

JUDGMENTSHEET
HIGH COURT OF SINDH, KARACHI

First Rent Appeal No. 27 of 2016

APPELLANT : Nazimuddin through Mr. Muhammad
Zahid Kabeer, Advocate

RESPONDENT NO.1 : Mrs. Shahida through Mr. Irfan Ali
Advocate

RESPONDENTS NOS. 2
AND 3 : Nemo

DATES OF HEARING : 05.08.2016 and 20.08.2016

DATE OF JUDGMENT : 07.09.2016

JUDGMENT

Muhammad Humayon Khan, J: This First Rent Appeal under Section 24 of the Cantonment Rent Restriction Act, 1963 (hereinafter referred to as "the said Act") is filed against the Order dated 02.05.2016 passed by the learned Addl. Controller of Rents, Clifton Cantonment, Karachi, in Rent Case No. 63 of 2015, whereby, the learned Rent Controller allowed the ejectment application filed by the respondent No.1 and directed the respondent No.2 or anybody in possession to vacate the demised premises i.e. Flat No. B-2, 2nd Floor, Plot No. 12/C, Phase-VI, Rahat Commercial Lane-I, Pakistan Defence Officers Housing Authority, Karachi, and handover its vacant and peaceful possession to the respondent No.1 within 30 days.

2. Since the appellant concealed and suppressed the material facts in the memo of appeal, I took the relevant facts of the matter from the R & P of the said Rent Case No. 63 of 2015.

3. The relevant facts of the case are that the respondent No.1 is lawful owner and landlady of Flat No. B-2, 2nd Floor, Plot No. 12/C, Phase-VI, Rahat Commercial Lane-I, Pakistan Defence Officers Housing Authority, Karachi (hereinafter referred to as “the demised premises”) and the respondent No.2 acquired the demised premises together with all necessary fittings and fixtures installed therein on monthly rent of Rs.18,700/- excluding amenities as per tenancy agreement in January 2013. After expiry of the tenancy period, both the respondents Nos.1 and 2 entered into fresh tenancy agreement in the year 2014 and rent was increased to Rs. 24,500/- per month. The respondent No.2 paid rent of the demised premises upto the month of April 2015 and thereafter he failed to tender or pay the monthly rent to the respondent No.1 with effect from May 2015. Ultimately, the respondent No.1 filed ejectment application on the ground of default in payment of rent against the respondent No.2.

4. After filing of ejectment application, notices were issued to the respondent No.2 through bailiff and TCS on two occasions but service could not be made as the respondent No. 2 was not present at the demised premises. Ultimately notice was pasted on the demised premises in presence of two witnesses but the respondent No.2 did not appear and lastly notice was published in the newspaper even then the respondent No.2 did not appear. However, the appellant moved an application for joining him as party in the instant case on the ground that the appellant has purchased the demised premises from the respondent No.1 by agreement of sale dated 02.02.2015 and he is in possession of the demised premises. The respondent No.1 filed counter affidavit and denied the case of the

appellant and specifically pleaded that both the sale agreements are bogus and forged.

5. It is apparent from the record that the appellant was directed to produce both the original sale agreements dated 02.02.2015 and 31.03.2015 by Order dated 11.02.2016 but the appellant failed to produce the said original agreements though many chances were given by the learned Rent Controller as apparent from the diary sheets of 11.02.2016, 25.02.2016, 03.03.2016, 17.03.2016, 31.03.2016 and 14.04.2016. It is also apparent from the diary sheet of 28.04.2016 that on 28.04.2016, the learned counsel for the appellant filed Police Report dated 25.11.2015 registered at Gizri Police Station regarding lost of the original sale agreements and in these circumstances, the learned Rent Controller observed that the appellant could have informed him regarding lost of the original agreements on the very first date and finally after hearing the parties dismissed the said application of the appellant for joining him as party in the instant case and the respondent No.1 was directed to file affidavit-in-ex-parte proof, which she filed. In these circumstances, the learned Rent Controller allowed the ejectment application, against which, the appellant has filed this appeal.

6. I have heard the learned counsel for the petitioner as well as respondent No.1 and perused the entire material available in the R & P of the instant case.

7. The learned counsel for the appellant has contended that his application for joining the appellant as party in the instant case was dismissed without reasons and ejectment order was passed

straightaway and therefore both the orders are null and void being in violation of principle of natural justice. He further submitted that the appellant is in possession of the demised premises being the bonafide purchaser as he has purchased the demised premises by agreements of sale dated 02.02.2015 and 31.03.2015 and had paid the entire sale consideration to the respondent No.1. He further contended that the respondent No.1 has concealed these facts and fraudulently filed ejectment proceedings against the respondent No.2, who was previous tenant. He finally argued that the appellant has already filed civil suit No. 511/2015 before the learned IVth Senior Civil Judge, Karachi-South, for specific performance, declaration and injunction against the respondent No.1, which is pending.

