

ORDER SHEET
IN THE HIGH COURT OF SINDH
CIRCUIT COURT MIRPURKHAS

Constitutional Petition No.S-191 of 2024
Constitutional Petition No.S-197 of 2024

DATE **ORDER WITH SIGNATURE OF JUDGE**

1. For order on office objection.
2. For hearing of M.A No 1309/ 2024.
3. For hearing of M.A No.1306/ 2024.
4. For hearing of main case.

12-03-2026.

Mr. Wishandas Kolhi and Ms. Nosheen Pahore advocates for the petitioner in C.P.No.S-191/2024.

Ms. Nazeeran Soomro advocate for the petitioner in C.P No.S-197/2024.

Mr. Muhammad Sharif Solangi, A.A.G.

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1. Heard learned counsel(s) for the petitioner(s) in both these Petitions, out of which one has been filed by the Evacuee Trust Property and other one is filed by tenant Muhammad Rauf, against whom the ejection Order has been passed by the learned Rent Controller which was concurrently upheld by the learned Appellate Court.

2. Learned counsel for the petitioner (in C.P No.S-191/2024) during course of the arguments has also placed on record photo copy of certain documents, which were duly exhibited by the concerned *Mukhtiarkar* during course of evidence to depict that the subject property was originally owned by one Saeeduddin s/o Sultan and upon his expiry and based upon a *Fatwa*, subject property was transferred in the name of Abdul Ghiyas s/o Faqeer Muhammad. Subsequently, upon demise of Abdul Ghiyas and based upon another *Fatwa* subject property was then transferred to the legal heirs of Abdul Ghiyas namely Gul Muhammad, Ameer

Muhammad and Muhammad Khan. Another document also shows name of another legal of Haji Abdul Ghiyas as Noor Muhammad. Subsequently, said property was sold to one Abdul Sattar s/o Muhammad Hashim Ghouri in the year 2006 and the said property then was transferred to the legal heirs of said Abdul Sattar in the year 2009. Counter claim of the Evacuee Trust Property is that subject property is duly recorded in Gazette Book's Notification of year 1983; however, upon perusal of the impugned Judgment and Order passed by the learned lower Courts it appears that after demise of Saeeduddin, such factor as recorded above and is available in the evidence, was not considered by the learned trial Court or by the learned Appellate Court nor proper notices were issued to the present owners of the subject property (as recorded in the above referred exhibited documents) so as to decide the relationship of the landlord and tenant between Saeeduddin and petitioner Muhammad Rauf or between the Evacuee Trust Property and said Muhammad Rauf. Such issue goes to the root of the controversy, for which it is settled law that before assuming jurisdiction, the relationship of the landlord and tenant must be established at initial stage. The case of petitioner Muhammad Rauf is that he is not tenant of said deceased Saeeduddin, who had initiated Rent proceedings against him, but is tenant of Evacuee Trust Property and submits that since 1983 he has been regularly paying rent to the Evacuee Trust Property.

3. Without touching the merits of the case, it appears that both the learned Courts below have failed to consider the evidence and record produced by the official witness/ Mukhtiarkar as discussed above and without ascertaining the relationship of landlord and

tenant between the petitioner and Saeeduddin proceeded to pass ejectment Order against the petitioner, which was concurrently upheld by the learned Appellate Court.

4. In view of above, impugned Judgment and Decree dated 08-05-2025 passed in First Rent Appeal No. 05 of 2022 by the learned Additional District Judge-II/M.C.A.C, Mirpurkhas and impugned Order dated 28-07-2022 passed in Rent Application No. 03/ 1992 by the learned Rent Controller-I, Mirpurkhas, are set aside and the matter is remanded back to the learned trial Court for decision on merits after issuance of notice to the legal heirs of the present owner as recorded in the official record and duly exhibited by the concerned *Mukhtiarkar* and after affording opportunity of hearing to all concerned first decide the issue of relationship of the landlord and tenant between the parties and then to proceed further in accordance with law and pass final Order.

5. The instant Petitions alongwith pending listed applications stand dispose of in above terms.

JUDGE

Saleem

