

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. S- 1826 of 2016

[Ahsan Ali v. Nawab Khan Kokani Khoso and others]

CP No. S- 1827 of 2016

[Ahsan Ali v. Meehan Wasayo and others]

CP No. S- 1828 of 2016

[Ahsan Ali v. Muhammad Panna and others]

CP No. S- 1829 of 2016

[Ahsan Ali v. Mushtaq @ Moosa and others]

CP No. S- 1830 of 2016

[Ahsan Ali v. Muhammad Panna and others]

CP No. S- 1831 of 2016

[Ahsan Ali v. Ghulam and others]

Petitioners : Through Mr. Aqeel Ahmed Siddiqui, Advocate

Respondents : Through Mr. Syed Abbas Ali Jaffery, Advocate
Mr. Muhammad Ismail Bhutto, Addl. A.G.

Date of Hearing : 14.04.2025

Date of Decision : 09.05.2025

JUDGMENT

ARSHAD HUSSAIN KHAN, J -. These Constitutional Petitions are being disposed of through this consolidated judgment, as they involve common questions of fact and law.

2. The petitioner in the petitions has challenged the conflicting findings of two courts below as the Rent Application(s) filed by the Petitioner was / were allowed, vide order(s) dated 31.01.2014, however, the First Rent Appeals [FRAs] preferred by the opponents / respondents against the above orders were allowed, vide Judgments dated 23.10.2016. The judgments passed by the appellate court have been impugned by the petitioner through these Constitutional Petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973.

3. Concisely, the case of the petitioner is that he is owner / landlord of part of City Survey No. 2093 Ward 'G' admeasuring 7550 sq.ft. (**subject plot**). Upon the said plot, he constructed seven houses and one shop, the subject matter of instant proceedings, the houses and shop are jointly referred

to as the **demised premises**', which were rented out to opponent No.1 / respondent No.1, who without the consent of petitioner sublet the same to respondent No.2; and in some cases respondent No.2 subsequently handed over the respective premises to respondent No.3. On default in payment of rent, the petitioner / applicant approached respondent No.1 where he came to know that respondent No.1 has sublet the demised premises to respondent No.2, hence he filed ejectment application against the respondents / opponents seeking eviction of respondents as well as recovery of arrears of rentals.

4. Learned counsel has argued that the judgments of appellate court suffer from misreading and non-reading of the pleadings and evidence on record; that appellate court while observing that there is collusion between the parties viz. the petitioner and respondent No.1, reversed the findings of rent controller, which were based on the evidence, whereas the appellate court decided the matter on the basis of documents, which were neither produced in evidence before the rent controller nor alongwith the memo of appeals (FRAs) but were subsequently filed before the appellate court that too behind the back of petitioner and the appellate court without hearing the petitioner's counsel on the said documents passed the impugned judgments; that the appellate court passed the impugned judgments purely on the basis of presumption and assumption; that the appellate court framed the points for determination with predetermined mind, which has resulted in miscarriage of justice and further the impugned judgments are not sustainable in law, as such, the same are liable to be set-aside. He has lastly prayed that these constitutional petitions may be allowed as prayed for. In support of his stance, learned counsel has relied upon the cases of *Ahmed Ali alias Ali Ahmed v. Nasar-ud-din and others* [PLD 2009 SC 453], *Dane International Corporation v. M.V. Camel (Ex-Camelot) and another* [2022 CLC 1778].

5. Learned counsel for respondent No.1 has argued that in the year 1988 through rent agreement the demised premises were rented out to respondent No.1 and in the year 1990 due to law and order situation respondent No.1 shifted to his village and sublet the rented premises to respondent No.2, vide rent agreement dated 16.5.1990. He further submitted that respondent No.1 was not in contact with the petitioner and since respondent No.2 did not pay the rent to him; therefore, he could not pay the same to the petitioner.