8. On the other hand, the learned counsel for the respondent No.1 contended that the respondent No.1 had let out the demised premises to the respondent No.2, who is brother-in-law of the appellant, by tenancy agreements on monthly rent. He further submitted that the respondent No.2 committed default in payment of rent, therefore, the respondent No.1 filed ejectment application against the respondent No. 2, who failed to appear in the instant case but appellant moved an application for joining him as party on the footing of bogus sale agreements. He further stated that the respondent No.1 never sold out the said demised premises to the appellant nor she has signed or executed any sale agreement nor received any amount from the appellant as sale consideration. He further contended that the respondent No.1 has contested the said civil suit and she has filed an application under Article 84 of the Qanoon-e-Shahadat Ordinance which was allowed and appellant was

directed to surrender all the original sale agreements and payments receipts for opinion of handwriting expert. He further submitted that this order was not complied with by the appellant and ultimately his suit was dismissed for non-prosecution by Order dated 30.03.2016. He further stated that the appellant has only challenged order dated 02.05.2016 whereby ejectment application was allowed but he has not challenged the basic order whereby his application for joining him as party was dismissed. He lastly argued that it is well settled principle of law that if any party claims ownership on the basis of sale agreements then he has to file suit for specific performance and after getting decree in the said suit, he will get the possession restored. In support of his arguments, the learned counsel for the respondent No.1 has relied upon the following case-laws:-

- i) Iqbal and 6 others Vs. Mst. Rabia Bibi and another (PLD 1991 Supreme Court 242);
- ii) Haji Jumma Khan Vs. Haji Zarin Khan (PLD 1999 Supreme Court 1101);
- iii) Syed Imran Ahmed Vs. Bilal and another (PLD 2009 Supreme Court 546);
- iv) Abdul Rasheed Vs. Maqbool Ahmed and others (2011 SCMR 320);
- v) Muhammad Nisar Vs. Izhar Ahmed Shaikh and others (PLD 2014 Supreme Court 347);
- vi) Mian Munir Ahmed Vs. Mrs. Manzar Jaffery and another (1987 MLD (Karachi) 2922).

9. The first contention of the learned counsel for the appellant is that his application for joining the appellant as party in the instant case was dismissed without reasons and ejectment order was passed straightaway and therefore both the orders are null and void being in violation of principle of natural justice. I am not impressed with the contention of the learned counsel for the appellant for the reasons that the order of dismissal of appellant's application for joining him as party has not been challenged in the appeal. However, it is apparent from the record that the appellant was directed to produce both the original sale agreements dated 02.02.2015 and 31.03.2015 by Order dated 11.02.2016 but the appellant failed to produce the said original agreements though many chances were given by the learned Rent Controller as apparent from the diary sheets of 11.02.2016, 25.02.2016, 03.03.2016, 17.03.2016, 31.03.2016 and 14.04.2016. It is also apparent from the diary sheet of 28.04.2016 that on 28.04.2016, the learned counsel for the appellant filed Police Report dated 25.11.2015 registered at Gizri Police Station regarding lost of the original sale agreements and in these circumstances, the learned Rent Controller observed that the appellant could have informed him regarding lost of the original agreements on the very first date and finally after hearing the parties dismissed the said application of the appellant for joining him as party in the instant case. Later on, the learned Rent Controller dealt with the said point in his Order dated 02.05.2016 by observing that:-

“Keeping in view the circumstances of the case, the intervener side was directed to file Original Sale Agreements dated 2nd February, 2015 and 31st March, 2015 on next date. However, on 03.03.2016, the side of the opponent for filing of Written Statement was closed and he was proceeded against Ex-Parte

and intervener side was also given last and final chance for filing of Original Sale Agreements on next date. The intervener availed many chances but failed to file the said agreements on the pretext one another. Therefore, the intervener's application for being a party as opponent No.2 in the instant rent case was dismissed being meritless."

10. The second contention of the learned counsel for the appellant is that the appellant is in possession of the demised premises being bonafide purchaser as he has purchased the demised premises by agreements of sale dated 02.02.2016 and 31.03.2016, which are sub-judice in Civil Suit No.511/2015 filed by the appellant against the respondent No.1 for specific performance, declaration and injunction. Upon my query whether there is any relationship between the appellant and the respondent No.2, the learned counsel for the appellant showed his ignorance and the appellant, who was present in the court, kept silent. When the respondent No.1, who was also present in the court, informed the Court that the respondent No.2 is brother-in-law of the appellant then only the appellant admitted that the respondent No.2 is his brother-in-law. Upon my further query that the appellant has not pleaded his relationship with the respondent No. 2 at any stage either in the rent case or in this appeal, he kept silent. However, the appellant admitted that he informed the respondent No.2 regarding the said rent case and this appeal. Be that as it may, suffice it to observe that genuineness or otherwise of the said sale agreements and their consequential effect will be independently determined by the Civil Court. However, the instant case was filed by the respondent No.1 against her tenant respondent No.2, who neither appeared before the learned Rent Controller nor before this Court. The relationship of landlady and tenant between

the respondents Nos.1 and 3 is not in dispute, the learned Rent Controller has rightly passed ejectment order against the respondent No.2 and any person in possession of demised premises.

