

THE HIGH COURT OF SINDH KARACHI

C.P. No. S-942 of 2023

[Shaikh Muhammad Ameen vs. Noor Bano & others]

Petitioner : Shaikh Muhammad Ameen
through Ms. Farha Kulsoom, Advocate.

Respondent No.1 : Noor Bano
through Mr. M. Rehan Pervaiz Qureshi,
Advocate.

Respondent Nos.2-4 : NEMO.

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Date of hearing : 28.10.2026

Date of decision : 28.10.2026

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ORDER

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Zulfiqar Ali Sangi J.— Through the instant constitutional petition, filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner has called into question the judgment dated 25.08.2023, passed by the learned IVth Additional District Judge, Karachi Central, in First Rent Appeal No.167 of 2022, whereby the appeal preferred by the petitioner against the order dated 25.03.2022, passed by the learned Rent Controller-IV, Karachi Central, in Rent Case No.224 of 2020, was dismissed and the order of ejectment was maintained. The petitioner has, therefore, sought setting aside of both the impugned judgments/orders.

2. The facts, in brief, as emerging from the record, are that respondent No.1 instituted Rent Case No.224 of 2020 under Section 15 of the Sindh Rented Premises Ordinance, 1979, alleging that the premises bearing House No.A-5/94, adjacent to Quaid Elementary School, Katchi Abadi, Musa Colony, Federal B Area, Karachi (hereinafter referred to as “the demised premises”), had been let out to the petitioner in July 2014 at a monthly rent of Rs.4,500/-, against a security deposit of Rs.15,000/-. It was alleged that the petitioner had committed default in payment of rent and utility charges and had also sublet the demised premises to opponent No.2 without the consent or permission of the

landlord. Ejectment was further sought on the ground of personal bona fide requirement.

3. The petitioner contested the rent application by filing a written statement, wherein he denied the existence of any relationship of landlord and tenant between the parties. His case was that he had purchased the demised premises from Shaikh Muhammad Sohail, son of respondent No.1, for a total sale consideration of Rs.14,60,000/- pursuant to an alleged sale agreement dated 03.11.2012, whereafter possession of the property had been delivered to him. He asserted that he had never paid rent to respondent No.1 and that the rent proceedings had been initiated with mala fide intentions. The petitioner also placed reliance upon earlier civil litigation concerning the property and maintained that respondent No.1 had failed to establish title thereto.

4. The record reflects that, upon service of notice, the matter proceeded before the learned Rent Controller. The petitioner subsequently appeared through counsel and filed his written statement; however, despite opportunities afforded to him, he failed to produce evidence in support of his defence. Conversely, respondent No.1 produced affidavit-in-evidence along with relevant documents, including the documents relied upon in support of the respective claims and the judgment and decree pertaining to the earlier civil proceedings. Upon appraisal of the material available on record, the learned Rent Controller, vide order dated 25.03.2022, allowed the rent application to the extent of ejectment and directed the petitioner to vacate the demised premises and hand over peaceful, physical and vacant possession thereof to the applicant within thirty days.

5. Aggrieved by the aforesaid order, the petitioner preferred First Rent Appeal No.167 of 2022. The learned appellate court, after hearing the parties and examining the available record, dismissed the appeal vide judgment dated 25.08.2023. The learned appellate court, inter alia, observed that the petitioner had failed to establish his asserted ownership through cogent evidence; that the civil suit instituted on the basis of the alleged sale agreement had been dismissed and the decision had attained finality; and that an agreement to sell, by itself, did not confer title to immovable property. Consequently, the order of ejectment passed by the learned Rent Controller was maintained, giving rise to the instant constitutional petition.

6. Learned counsel for the petitioner assailed the impugned judgment and order on the ground that the same were contrary to law and had been passed

without proper appreciation of the material available on record. It was contended that no relationship of landlord and tenant had ever existed between the petitioner and respondent No.1, as the petitioner had entered into possession of the demised premises in the capacity of a purchaser under the alleged sale agreement and had paid the entire sale consideration. Learned counsel further submitted that the petitioner had been paying the utility bills and had remained in possession of the property for several years. It was argued that the alleged tenancy agreement had not been executed by the petitioner and that respondent No.1 had consequently failed to establish any lawful basis for invoking the jurisdiction of the Rent Controller against him. Learned counsel further contended that the petitioner could not effectively participate in the proceedings on account of serious illness and a back injury, which allegedly rendered him unable to walk or stand without difficulty. It was submitted that the medical documents and prescriptions produced before the learned appellate court had not been properly considered, thereby depriving the petitioner of an effective opportunity to establish his defence. Reliance was also placed upon the earlier civil litigation concerning the property, with the submission that the courts below had failed to appreciate the petitioner's documents and the circumstances surrounding his possession. Learned counsel, therefore, prayed that the impugned judgment and order be set aside or, in the alternative, the matter be remanded to the learned Rent Controller for recording of evidence and fresh decision in accordance with law.