6. Insofar as respondent No.2 is concerned, from the record it appears that initially their counsel had been appearing in the matter and filed counter affidavit in rebuttal to the main petition, however, subsequently he got

discharged his vakalatnama and, thereafter, despite several notices including publication none appeared on their behalf. Nonetheless, stance of respondent No.2 as per counter affidavit is that there is no relationship of landlord / tenant between the petitioner or respondent No.1 and respondent No.2. Further that the petitioner in the memo of petition has stated that he rented out the premises to respondent No.1, however, he sublet the premises to respondent No. 2 and found them in possession of the demised premises, however, he had chosen to lodge FIR only against respondent No.2 being trespasser such fact clearly reflects collusion and malafide on the part of petitioner and respondent No.1. However, subsequently, the accused nominated in the FIR including respondents 2 were acquitted. It has been stated that the order of trial court is illegal while the order of appellate court is valid and legal. Lastly, it has been prayed that the Petitions may be dismissed with compensatory cost.

7. Perusal of the record reflects that the subject plot was allotted / transferred by Settlement Department to petitioner Ahsan Ali and his brother Muhammad Aman Ali both sons of Usman Khan. Photostat copy of PTD is available at page 49 Annexure 'C'. Subsequently Aman Ali gifted his share to the petitioner Ahsan Ali. Such Extract from the Property Register Card is available at page 51 Annexure 'D'. There is also rent agreement dated 7.1.1988 between the petitioner Ahsan Ali Khan and respondent No.1 in each case with some terms and conditions specially that the tenant shall not sublet the premises to anyone and also shall not give its possession to anyone. Record further reveals that there is another rent agreement dated 26.6.1990 between respondent No.1 [tenant and respondent No.2 (sub-lessee) available at page 95 Annexure-K whereby respondent No.1 in violation of the rent agreement with petitioner sublet the premises to respondent No.2. Record also shows that respondent No.2 (sub-lessee) although denied the relationship of landlord and tenant with the petitioner, however, he has failed to produce any ownership documents and / or to prove his legal possession over the demised property.

8. In the evidence, respondent No.1 candidly admitted that he entered into rent agreement with the petitioner, vide agreement dated 20.01.1988, subletting the demised premises to respondent No.2 in the year 1990. Insofar as the payment of rental is concerned, it has been stated that since he did not receive rent from respondent No.2 as such he could not pay the same to the petitioner. Respondent No.2 in his evidence produced sale agreement and electricity bill and claimed that he is owner of the premises and there is no

relationship of tenant / landlord between him and Petitioner / respondent No.1. The rent controller decided the case on the basis of evidence available before it. However, the appellate court reversed the findings of rent controller through the judgments impugned herein.

9. From the perusal of impugned judgments it appears that the appellate court while deciding the case although framed the points of determination [*1. Whether impugned order is passed without appreciating evidence and law in its true perceptive? And 2. What should the order be?*], yet the appellate court while answering point No.1 has completely lost sight of the fact that respondent No.2 failed to justify his lawful possession over the demised premises, which as per the documents produced before the court belongs to the petitioner, whereas the appellate court reversed the finding of rent controller on the basis of document pertaining to the criminal case, which was never produced in evidence. On the contrary, the rent controller while deciding the case discussed the claim of respondent No.2 and the documents produced by him in the evidence. In this regard, relevant portions of the judgment dated 31.01.2014 for the sake of ready reference are reproduced as under:

“16. On the other hand, opponent No.2 Shakeel Bilal denied the relationship with applicant and stated that opponent No.2 claims that his mother purchased the rented premises from one Ali Bux. He further stated that his mother obtained possession from Ali Bux but did not pay any sale consideration. Again said that he does not remember the exact sale consideration paid by his mother. He admitted that the sale agreement as Ex.35/A and Electricity Bill as Ex.35/B do not show the plot number and its boundaries.

17. Opponent No.2 admitted that his written statement and affidavit in evidence do not show that his mother had purchased the case property. Opponent admitted that City Survey No. 2093, Ward-G, situated in Muukhi Bagh, Hyderabad. The Applicant has proved that he rented out the shop in question to opponent No.1 who sub-letted it to opponent No.2 but opponent No.2 failed to disprove or prove it.”

