CLC 992.

4. Per contra, learned counsel for the respondent/landlord submitted that rent proceedings under the Ordinance and a civil suit for specific performance operate in distinct statutory domains and cannot be consolidated in the absence of any enabling provision.

5. I have heard learned counsel for the parties and perused the material available on record.

6. The objection regarding maintainability of the First Rent Appeal is misconceived. An order which directly affects statutory jurisdiction, alters the forum or mode of trial, subject the proceedings to a procedure not contemplated by the governing statute, cannot be treated as a mere interlocutory or procedural order.

7. By consolidating a rent application governed by the Ordinance with a civil suit under the Specific Relief Act, 1877, the learned trial Court effectively blended two distinct statutory jurisdictions, thereby affecting the landlord's substantive right to have rent proceedings adjudicated by the exclusive forum created by law. Such an order was, therefore, appealable. The learned appellate Court rightly entertained and decided the First Rent Appeal.

8. The pivotal question is whether a civil suit for specific performance can be consolidated with a rent application filed under the Ordinance. The answer, in law, is in the negative.

9. The Rent Controller is a creature of statute exercising special and limited jurisdiction. The Honourable Supreme Court has held that although a Rent Controller may execute his orders as if they were decrees of a Civil Court, he does not thereby become a Civil Court, nor can he grant relief beyond that conferred by statute (Muhammad Saleem v. Noor Muhammad, 2007 SCMR 818).

10. Likewise, where a tenant asserts ownership on the basis of an alleged sale or agreement, such claim cannot be adjudicated by the Rent Controller and must be independently determined by a competent

Civil Court; until such civil claim is established, the landlord-tenant relationship for purposes of rent law remains intact.

11. Jurisdiction attaches to the forum and the statutory capacity in which a judicial officer acts, not to the individual. While adjudicating a civil suit, the officer functions as a Civil Court under the Code of Civil Procedure; while adjudicating a rent application, he acts as a Rent Controller under the Ordinance. These jurisdictions are distinct, exclusive, and non-interchangeable.

12. The contention that consolidation was permissible merely because the parties and subject matter are identical is misconceived. Identity of parties does not confer jurisdiction where none exists, nor does it authorize amalgamation of proceedings governed by separate statutory frameworks.

13. The Honourable Supreme Court has authoritatively held that where the legislature creates a special tribunal and provides a complete mechanism for adjudication, the jurisdiction of ordinary courts stands excluded to the extent of matters entrusted to such tribunal. The corollary is equally settled: just as a Civil Court cannot usurp the jurisdiction of a special tribunal, a special tribunal cannot assume jurisdiction vested exclusively in a Civil Court.

14. The Ordinance creates a self-contained and expeditious mechanism for resolution of landlord-tenant disputes. If consolidation of rent proceedings with ordinary civil suits were permitted on considerations of convenience, the legislative intent underlying the creation of a special forum would stand diluted. Procedural devices cannot be invoked in a manner that defeats the statutory scheme of a special law.

15. It is further settled that where a tenant asserts ownership on the basis of an alleged agreement to sell and institutes a suit for specific performance, such plea does not suspend or defeat rent proceedings. A

tenant cannot simultaneously retain possession in the capacity of tenant while setting up title inconsistent with tenancy to resist eviction. If he asserts ownership inconsistent with the landlord-tenant relationship, the proper course is to surrender possession and pursue his civil remedy; in the event of success, he may seek restoration in accordance with law. A party cannot be permitted to approbate and reprobate so as to defeat statutory rights. Reliance is placed in the case of **Abdul Rasheed v. Maqbool Ahmed and others, 2011 SCMR 320**, wherein the Honourable Supreme Court observed as follows:

“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 **Syed Imran Ahmed v. Bilal and another, PLD 2009 SC**

546, it was held as under:-

“5. It is a principle too well established by now that a sale agreement did not itself create any interest or even a charge on the property in dispute; that un-like the law in England, the law in Pakistan did not recognize any distinction between the legal and equitable estates; that a sale agreement did not confer any title on the person in whose favour such an agreement was executed and in fact it only granted him the right to sue for such a title and further that such an agreement did not affect the rights of any third party involved in the matter. It may be added that till such time that a person suing for ownership of a property obtains a decree for specific performance in his favour, such a person cannot be heard to deny the title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the property which is the subject-matter of the litigation. Postponing the ejectment proceedings to await the final outcome of a suit for specific performance would be causing serious prejudice to a landlord and such a practice, if approved by this Court, would only give a licence to un-scrupulous tenants to defeat the interests of the landlords who may be filing suits for specific performance only to delay the inevitable and to throw spanners in the wheels of law and justice”.

16. Jurisdiction cannot be conferred by consent or acquiescence. Participation in proceedings does not validate an order passed without lawful authority.

17. It is clarified that this Court has confined itself solely to examining the legality of the consolidation order. All factual controversies relating to the rent application and the civil suit for specific performance shall be decided independently by the respective Courts in accordance with law and without being influenced by any observation made herein.

18. For the foregoing reasons, it is held that the First Rent Appeal was maintainable; that consolidation of a civil suit for specific performance with a rent application under the Sindh Rented Premises Ordinance, 1979 is neither contemplated nor permissible in law; that the fact that the same judicial officer was seized of both matters does not merge distinct statutory jurisdictions; and that the learned appellate Court rightly set aside the consolidation order. Consequently, the instant constitutional petition is **dismissed** along with all pending applications. There shall be no order as to costs.

19. The case laws relied upon by learned counsel for the petitioner have been duly considered; however, they are distinguishable on facts and does not advance the petitioner's case.

JUDGE

Ayaz Gul