7. Conversely, learned counsel for respondent No.1 supported the impugned judgment and order and submitted that the learned Rent Controller had passed the order of ejectment after affording due opportunities to the parties and considering the evidence produced by respondent No.1. It was contended that the petitioner had failed to substantiate his claim of ownership or establish any legally sustainable basis for retaining possession of the demised premises against respondent No.1. Learned counsel emphasized that the assertions contained in the written statement could not substitute for evidence, particularly when the petitioner had failed to enter the witness box or otherwise produce evidence in support of his defence despite the opportunities afforded to him. It was further argued that the learned appellate court had independently examined the controversy and found no illegality or material infirmity in the order passed by the learned Rent Controller. Learned counsel accordingly prayed for dismissal of the instant petition.

8. I have heard learned counsel for the parties and examined the available record with their assistance. The principal question requiring determination is whether the petitioner has succeeded in demonstrating any jurisdictional defect, material illegality, procedural irregularity or other infirmity in the concurrent findings recorded by the learned Rent Controller and affirmed by the learned appellate court so as to warrant interference by this Court in the exercise of its constitutional jurisdiction.

9. At the outset, it is necessary to observe that the constitutional jurisdiction conferred upon this Court under Article 199 of the Constitution is extraordinary in nature and is not intended to provide an additional forum for a fresh appraisal of the evidence merely because a party is dissatisfied with the conclusions reached by the competent courts. Where the courts below have exercised jurisdiction vested in them by law, their findings cannot ordinarily be disturbed in constitutional proceedings unless the petitioner establishes a legally recognized ground for interference, such as absence or excess of jurisdiction, material illegality, disregard of a binding legal principle, or findings so perverse or arbitrary that they cannot reasonably be sustained on the record. A general assertion of misreading or non-reading of evidence, without identifying any material error affecting the outcome, is insufficient to invoke such jurisdiction.

10. In the present case, the principal defence advanced by the petitioner is that the relationship of landlord and tenant never existed between the parties, as he had purchased the demised premises from the son of respondent No.1 pursuant to the alleged sale agreement dated 03.11.2012. He maintains that the entire sale consideration was paid and possession was delivered to him in pursuance thereof. However, the assertion of an agreement to sell, even when accompanied by a claim of payment of consideration and delivery of possession, does not, by itself, establish that ownership of immovable property was validly transferred to the purchaser. The legal effect of an agreement to sell must be distinguished from the acquisition of title through a legally recognized mode of transfer. The petitioner was, therefore, required to establish the legal effect of the transaction relied upon by him and demonstrate how it furnished a lawful basis to defeat the claim for ejectment.

11. The learned appellate court specifically considered the petitioner's claim of ownership and noted that civil proceedings had previously been instituted by him in respect of the demised premises on the basis of the alleged sale

agreement, but the relevant suit had been dismissed and the decision had attained finality. In the instant proceedings, the petitioner has not demonstrated that the courts below disregarded any binding determination rendered in the earlier litigation or that their conclusions concerning his failure to establish ownership suffer from any patent illegality. It is not the mere existence of an agreement to sell, but its legal efficacy and the rights, if any, flowing therefrom, that are material. In the absence of cogent evidence establishing the petitioner's asserted title or a legally sustainable defence to the rent application, the said agreement does not, in the circumstances of the case, furnish sufficient ground for setting aside the concurrent orders.

12. Another material circumstance is that, although the petitioner filed a written statement denying the relationship of landlord and tenant and asserting ownership of the demised premises, he failed to substantiate those assertions through evidence despite the opportunities afforded to him by the learned Rent Controller. It is a settled principle of law that pleadings, in the absence of supporting evidence, do not ordinarily constitute proof of the facts asserted therein. Where a party advances a positive factual plea in defence, the burden of establishing such plea rests upon that party to the extent prescribed by law. A bare denial of the opposing party's case cannot, by itself, discharge that burden. In these circumstances, the learned Rent Controller was justified in assessing the evidence produced by respondent No.1 alongside the defence actually established on the record.

13. The petitioner's reliance upon utility bills and his alleged long-standing possession of the demised premises does not materially advance his case. Such documents may, depending upon their nature and the circumstances in which they were issued, be relevant to establishing occupation or payment of utility charges. Nevertheless, neither the payment of utility bills nor the fact of physical possession, standing alone, conclusively establishes ownership or necessarily negates a relationship of landlord and tenant otherwise found to exist on the basis of the evidence. The petitioner has not identified any particular document or item of evidence demonstrating that the findings recorded by the courts below are perverse, unsupported by the record, or otherwise legally unsustainable. Consequently, no ground for constitutional interference is made out on this account.