11. In the case of Iqbal and 6 others Vs. Mst. Rabia Bibi and another reported in PLD 1991 Supreme Court 242, the Hon'ble Supreme Court of Pakistan has held that where the sale agreement or any other transaction relied upon by a tenant is seriously and bonafide disputed by the landlord, the tenant cannot be allowed to retain the possession during the litigation. It has been further held that the tenant cannot be permitted to remain in occupation and fight the litigation for long time even for decades and the tenant must vacate though of course he would be entitled to an easy and free entry as soon as he finally succeeds in establishing his title against the landlord.

12. In the case of Haji Jumma Khan Vs. Haji Zarin Khan reported in PLD 1999 Supreme Court 1101, the Hon'ble Supreme Court of Pakistan has followed the case of Iqbal and 6 others Vs. Mst. Rabia Bibi and another (PLD 1991 Supreme Court 242) and held that till the time that tenant is able to establish his claim for specific performance on the basis of alleged sale agreement, respondent-landlord would continue to enjoy the status of being owner and landlord of the premises.

13. Again in the case of Syed Imran Ahmed Vs. Bilal and another reported in PLD 2009 Supreme Court 546, the Hon'ble Supreme Court of Pakistan has categorically held that:

“It is a principle too well established by now that a sale agreement did not itself create any interest or even a charge on the property in dispute; that un-like the law in England, the law in Pakistan did not recognize any distinction between the legal and equitable estates; that a sale agreement did not confer any title on the person in whose favour such an agreement was executed and in fact it only granted him the right to sue for such a title and further that such an agreement did not affect the rights of any third party involved in the matter. It may be added that till such time that a person suing for ownership of a property obtains a decree for specific performance in his favour, such a person cannot be heard to deny the title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the property which is the subject-matter of the litigation. Postponing the ejectment proceedings to await the final outcome of a suit for specific performance would be causing serious prejudice to a landlord and such a practice, if approved by this Court, would only give a licence to unscrupulous tenants to defeat the interests of the landlords who may be filing suits for specific performance only to delay the inevitable and to throw spanners in the wheels of law and justice.”

14. The earlier view of the Hon’ble Supreme Court of Pakistan in the above-referred cases was again followed by the Apex Court in the cases of (i) Abdul Rasheed Vs. Maqbool Ahmed and others (2011 SCMR 320) and (ii) Muhammad Nisar Vs. Izhar Ahmed Shaikh and others (PLD 2014 Supreme Court 347).

15. In all the above-referred Judgments of the Apex Court, the matters were between the landlord and tenant and tenant setup the plea of sale agreement by denying the relationship of landlord and tenant but in my view the same principle of law as laid down by the Apex Court in all the above referred cases is also applicable to the cases where a relative or friend of the tenant appears as intervener as alleged purchaser and setup the plea of sale agreement and tenant remained absent and the landlord/landlady denies the execution of sale agreement and delivery of possession then the learned Rent Controller has no option except to allow the ejectment

application with the direction to the alleged purchaser to file suit for specific performance of contract and get injunction order from the Civil Court. My this view is fully supported by the case of Mian Munir Ahmed Vs. Mrs. Manzar Jaffery and another reported in 1987 MLD (Karachi) 2922, which is identical case, wherein, it is held that:-

“I have given consideration to the submissions made at the bar and as already pointed above, I do not find any substance in this appeal. The appellant claims to be the owner of the property by virtue of agreement allegedly executed between him and the respondent No.1 for the specific performance thereof he has already filed a civil suit in this court. The matter will be duly investigated and thrashed out in the said suit. The relationship of landlord and tenant between the respondents Nos. 1 and 2 is not in dispute and since the respondent No.1 despite having put in appearance before the learned Rent Controller chose to be proceeded with ex parte, no objection can be taken to the order of the learned Rent Controller for his eviction in an ex parte proceedings. The refusal to set aside the order of ex parte proceedings is also proper in as much as no application for its setting aside was made by the respondent No.2 or by any person duly authorized by him. In so far as the appellant is concerned, since he claims to be the owner of the premises himself and he has already filed a suit in that behalf it will be open to him obtain requisite prohibitory order against the respondent No.1 restraining her from executing the order of ejectment obtain in the rent case under appeal.”

16. There is another important aspect of the matter, which I noticed that before learned Rent Controller, the appellant produced Police Report dated 25.11.2015 that both the original sale agreements have been lost. However, upon my query regarding this aspect of the matter, the appellant showed me the original sale agreements. I was surprised to see the original sale agreements in the possession of the appellant, when these agreements were lost according to the Police Report dated 25.11.2015 and there is no explanation that how and when these documents were found. In my view this conduct of the appellant shows deliberate misrepresentation to the Court and every

representation made to Court which is deliberately false amounts to fraud upon the Court. My this view is supported by the case of John Paul Vs. Irshad Ali and others (PLD 1997 Karachi 267).

17. In view of the above discussion, I do not find any justification to interfere in the order of the learned Rent Controller, which is passed in accordance with law. Accordingly this appeal alongwith the listed application is dismissed with costs. However, the appellant or any other person in possession of the demised premises is allowed 30 days' time to vacate the demised premises and hand-over its vacant and peaceful possession to the respondent No.1.

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