

IN THE HIGH COURT OF SINDH, AT KARACHI

Const. Petition No.S-864 of 2023

Const. Petition No.S-865 of 2023

Const. Petition No.S-866 of 2023

Const. Petition No.S-867 of 2023

Const. Petition No.S-868 of 2023

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Syed Haider Imam Rizvi, Advocate for the Petitioner.

Mr. Muhammad Safdar Khokhar, Advocate for the Respondents.

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Date of hearing

20.05.2025

Date of order

26.05.2025

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Shamsuddin Abbasi, J.--

These Constitutional Petitions filed under Article 199 of the Constitution of Islamic of Pakistan, 1973, arise from the concurrent findings of two Courts below, whereby both the Courts declined to implead petitioner /intervenor as necessary party in the rent proceedings and dismissed his application under Order 1 Rule 10, CPC.

2. Ejectment Applications were filed by respondent No.3/ applicant seeking eviction of tenants from four shops and one godown, located on Industrial Plot No.WSA-2, Block-14, measuring 500 square yards, KDA Scheme No.16, Federal 'B' Area, Karachi. During pendency of rent proceedings, the petitioner approached the learned Rent Controller and filed an application under Order 1 Rule 10, CPC, for joining him as necessary party in each case. The learned Rent Controller-IV, Karachi (Central), after hearing the respective parties, dismissed the application vide order dated 19.04.2023. Aggrieved of the order of the learned Rent Controller, the petitioner filed First Rent Appeal, which was dismissed vide judgment dated 23.08.2023, penned down by the learned Additional District Judge-IV, Karachi (Central), hence these petitions have been filed against concurrent findings of the learned two Courts below, which are being decided together through this single order.

3. It is contended on behalf of the petitioner that he is one of the lawful and bonafide co-owners of the subject property, which was

purchased by his deceased mother Mst. Zubaida Khatoon and subsequently it was transferred in her name in the record of rights. It is next submitted that the demised premises remained in possession of the petitioner, who let out the same to different tenants. It is also submitted that the relinquishment deed was obtained by means of fraud and coercion. Per learned counsel, the property in question was an inherited property, which was sold out on the basis Relinquishment Deed, obtained through fraud and coercion. The learned counsel while emphasizing his submissions has submitted that both the learned Courts below have erred in law and dismissed the petitioner's application under Order 1 Rule 10, CPC without appreciating the fact that the shops in question were let out by the petitioner and rent thereof is being paid to him, the impugned order and judgment are, thus, bad in law and facts and liable to be set-aside.

4. On the other hand, the learned counsel for the respondent No.3 has supported the impugned order and judgment and submitted that both the learned Courts below have acted in accordance with law and rightly dismissed the application under Order 1 Rule 10, CPC. It is next submitted that the petitioner and other co-owners of the property have executed relinquishment deed in favour of Dr. Ishrat ul Ebad, who sold out the said property to respondent No.3 through registered conveyance deed. It is also submitted that the civil litigations are pending between the parties and petitioner has approached the learned Rent Controller with unclean hands and without any lawful authority. Per learned counsel, the impugned order and judgment are based on fair evaluation of record and the learned counsel for the petitioner has failed to point out any illegality, infirmity or material irregularity in the concurrent findings of the learned two Courts below, hence no case for interference is made out.

5. I have given my anxious consideration to the submissions of both the sides and perused the entire material available before me with their able assistance.

6. The issue involved in these proceedings are five shops, located on Plot No.WSA-2, Block-14, measuring 500 square yards,

KDA Scheme No.16, Federal 'B' Area, Karachi, which are in the use and occupation of the tenants. There is no denial of the fact that the subject property was owned by the mother of the petitioner namely, Mst. Zubaida Khatoon, who passed away on 26.01.1997 and after her death, the petitioner and other legal heirs became co-owners and co-sharers of the property. The claim of the petitioner is that his brother Dr. Ishrat ul Ebad, using his political influence succeeded in executing a relinquishment deed through fraudulent means and coercion, and based on such deed sold out the said property to the respondent No.3 through conveyance deed, which actions are the subject matter of suits pending adjudication before the competent Courts of law. It is further the claim of the petitioner that he is in possession of the subject property and still receiving the rents from the tenants. On the other hand, the case of the respondent No.3 is that he has purchased the shops from Dr. Ishrat ul Ebad, who was actual owners of the premises, through registered conveyance deed whereas the petitioner has no nexus with the rented premises and he has approached the Court with unclean hands.

7. Pertinent to note that the learned counsel for the respondent No.3, during his arguments, admitted that ejectment applications have been allowed, yet no execution application has been filed for want of disposal of these petition, he, however, admitted that the premises are still in the use and occupation of tenants and out of five tenants, the respondent No.3 is receiving rent from two tenants whereas the tenants of remaining three shops are paying rent to the petitioner. Record reflects that initially Dr. Ishrat ul Ebad, brother of the petitioner, executed Power of Attorney in favour of the petitioner which was subsequently withdrawn through redemption deed dated 10.11.2005. The claim of the petitioner over the property has been substantiated through admission made by the learned counsel for the respondent No.3 that still the petitioner is receiving rent from two tenants. In such eventuality, besides issue of title of property, the claim of the petitioner to the extent that the rented shops were let out by him and rent thereof is being paid to him has been admitted by the respondent No.3, *Prima facie*, valuable rights of the petitioner are involved and it is always better to

allow the parties to lead their claim (s) rather to bring a full stop to such valuable rights without their being any due process of law. Guidance in this behalf may be taken from the case of *Muhammad Bashir & another v Province of Punjab through Collector of District Gujrat & Ors* [2003 SCMR 83] wherein it has been held as under:-

“7. ... Legal formalities and technicalities are intended to safeguard the paramount interest of justice and devised with a view to impart certainty, consistency and uniformity to administration of justice and to secure the same against arbitrariness, errors of individual judgment and mala fides. General speaking the object of a superior Court, while exercising its discretionary jurisdiction, is to foster the ends of justice, preserve the rights of parties and to a right a wrong and, keeping this object in view, it may in equity, set aside or annul a void judgment or decline to enforce it by refusing to intervene in the circumstances of the case.

8. Pursuant to the above, the impugned order and judgment, passed by the learned two Courts below, being contrary to law are open to examination by this Court in exercise of its writ jurisdiction, therefore, the same cannot be allowed to hold field. It is a trite law that one should not be condemned unheard and every litigant should be given fair opportunity to present and defend his/her case. Here I refrain from rendering further observations on merits of the case, may it prejudice case of either side, therefore, this Court holds its hands from making any further dilation.

9. For the foregoing reasons, this petition is allowed, consequent whereof the impugned order and judgment passed by the learned Courts below are set aside and case is remanded to the learned Rent Controller with a direction to implead the petitioner in the array of the opponents and allow him to file his written replies and proceed with the rent cases, which will be deemed to be pending, expeditiously and decide the same afresh in accordance with law.

JUDGE