14. The contention that the petitioner was unable to participate effectively in the proceedings owing to illness and a back injury has also been examined. There can be no cavil with the proposition that a genuine and sufficiently established medical impediment may, in an appropriate case, constitute a relevant consideration for the grant of procedural relief in accordance with law. Nevertheless, the mere assertion of illness does not automatically invalidate proceedings conducted by a competent court, nor does it, by itself, establish that a party was denied a fair opportunity of hearing. It was incumbent upon the petitioner to demonstrate, through the relevant record, that his inability to participate had been brought to the notice of the competent forum in the manner required by law and that the circumstances complained of resulted in a material procedural irregularity affecting the validity of the decision.

15. In the present case, the petitioner has not been able to demonstrate any procedural defect of such a nature as would justify interference under Article 199 of the Constitution. The impugned judgments indicate that the petitioner was afforded opportunities to establish his defence but failed to produce evidence in support thereof. The learned appellate court also examined the petitioner's challenge to the proceedings before the Rent Controller and found no sufficient ground to disturb the order of ejectment. In the absence of a demonstrated denial of a fair opportunity or any other material procedural illegality, this Court cannot reopen the factual controversy merely because the petitioner now seeks another opportunity to substantiate the defence that he failed to establish before the competent forum.

16. The further contention that no written tenancy agreement executed by the petitioner was produced or proved does not, in the circumstances of the present case, independently warrant interference. The existence of a relationship of landlord and tenant is a question to be determined upon consideration of the pleadings, the evidence adduced and the applicable law; it cannot invariably be resolved solely by reference to the presence or absence of a written instrument bearing the tenant's signature. In the instant matter, the petitioner's denial of the tenancy and assertion of ownership were considered by the learned Rent Controller and subsequently examined by the learned appellate court. The petitioner has failed to identify any material legal error in the manner in which the said controversy was determined. Accordingly, the mere reiteration of his denial does not furnish a sufficient basis for invoking the constitutional jurisdiction of this Court.

17. So far as the earlier civil litigation is concerned, the institution or disposal of civil proceedings does not, without consideration of the nature of the relief sought, the issues determined and the legal effect of the resulting judgment and decree, necessarily resolve every question arising in subsequent rent proceedings. The learned appellate court took note of the earlier litigation and the petitioner's failure to establish the title asserted by him. The petitioner has not demonstrated that any binding finding having a direct bearing upon the present controversy was ignored, nor has he shown that the impugned judgment is inconsistent with any operative determination in the earlier proceedings. The petitioner's reliance upon the previous litigation, therefore, does not establish any jurisdictional or legal infirmity in the impugned judgment.

18. It is further evident that the learned Rent Controller adjudicated the rent application on the basis of the material placed before him, while the learned appellate court examined the petitioner's challenge to the resulting order in the exercise of its appellate jurisdiction. The petitioner has failed to identify any material evidence that was demonstrably ignored, any inadmissible material that formed the decisive basis of the findings, or any error of law that materially affected the outcome of the proceedings. Nor has he established that the findings recorded by the courts below are so unreasonable or perverse as to fall outside the range of conclusions legally available on the material before them. In these circumstances, no sufficient ground has been made out for this Court to undertake a fresh appraisal of the factual controversy in the exercise of its constitutional jurisdiction.

19. The alternative prayer for remand of the matter for recording of evidence is equally devoid of merit. Remand is not an automatic consequence of a party's failure to establish its case and cannot ordinarily be ordered merely to afford another opportunity to fill an evidentiary gap after the party has failed to produce evidence despite opportunities before the competent forum. Such a course may be warranted where a material procedural illegality, denial of a fair hearing, or other legally recognized ground for remand is established. In the present case, however, the petitioner has failed to demonstrate any such circumstance. The record does not disclose a legally sustainable basis for concluding that the proceedings were conducted in a manner that deprived him of his right to defend the rent application or that the learned appellate court acted without lawful authority in maintaining the order of ejectment.

20. For the foregoing reasons, I am of the considered view that the petitioner has failed to make out a case warranting interference with the judgment dated 25.08.2023 passed by the learned IVth Additional District Judge, Karachi Central, in First Rent Appeal No.167 of 2022, or the order dated 25.03.2022 passed by the learned Rent Controller-IV, Karachi Central, in Rent Case No.224 of 2020. No jurisdictional defect, material illegality, procedural irregularity or perversity sufficient to attract the constitutional jurisdiction of this Court under Article 199 of the Constitution has been established.

21. Consequently, the instant constitutional petition is **dismissed**. The impugned judgment dated 25.08.2023 and the order dated 25.03.2022 are maintained. There shall be no order as to costs.

JUDGE