

**IN THE HIGH COURT OF SINDH, CIRCUIT
COURT HYDERABAD**

C.P No. S-595 of 2021

[Muhammad Riaz v. Mirza Nadeem Baig & others]

Petitioner : Muhammad Riaz through Mr. Farhad Ali Abro, Advocate.

Respondent No.1 : Nemo.

Respondents No.2&3 : Through Mr. Allah Bachayo Soomro, Additional Advocate General Sindh.

Date of Hearing : **16.02.2026**

Date of Judgment : **02.03.2026**

JUDGMENT

RIAZAT ALI SAHAR. J. - The petitioner has filed the instant Constitutional Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayers:-

- a. *That this Honourable Court may be pleased to set-a-side judgment dated 06.03.2021 passed by the learned respondent No.2/Rent Controller Hyderabad, and Judgment dated 01.10.2021 passed by the learned respondent No.3;*
- b. *That this Honourable Court may be pleased to allow the application of the petitioner u/s 15 SRPO 1979 in light of evidence available on record;*
- c. *Any other relief(s) which this Honourable Court deems fit, just and proper in favour of the petitioner.*

2. The background of the case is that the petitioner, Muhammad Riaz, instituted Rent Application No.03 of 2019 under Section 15 of the Sindh Rented Premises Ordinance, 1979 before the learned Vth Senior Civil Judge/Rent Controller, Hyderabad,

seeking ejectment of respondent No.1, Mirza Nadeem Baig, from the northern portion (500 sq. ft.) of House constructed on Plot No.91, forming part of R.S. Nos. 75, 76 and 77, situated at Gulshan-e-Elahi Housing Scheme, Phase-II, Deh Gujjo, Hyderabad. The petitioner stated that the premises had been let out to respondent No.1 through a written rent agreement dated 01.09.2015 for eleven months at a monthly rent of Rs.7,000/-, against a security deposit of Rs.100,000/-. It was alleged that the respondent committed default in payment of rent from July 2017 onwards and that the petitioner had adjusted rent from the security deposit up to August 2018. The petitioner further pleaded personal *bona fide* requirement of the premises for his own residence.

3. The respondent No.1 contested the application, denying the existence of a landlord-tenant relationship. He claimed that Plot No.91 had been sold to him through a prior agreement to sell dated 12.10.2012 and that possession had been delivered to him in pursuance thereof. It was further contended that the property had earlier been subject to other sale transactions and was mortgaged with a bank. The respondent maintained that he had instituted a civil suit for specific performance against the petitioner and that the alleged rent agreement was fabricated and the rent application is not maintainable.

4. At trial, the petitioner examined himself and two witnesses and produced the original rent agreement (Ex.19/A). One marginal witness to the agreement did not appear to verify his affidavit. The respondent's attorney appeared in evidence and denied execution of any rent agreement or existence of tenancy.

5. The learned Rent Controller, vide judgment dated 06.03.2021, formulated issues regarding maintainability, default and *bona fide* requirement. It was held that the petitioner failed to prove the essential relationship of landlord and tenant. The Court observed that attesting witnesses of the rent agreement were not

properly examined, no rent receipts were produced, no legal notice for default was issued and no fresh agreement was executed after expiry of eleven months. Consequently, the application was dismissed as not maintainable.

6. Being aggrieved the petitioner preferred First Rent Appeal No.15 of 2021 before the learned Model Civil Appellate Court-II/VIth Additional District Judge, Hyderabad. The appellate Court, through judgment dated 01.10.2021, concurred with the findings of the Rent Controller. It was held that the burden to prove tenancy lay upon the petitioner and no cogent documentary or oral evidence was brought on record to establish acknowledgment of tenancy by the respondent. The appeal was dismissed and the trial Court's judgment was maintained.

7. Despite issuance of notice through various modes, including publication made on 25.06.2026 in the daily Express, the private Respondent has failed to appear before this Court. Accordingly, service was held good.

