

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P No. S-1089 of 2012

DATE ORDER WITH SIGNATURES OF JUDGE(S)

Hearing/Priority case

1. For orders on CMA No.4785/2012 (U/S 151 CPC)
2. For hearing of CMA No.4786/2012 (Stay)
3. For hearing of Main Case

27.10.2016

Mr. Abdul Hafeez, Advocate for the petitioner
Mr. Mushtaq Ahmed Chandio, Advocate for respondent No.1

Zulfiqar Ahmad Khan, J:- Being aggrieved by the judgment dated 17.08.2012 passed by the Vth Additional District Judge, Karachi South in F.R.A No.41 of 2011, the instant petition has been agitated. Brief facts of the case are that one Mr. Abdul Karim (father of respondent No.1) rented out the impugned property to one Mr. Abdul Rehman (father of the petitioner) on the rent payable at the rate of Rs.300/- per month.

Upon death of his father, respondent No.1 acquired the said premises by way of inheritance and reached to the tenant for the payment of rent and arrears thereof. A notice of change of ownership was given to the tenant on 30.03.2007. Upon default by the tenant, a rent case under Section 15 of the Sindh Rented Premises Ordinance, 1979 was filed by the respondent.

A review of the order passed by the learned Rent Controller shows that the tenant through his written statement denied the relationship of landlord-tenant. After considering the evidence and examination of the witnesses, the point No.1 that whether there existed any relationship between the petitioner and respondent No.1, the trial Court answered this question in negative. Being

aggrieved by the said order, the F.R.A was preferred, wherein the appellate Court reconsidered the evidence and came to the conclusion that the order of the trial Court was outcome of gross mis-appreciation of facts and relevant laws and ordered the tenant to vacate the premises within 60 days.

Against such conflicting findings, the instant petition has been filed. Looking at the findings of both the courts below, it appears that the trial Court failed to appreciate that the evidence produced in the form of the tenancy agreement and rent receipts of the witnesses (brought forwarded by respondent No.1) and that witnesses categorically stated that deceased father of the petitioner (Abdul Rehman) paid rent in their presence to Mst. Kareema upto December, 2004. The trial Court also failed to appreciate that the statement of these two witnesses were not questioned by the rival parties during the cross examination, as well as, the petitioner failed to bring any evidence in his support as to the ownership of the property in question, except a Form PT-I that was held to be fake and the letter issued by the District Magistrate, Karachi dated 19.07.1972 registering Printing Press of the petitioner's father does not create any title to the property in question in the petitioner's name enabling him denying his relationship as tenant of respondent No.1. Also of particular importance, as rightly noted in the impugned judgment, is the fact the tenant has categorically admitted in the written statement that he was tenant of shop No.1.

I therefore, tend to agree with the view of the appellate Court that relationship of landlord and tenant existed between the parties and tenant (the petitioner) failed to bring any evidence in his support that he is the owner or paid rent in respect of the

property in question and has thus committed perpetual default, therefore, the judgment wherein he was ordered to vacate the premises is well founded. I therefore, refuse to interfere in the impugned judgment and dismiss the instant petition with cost of Rs.2,000/-

JUDGE

Barkat Ali/PA