

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*C.P No.S-188 of 2025
(Shah Nawaz vs. Shabir Ahmed and others)*

*C.P No.S-189 of 2025
(Shah Nawaz vs. Shabir Ahmed and others)*

*C.P No.S-190 of 2025
(Shah Nawaz vs. Zahid Hussain and another)*

*C.P No.S-191 of 2025
(Shah Nawaz vs. Imtiaz Ahmed and others)*

*C.P No.S-192 of 2025
(Shah Nawaz vs. Shabir Ahmed and others)*

Petitioner	:	Shah Nawaz Memon through Mr. Muhammad Zubair Malik, Advocate
Respondents	:	Mr. Muhammad Zohaib Azam Rajput, Advocate for Respondent No.7 (C.P No.188/2025). Respondent No.01 C.P No. S- 190/2025, C.P No.S-191/2025, Respondent No.07(i) in C.P No. S- 192/2025.
		Mr. Shahryar Imdad Awan, Assistant Advocate General, Sindh.
Date of hearing	:	13.02.2026
Date of decision	:	13.02.2026

JUDGMENT

ALI HAIDER 'ADA' J.- Through this single consolidated judgment, the following Constitutional Petitions are being decided together, as they arise out of the same property and involve common questions of law and fact.

C.P. No. S-188 of 2025 has been filed by the petitioner, Shah Nawaz, against respondent Nos.1 to 6, who are his siblings and co-owners of property bearing C.S. No. B-2982/3/1 situated

at Bhutta Street, Sarafa Bazar, Sukkur. Respondent No.7, Zahid Hussain, is stated to be a tenant in the said property.

C.P. No. S-189 of 2025 has also been filed by the petitioner against his siblings in respect of the same property, wherein respondent No.7, Azmatullah, is shown as a tenant.

C.P. No. S-190 of 2025 has been filed against Zahid Hussain, the tenant alone.

C.P. No. S-191 of 2025 has been filed against respondent No.1/Imtiaz Ahmed (tenant) along with other siblings, and C.P. No. S-192 of 2025 has been instituted against tenant Imtiaz Ahmed and the remaining siblings.

In all these petitions, the subject matter pertains to the same property bearing C.S. No. B-2982/3/1, which consists of different portions in the shape of shops, though forming part of one survey number.

2. In C.P. Nos. S-188, S-190, S-191 and S-192 of 2025, the common question involved is that the petitioner filed applications before the Rent Controller for fixation and enhancement of fair rent. The Rent Controller, after proceedings, enhanced the rent to Rs.10,000/- (Rupees Ten Thousand) per month. Being aggrieved, the petitioner preferred Rent Appeals, and the learned Appellate Court, vide judgment dated 07.05.2025, remanded the matters to the trial Court with directions to obtain reports from property dealers regarding prevailing market rent of similar shops, to afford opportunity of hearing to the parties, and thereafter to decide the applications afresh. The Appellate Court further directed that till such determination, rent be deposited at the rate of Rs.4,500/- per month. The petitioner, being dissatisfied with the order of remand, has assailed the same before this Court through the instant petitions.

3. It is pertinent to note that siblings of the Petitioners, being co-owners, filed applications before the Rent Controller asserting that they are also co-owners of the property and sought to place their independent stance on record, contending that the Petitioner is not the exclusive owner of the entire premises.

4. In C.P. No. S-189 of 2025, the petitioner had filed an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 before the Rent Controller, seeking possession of the demised premises. The Rent Controller allowed the application and directed that possession of the property be handed over to the petitioner. The said order was challenged by the co-owner before the appellate forum, whereupon the Appellate Court remanded the matter with directions that the tenant shall deposit rent at the rate fixed and that the same be distributed amongst all the co-owners/legal heirs.

5. Learned counsel for the petitioner mainly contended that the property bearing C.S. No. 2982/3/1 measures 38.3 square yards and that, by virtue of the judgment passed by the learned First Senior Civil Judge, Sukkur, in F.C. Suit No.44 of 2007 (a partition suit amongst the siblings), the property was partitioned and the said C.S. number was subdivided. It was argued that the petitioner, in view of such partition, is entitled to receive rent of the demised premises and to obtain possession thereof. It was further contended that the remand orders passed by the Appellate Court are unsustainable in law and liable to be set aside. The petitioner has also sought enhancement of rent to Rs.20,000/- per month in the connected matters and confirmation of eviction in C.P. No. S-189 of 2025.

