

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

**C.P No. S-45 of 2010**

[Dr. Ahmed Bux v. Sikandar Ali & others]

Petitioner	:	Dr. Ahmed Bux through Mr. Abdul Ghafoor Hakro, Advocate.
Respondents No.1to3	:	Sikandar and others through Mr. Faiz Muhammad S.Chandio, Advocate.
Respondent No.4	:	Additional District Judge, Sehwan through Mr. Muhammad Ismail Bhutto, Advocate.
Date of Hearing	:	<b>20.02.2026</b>
Date of Judgment	:	<b>30.03.2026</b>

**JUDGMENT**

**RIAZAT ALI SAHAR. J.** - The petitioner has filed the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 challenging the judgment dated 09.12.2009 passed by the learned Additional Sessions Judge, Sehwan in Rent Appeal No.05 of 2006 whereby the ejection application of respondents No.1 to 3 was allowed and the petitioner was directed to vacate the premises. Hence, the petitioner has sought following reliefs:-

- (a) It be declared that the Judgment dated 09.12.2009 passed by the respondent No.4 in F.R.A No.05/2006 (Sikandar Ali & Ors Vs. Dr. Ahmed Bux) is illegal and in excess of their jurisdiction and against the provision of law and may be declared of no legal effect and may be set-aside.
- (b) It be declare that the Order dated 30.09.2009 passed by Senior Civil Judge & Rent Controller Sehwan, may be declare as a legal and has been illegally set-aside by the respondent No.4 and may be maintained.
- (c) The cost of the petition may be borne by the respondents No.1 to 3
- (d) Any other relief justice deemed fit and proper may be granted.

2. The background of the case is that respondents No.1 to 3 through their father and next friend, Serai Ali Muhammad, filed Rent Application No.01 of 2005 under Section 15 of the Sindh Rented Premises Ordinance, 1979 seeking eviction of the petitioner from premises comprising two shops, two rooms with attached bathroom behind the shops, stairs and a store situated at Village Bhan Saeedabad. It was alleged that the said premises were rented out to the petitioner on 04.07.1999 at monthly rent of Rs.3000/- payable on or before the 5<sup>th</sup> of each month, but due to friendly relations between the petitioner and the respondents' father no written agreement was executed. The petitioner allegedly paid rent regularly up to September 2000 and thereafter stopped payment and also failed to clear electricity dues amounting to Rs.14,624/-. The petitioner filed written statement denying the relationship of landlord and tenant and asserted that the premises had been sold to him by the father of the respondents in June 1999 for Rs.330,000/-, out of which Rs.3,00,000/- had been paid as earnest money and the remaining Rs.30,000/- was to be paid at the time of execution of the sale deed. The petitioner further pleaded that he had already instituted Suit No.55 of 2003 for specific performance of the said agreement. After recording evidence of the parties, the learned Rent Controller dismissed the ejectment application on 30.09.2006 holding that the relationship of landlord and tenant was not proved. The respondents preferred Rent Appeal No.05 of 2006 which was allowed by the learned appellate Court on 09.12.2009 and the petitioner was directed to vacate the premises within sixty days. The said appellate judgment has been assailed through the present constitutional petition.

3. Learned counsel for the petitioner contended that the impugned judgment is illegal and without lawful authority as the learned appellate Court failed to determine the question of maintainability of the rent proceedings and jurisdiction of the Rent Controller. He contended that the premises in question is situated in Village Bhan Saeedabad which does not fall within an urban area, therefore the provisions of the Sindh Rented Premises Ordinance, 1979 were not applicable and the Rent Controller lacked jurisdiction. Learned counsel further contended that the respondents failed to produce any documentary evidence to establish the relationship of landlord and tenant and the appellate Court misread the evidence, particularly the

statement of the petitioner, while arriving at the conclusion that such relationship existed. He further contended that the respondents' case rested merely upon the statement of their father without independent corroboration, whereas the petitioner had asserted ownership on the basis of an agreement to sell and had already filed a suit for specific performance, therefore the impugned judgment was liable to be set aside.