The Rent Controller's findings clearly establish that respondent No.1 sublet the demised premises without the petitioner's consent. This assertion was not seriously denied by the respondents. Even respondent No.1 admitted the subletting occurred. Under Section 15(2)(ii) of the Sindh Rented Premises Ordinance, subletting without the landlord's written consent constitutes a valid ground for eviction.

10. Insofar as the findings of appellate court with respect to criminal case is concerned, it is well settled that standards of appraisal of evidence in criminal and civil cases are altogether different, therefore, the findings of a criminal court is not binding on civil court. Reliance can be placed on the case of *Karachi Transport Corporation v. Muhammad Hanif* [2009 SCMR 1005].

11. Insofar as the stance of respondent No.2, denying the relationship of tenant / landlord between the parties and claiming that he is the lawful purchaser / owner of the demised premises under the sale agreement is concerned, firstly in the evidence it has come on the record that the alleged sale agreement was executed by a person who was not the owner of property; further the property number/description is not mentioned in the agreement; secondly it would suffice to say that a sale agreement is not a title document but, at the most, grants a right to sue for such title as well as rights arising out of such agreement.

12. In the instant case, the petitioner has successfully proved that he is owner / landlord of the demised premises, respondent No.1 [tenant of the petitioner] committed default in payment of rentals and further he has sublet the premises to other respondent(s) without the consent and permission of the petitioner. Besides respondent(s) [sub-lessee] also failed to justify their claim of ownership by producing any title document of the demised premises. In such circumstances, the Supreme Court of Pakistan in the case of *Shajar Islam v. Muhammad Siddique and 2 others* [PLD 2007 SC 45] has held as follows :

“However, in the normal circumstances in absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered as tenant under the law or the tenancy may not be necessarily created by a written instrument in express terms rather may also be oral and implied”.

The evidence produced by the petitioner /landlord had not been disproved by the respondent.

13. It is also a well settled principle of law that where the tenant asserts ownership of the property, the legally mandated procedure requires the tenant to vacate the premises, pursue the civil remedy, and, upon a favorable judgment by the competent court, regain possession of the property¹.

¹ *Rehmatullah v. Ali Muhammad and another* [1983 SCMR 1064], *Muhammad Nisar v. Izhar Ahmed Shaikh and others* [PLD 2014 SC 347] *Nasir Khan v. Nadia Ali Butt and others*, [2024 SCMR 452].

14. It is concerning that the appellate court, while reversing the orders of rent controller, relied upon certain documents that were neither produced at trial nor appended to the memo of appeal. These documents were not confronted to the petitioner and were accepted without giving an opportunity to rebut the same. This practice violates settled principles of fair trial and natural justice. More so, the appellate court's finding of alleged collusion between the petitioner and respondent No.1 appears speculative and unsupported by substantive evidence. It is apparent that the appellate court misdirected itself by forming a predetermined opinion, thereby displacing the trial court's findings based on vital evidence.

Moreover, learned appellate court while reversing the findings of rent controller has failed to point out any illegality in the order of learned rent controller particularly with regard to any misreading or non-reading of material evidence available on record, as such, the findings recorded by the appellate court were not in accordance with law or the evidence on record, as such, the same are not sustainable.

15. Ordinarily, findings of fact by competent forums are not disturbed in constitutional jurisdiction. However, where the appellate authority exceeds its jurisdiction, fails to follow procedural safeguards, or commits a manifest illegality resulting in miscarriage of justice, this Court is duty-bound to intervene. The instant case falls within such an exception. In view of the above, it is evident that the judgments passed by the appellate court dated 23.01.2016 are perverse, suffer from material irregularities, and cannot be sustained in law.

16. For the foregoing reasons and discussion, these petitions are allowed. The impugned judgments dated 23.01.2016, passed by the appellate court, are set aside; and the orders passed by the rent controller on 31.01.2014 are restored. The observations made hereinabove with regard to ownership of the landlord is tentative in nature.

17. The above constitutional petitions along with pending applications, if any, stand disposed of.

JUDGE