6. Conversely, learned counsel, Mr. Muhammad Zohaib Azam Rajput, appearing on behalf of the respondents, argued that the impugned remand orders are legal and proper. He submitted that the interim direction for deposit of rent at the rate of Rs.4,500/- per month till final determination is justified. He further contended that the co-owners are not aligned with the petitioner and that the record of rights still reflects the names of all co-owners. Therefore, the petitioner, being only one of the co-owners and having been allotted a specific share in the partition proceedings, cannot claim exclusive entitlement over the entire demised premises beyond his allotted portion.

7. Learned Assistant Advocate General also supported the impugned orders of the Appellate Court and submitted that the remand was rightly made, as the petitioner must first establish his entitlement to the demised premises in its entirety. According to him, admittedly, the petitioner owns only a specified portion pursuant to the partition decree and not the whole property; hence, such factual controversy requires determination by the competent forum.

8. Heard learned counsel for the parties and perused the material available on record.

9. It is an admitted position on record that respondent Nos.1 to 6, along with the petitioner, are co-owners and co-sharers of the demised premises bearing C.S. No. B-2982/3/1. In such circumstances, as a general principle of law, the co-owners are required to act in unison while dealing with tenants, particularly in matters relating to eviction or fixation and enhancement of fair rent. However, where the co-owners are not ad idem and serious objections are raised by some of them, one co-owner, without the consent or concurrence of the others, cannot exclusively claim or appropriate the rent for the shares of the remaining co-owners. A co-owner is only entitled to receive rent to the extent of his lawful share, especially when the other co-sharers have categorically disputed his exclusive entitlement.

10. Furthermore, it has come on record that the property/demised premises has already been partitioned by virtue of a decree passed by the competent Civil Court. Once partition has been effected, the status of joint ownership to the extent of the divided portions ceases, and each co-sharer becomes entitled only to the specific portion allotted to him. In such circumstances, any claim by the petitioner over the entire property, beyond the extent of his allotted share, is *prima facie* misconceived and untenable. Therefore, the petitioner can only assert his claim to the extent of the share allotted to him in the partition proceedings. It would also be appropriate that the effect of such partition be duly reflected and verified in the relevant revenue record,

to clearly demarcate the respective entitlements of the parties and avoid further controversy.

11. So far as the process for the determination of fair rent is concerned, Sections 8 and 9 clearly provide the mechanism in this regard. Therefore, for the sake of elaboration and ready reference, the same are reproduced hereunder:

8. Fair rent. (1) *The Controller shall, on application by the tenant or landlord determine fair rent of the premises after taking into consideration the following factors: –*

- (a) *the rent of similar premises situated in the similar circumstances, in the same or adjoining locality;*
- (b) *the rise in cost of construction and repair charges;*
- (c) *the imposition of new taxes, if any, after commencement of the tenancy; and*
- (d) *the annual value of the premises, if any, on which property tax is levied.*

(2) Where any addition to, or improvement in, any premises has been made or any tax or other public charge has been levied, enhanced, reduced or withdrawn in respect thereof, or any fixtures such as lifts or electric or other fittings have been provided thereon subsequent to the determination of the fair rent of such premises, the fair rent shall, notwithstanding the provisions of section 9 be determined or, as the case may be, revised after taking such changes into consideration.

9. Limit of Fair rent. (1) *Where the fair rent of any premises has been fixed, no further increase thereof shall be affected unless a period of three years has elapsed from the date of such fixation or commencement of this Ordinance whichever is later.*

(2) The increase in rent shall not, in any case, exceed ten percent per annum on the existing rent.

12. Although determining fair rent under Section 8 of the Sindh Rented Premises Ordinance, 1979, the Court is required to take into consideration all factors which affect the value of money over time. In particular, a rise in the cost of construction, repair charges, taxes, labour charges, and other relevant expenditures cannot be ignored while fixing fair rent. Section 8 provides factors to be considered by the Court for the fixation of fair rent. It is, however, not necessary for a

landlord to prove an increase with respect to all factors. Moreover, not all these factors do not have to co-exist in every case; reliance on one or two grounds is sufficient for the Court to determine fair rent. This principle has been reaffirmed by the Honourable Supreme Court in **Akhtar Kamran (Deceased) through Legal Heirs v. Pervaiz Ahmed and others, 2023 SCMR 1147**, and **Alay Javed Zaidi v. Habibullah and others, 2024 SCMR 781**.