4. Conversely, learned counsel for respondents No.1 to 3 supported the impugned judgment and contended that the respondents are owners of the premises which was let out to the petitioner through their father on monthly rent of Rs.3000/-. He argued that due to friendly relations between the parties no written agreement was executed, however the petitioner had admittedly remained in possession as tenant and had paid rent up to September 2000. He contended that the petitioner stopped payment of rent thereafter and also failed to clear electricity dues which ultimately led to disconnection of electricity. Learned counsel further contended that during cross-examination the petitioner himself admitted that the premises had been rented out to him through the respondents' father, therefore, the relationship of landlord and tenant stood established and the appellate Court rightly set aside the erroneous findings of the Rent Controller.

5. Learned Additional Advocate General adopted the arguments advanced by counsel for respondents No.1 to 3 and submitted that the impugned judgment is based on proper appreciation of evidence and does not suffer from any jurisdictional defect warranting interference in constitutional jurisdiction.

6. I have heard the learned counsel for the parties and perused the material available on record with their able assistance.

7. At the outset, it is settled principle of law that constitutional jurisdiction under Article 199 of the Constitution is supervisory in nature and is not meant to substitute findings of fact recorded by competent courts unless the impugned order suffers from patent illegality, jurisdictional defect, or misreading or non-reading of evidence.

8. The primary contention raised by the petitioner relates to the alleged absence of relationship of landlord and tenant between the parties. However, a careful examination of the record reveals that during cross-examination the petitioner categorically admitted that the premises had been rented out to him through the father of respondents. Such admission constitutes substantive evidence and once a fact stands admitted, the same does not require further proof. The learned appellate Court has rightly relied upon this admission while concluding that the relationship of landlord and tenant existed between the parties. The Rent Controller had failed to appreciate this material aspect of the evidence; therefore, the appellate Court was justified in interfering with the findings of the trial forum.

9. As to the lack of jurisdiction of the Rent Controller on the ground that the premises fall within a rural area also does not hold substance is concerned, in this regard, a report was called from the Mukhtiarkar Taluka Sehwan Sharif who confirmed through official correspondence and Government Gazette Notification dated 27.03.1990 that Bhan was declared as a Town Committee by the Government of Sindh and the said Town Committee had been in existence even prior to the issuance of the notification. The said report clearly establishes that Bhan Saeedabad falls within a notified town area. Consequently, the provisions of the Sindh Rented Premises Ordinance, 1979 are applicable and the Rent Controller had lawful jurisdiction to entertain the ejectment application.

10. The plea of the petitioner that the premises had been sold to him through an agreement to sell also does not advance his case. It is well settled that a mere agreement to sell does not confer title or ownership in immovable property unless a registered conveyance is executed in accordance with law. The petitioner has admittedly not produced any registered sale deed in his favour. Even otherwise, the question relating to specific performance of an agreement to sell is the subject matter of a separate civil suit instituted by the petitioner and the same cannot defeat the rights of the landlord in rent proceedings, particularly when the relationship of landlord and tenant stands admitted. 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 Honourable Supreme Court summarized the legal position in clear 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.

11. Furthermore, the petitioner has also not disputed that no rent has been paid to the respondents since October 2000. Non-payment of rent for such a prolonged period constitutes willful default within the meaning of the relevant rent law. Once default in payment of rent is established, the tenant becomes liable to eviction under the law. The learned appellate Court has carefully examined the entire evidence available on record and has rightly concluded that the petitioner is a tenant of the respondents and has committed default in payment of rent. The findings recorded by the appellate Court are based on proper appreciation of evidence and correct application of law. No illegality, perversity or jurisdictional defect has been pointed out which may justify interference by this Court in exercise of constitutional jurisdiction.

12. For what has been discussed above, I am of the considered view that the impugned judgment dated 09.12.2009 passed by the learned Additional Sessions Judge, Sehwan does not suffer from any legal infirmity. The petition is devoid of merit and is accordingly **dismissed**, along with pending applications, if any. The petitioner is directed to vacate the possession of subject premises within 15 days. The SHO PS Bhan is required to provide assistance to the trial Court.

13. Let copy of this order be transmitted to the trial Court and SSP Jamshoro as well, for compliance under intimation of this Court through Additional Registrar.

**JUDGE**

\*Abdullah Channa/PS\*