8. Learned counsel for the petitioner contended that the impugned judgments suffer from gross illegality, misreading and non-reading of evidence available on record. He contended that the petitioner had produced the original rent agreement and examined himself and supporting witnesses, who fully corroborated the contents thereof. He contended that the Courts below allegedly failed to consider material admissions of the respondent during cross-examination, including non-production of any sale agreement and rejection of his civil suit under Order VII Rule 11 CPC. He contended that no witness was produced by the respondent to substantiate his plea of purchase. Learned counsel has further contended that the Rent Controller passed a non-speaking and stereotyped judgment, ignoring settled principles of appreciation of evidence and the appellate Court, instead of independently reassessing the evidence, mechanically affirmed the findings of the trial Court. He, therefore, prayed that both judgments be set aside and the rent application be allowed in

accordance with law. In support of his contentions, learned counsel has relied upon an Order dated 29.01.2026 passed by the Honourable Supreme Court in the case of Nawab Khan and another v. Muhammad Yousaf and others (C.P.L.A. No.806-P/2018 & CMA No.1877-P of 2018), AQSA JAWED through Attorney v. MUHAMMAD HASSAN and others (2021 CLC 1780), Order dated 13.12.2021 passed by this Court in C.P. No.S-336/2018 and Order dated 06.11.2023 in C.P. No.S-48 of 2022. Learned counsel for the petitioner has also placed on record a photo stat copy of Sale Deed in favour of the petitioner in respect of subject premises.

9. Learned Additional Advocate General Sindh contended that the courts below are under legal obligation to discuss each and every aspect of the case and decide the rent matters in accordance with law; however, he pointed out that the impugned judgments have not been passed keeping in view the parameters of the well-established law of the Honourable Supreme Court of Pakistan.

10. I have heard learned counsel for the petitioner and examined the record with his assistance. Before advertng to the merits of the controversy, it is necessary to reiterate the well-settled parameters governing the exercise of constitutional jurisdiction under Article 199 of the Constitution.

11. It is by now trite law that this Court does not sit as a court of appeal over decisions rendered by statutory forums constituted under special enactments. The scheme of the Sindh Rented Premises Ordinance, 1979 provides a complete hierarchy of remedies. An order passed by the Rent Controller is appealable under Section 21 before the Appellate Court, whose decision is declared final under the statutory framework. Once the statutory right of appeal has been availed and exhausted, this Court, in exercise of constitutional jurisdiction, cannot reappraise evidence or reassess factual determinations merely because another view is possible. The supervisory jurisdiction of this Court is limited to examining whether the impugned orders suffer from jurisdictional

defect, patent illegality, perversity, misreading or non-reading of material evidence, or violation of mandatory provisions of law. It cannot be invoked as a substitute for a second appeal nor can it be exercised to undertake a fresh evaluation of evidence already appreciated by two forums below. However, it is equally a well-settled principle of law that the constitutional jurisdiction of this Court, though limited, is not entirely ousted in matters where concurrent findings of the forums below suffer from fundamental defects. Interference may be warranted where such findings are demonstrably tainted by non-reading or misreading of material evidence, are based upon erroneous assumptions of fact, reflect a misapplication of settled legal principles, or disclose an excess or abuse of jurisdiction. These limited yet well-recognized exceptions operate to ensure that gross illegality or perversity does not remain immune from judicial scrutiny merely because the matter arises under a special statute.

12. In the present case, upon a careful reappraisal of the record within the limited but well-recognized parameters of constitutional jurisdiction, I find that the concurrent findings recorded by the learned Rent Controller and the learned Appellate Court are vitiated by material misreading and non-reading of evidence as well as misapplication of settled legal principles governing landlord-tenant relationship and the doctrine of estoppel. The petitioner produced on record the original rent agreement dated 01.09.2015 (Ex.19/A), examined himself on oath and adduced supporting witnesses to prove execution thereof. The very existence of a written rent agreement, coupled with admitted possession of respondent No.1 in the demised premises, constituted *prima facie* proof of tenancy. The Courts below, instead of examining the document in its proper legal perspective, discarded it primarily on technical grounds such as non-examination of one marginal witness and non-production of rent receipts. It is settled law that a tenancy agreement can be proved through the testimony of an executant and corroborating evidence; attestation is not a mandatory statutory requirement for validity