13. The proper course for the determination of the factual controversy is that the question of fair rent must be processed strictly in accordance with the procedure prescribed under the relevant rent law. The Rent Controller is required to determine the fair rent after affording a full opportunity of hearing to all.

14. Whilst in C.P. No. S-189 of 2025, the Petitioner has sought the handing over of the entire disputed premises. Admittedly, the property is partitioned amongst the co-owners. Consequently, the other co-owners have moved an application contesting the petitioner's claim and denying his exclusive entitlement over the entire premises. It has also been held in the case of **Messrs Mahboob Bakhsh (Pvt.) Ltd. v. Moinuddin Paracha** that a co-owner is entitled to be joined in the proceedings as a co-applicant.

15. Whilst, every co-owner has the right to agitate a plea of personal bona fide need, irrespective of the fact that the tenancy was created by another co-sharer, as legally each co-owner has his or her own independent circumstances. Therefore, every co-sharer is entitled to establish a plea of personal bona fide requirement in respect of the premises in question. In such circumstances, the petitioner alone cannot claim exclusive entitlement to the relief sought. Where other co-owners exist, they equally possess the right to claim the property, including seeking ejectment of the tenant on the ground of personal use. Reliance is placed upon the case of **Muhammad Azam Khan v. Dr. Iqbal Hameed**, wherein it was held that:

6. *In the instant matter, such plea is even misconceived for simple*

reason that referred earlier proceedings were launched by father of the respondent/ applicant who, undeniably, is dead thereby making his legal heirs, including the respondent/applicant as one of the co-owner/co-sharer and other legal heirs have given no objections to the present landlord though legally, in the rent jurisdiction every co-owner has a right to agitate the plea of personal bona fide need irrespective of fact that tenancy, created by other co-sharer because legally every co-sharer has his/her own circumstances hence legally shall have a right to establish the plea of personal bona fide need in respect of such premises. Reference may be made to Imran Qadir v. Roqiya Sultana and 7 others 2017 CLC Note 80 wherein it is observed as:-

"Any of the co-sharers may file a rent case against the tenant irrespective of the fact that some other co-sharers had inducted the tenant in the tenement. (Abdul Ghani v. Abrar Hussain 1999 SCMR 348 and Muhammad Hanif and others v. Muhammad Jameel and 5 others 2002 SCMR 429)."

16. The power to remand a case should not be exercised lightly. However, due care must be taken when doing so. The Court should carefully examine the evidence, and if it concludes that the material on record is insufficient to pronounce judgment or resolve the issues between the parties, it may either remand the case or record additional evidence itself before deciding the matter. Reliance is placed on the case of **Rehman Shah and others v. Sher Afzal and others, 2009 SCMR 462**.

17. In the instant matter, the Appellate Court recorded findings about the aspect of market value and, on such basis, determined the fair rent. However, Sections 8 and 9 of the Sindh Rented Premises Ordinance, 1979, provide a clear mechanism and settled parameters for the determination of fair rent. In these circumstances, the impugned verdict of the Appellate Court is modified, with the direction that the learned Trial Court/Rent Controller shall determine the fair rent strictly in accordance with the parameters laid down under Sections 8 and 9 of the Sindh Rented Premises Ordinance, 1979. Guidance in this regard may also be sought from the judgments of the Honourable Supreme Court of Pakistan reported as **2024 SCMR 781** and **2023 SCMR 1147**. Till the final determination of the matter, the rate of rent as fixed between the parties at the time of initiating the rent proceedings shall continue to be deposited by the tenant before the

learned Rent Controller, subject to the final adjudication of the case. The Trial Court shall be at liberty to record fresh evidence, if so desired by the parties, limited to the parameters envisaged under Section 8 and thereafter to proceed under Section 9 of the Ordinance.

18. Furthermore, in the ejectment proceedings, the Trial Court shall frame a specific issue regarding ownership between the parties and decide the same in accordance with the law. The co-owners who have moved applications and have been joined as co-applicants in the trial proceedings shall also be properly arrayed in the issues, and thereafter, the entire matter shall be concluded afresh on its own merits.

19. Keeping in view the above circumstances, with the aforesaid modification in the judgment of the Appellate Court, the matter is remanded back to the learned Trial Court/Rent Controller. Consequently, the instant petitions stand dismissed. The Trial Court/Rent Controller is directed to conclude the proceedings expeditiously, preferably within a period of three (03) months.

JUDGE

S.Nawaz(st)'