of such document. The approach adopted by the forums below, therefore, reflects a hyper-technical appreciation of evidence resulting in miscarriage of justice. Moreover, the respondent No.1 set up a plea of prior agreement to sell dated 12.10.2012, yet failed to produce the original agreement, failed to substantiate delivery of possession pursuant thereto and failed to secure any decree for specific performance from a competent Civil Court. Such plea remained a bare assertion without legal proof. The learned Courts below gravely erred in allowing such unsubstantiated claim to overshadow a duly executed rent agreement.

13. In this context, the Order dated 29.01.2026 passed by the Honourable Supreme Court of Pakistan in the case of Nawab Khan and another v. Muhammad Yousaf and others [C.P.L.A. No.806-P/2018 & CMA No.1877-P of 2018] authoritatively settles the controversy. In paragraph-7 thereof, the august Court summarized the legal position in unequivocal terms that:

- (i) A tenant who subsequently asserts acquisition of ownership rights is bound by estoppel under Article 115 of the Qanun-e-Shahadat Order, 1984, and cannot deny the landlord's title while continuing in possession as tenant. If he intends to contest proprietary title, he must first surrender possession and thereafter seek adjudication of his claim.
- (ii) An ejectment petition against such tenant remains maintainable, since the mere assertion or alleged acquisition of ownership rights does not terminate the tenancy nor does it oust the jurisdiction of the Rent Controller.
- (iii) Where the tenant claims to have purchased a share or acquired co-ownership, the proper remedy is not to resist ejectment proceedings but to seek recourse through a civil suit for partition.

The ratio decidendi of the aforesaid pronouncement squarely applies to the present case. Even if, for the sake of argument, the respondent's plea of agreement to sell is taken at its highest, he could not, in law, retain possession as a tenant and simultaneously dispute the petitioner's title. Until such time as proprietary rights are established before a competent forum, the relationship between the parties remains governed by tenancy law. The learned Courts below failed to apply this binding principle and thereby exercised jurisdiction in a manner not sanctioned by law.

14. Furthermore, the petitioner has placed on record title documents including Sale Deed demonstrating his ownership of the subject premises. On the contrary, the respondent neither proved transfer of title nor any legal conversion of his possession from that of tenant to owner. The rejection of his civil proceedings under Order VII Rule 11 CPC further weakens his stance. The concurrent findings, therefore, are not merely erroneous but perverse, being based upon overlooking material evidence and disregarding binding precedent. It is equally significant that the appellate Court did not independently reappraise the evidence but mechanically affirmed the trial Court's conclusions without addressing the legal effect of estoppel or the maintainability of ejectment proceedings in light of settled jurisprudence. Such non-speaking concurrence defeats the requirement of judicial reasoning and calls for constitutional correction.

15. For what has been discussed above, I have no hesitation to hold that the impugned judgments dated 06.03.2021 and 01.10.2021 suffer from patent illegality, misreading and non-reading of material evidence and misapplication of settled principles of law, thus, warranting interference under Article 199 of the Constitution. Consequently, instant petition is **allowed**. The impugned judgment dated 06.03.2021 passed by the learned Vth Senior Civil Judge/Rent Controller, Hyderabad and the judgment dated 01.10.2021 passed by the learned Model Civil Appellate Court-II/VIth Additional District Judge, Hyderabad, are

hereby **set aside**. The Rent Application No.03 of 2019 filed by the petitioner under Section 15 of the Sindh Rented Premises Ordinance, 1979 stands **allowed**. Resultantly, the respondent No.1 is directed to vacate the subject rented premises within one month from the date of receipt of this order and hand over its possession to the petitioner till the respondent proves the title of subject premises in his favour, if any, through evidence before the competent Court of law, if any is pending.

JUDGE

Abdullah Channa/PS