

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-1144 of 2017

Amir son of Abdul Zahoor.....PETITIONER

Versus

Nasir Ahmed and others.....RESPONDENTS

Date of hearing: 21.07.2017

Mr. Muhammad Sajjad Abbasi, Advocate for the Petitioner.

ORDER

ADNAN-UL-KARIM MEMON, J:- In the captioned Petition, the Petitioner has impugned Order dated 18.05.2016 passed by the learned VI-Rent Controller Karachi-East, in Rent Case No. 428 of 2009 whereby rent case filed by the Respondent No.1 was allowed. Petitioner challenged the said Order in First Rent Appeal No. 73 of 2016 which was also dismissed vide Order dated 25.04.2017 passed by learned IX-Additional District Judge Karachi East.

2. Brief facts of the case are that Respondent No.1 is claiming to be landlord/owner of the Flat No.A-11/1, First Floor, Block-1, "A/One" Centre, and Survey No. NJ-1, situated at Jail Road, Karachi (subject premises). The Petitioner is shown to have been inducted as tenant of subject premises at the rate of Rs. 5,000/- per month vide Rent Agreement dated 07.07.2001 executed by first owner namely Mrs. Kausar Barlas wife of Khalid Barlas. As per averments of Respondent No.1 that he has purchased the Flat from previous owner through conveyance deed registered on 26.6.2006 and agreement had been executed between him and first owner. It is further averred that on 19.4.2006 and 20.4.2006 legal notices had been sent to the petitioner whereby he was informed that the subject premises has been purchased

by the respondent No.1 from first owner and rent of subject premises be paid to him from 01.05.2006 to onward. It is further averred that petitioner has not paid rent to the respondent No.1 from 01.05.2006 to 30.11.2009, which comes to Rs 2,15,000/ (Rs. Two Lacs and Fifteen Thousand only) nor paid outstanding utilities bills of subject premises which comes to Rs 98,705/, (Rupees Ninety Eight Thousand Seven Hundred and Five only). Thereafter, petitioner was approached by respondent No.1 several times to pay rent and other utility charges and lastly on 28.10.2009 another legal notice was issued to the petitioner through his counsel but he ignored and refused to vacate the subject premises. On the contrary, petitioner claims that the subject premises is owned by the petitioner; that the title of respondent No.1 is totally defective, bogus and there is a Civil Suit pending against respondent No.1 and others for cancellation of his ownership, which he had taken fraudulently with corroboration of previous owner namely Kausar Barlas. However, he denied the relation of landlord and tenant between the parties with further assertion that when the petitioner is not the tenant then he is not liable for any payment to any person or department.

3. Learned Rent Controller framed the following points for determination:-

- i) Whether relationship of landlord and tenant is established between the parties?
- ii) Whether the opponent has failed to make payment of rent of the demised premises to the applicant since May 2006?

4. The learned VI Rent Controller, Karachi, East after recording evidence of the parties allowed the Rent Case No.428/2009 as prayed vide order dated 18.05.2016 with directions to the Petitioner to handover vacant and peaceful possession of subject premises to the Respondent No.1 within a period of thirty (30) days. Petitioner feeling aggrieved by and dissatisfied with the impugned order dated 18.05.2016 preferred First Rent Appeal No. 73 of 2016 before the IX Additional District Judge, Karachi, East. The learned Appellate Court vide Order dated 25.04.2017 dismissed the Appeal of the Petitioner and maintained the order of the

learned Rent Controller. On 24.5.2017, Petitioner approached this Court against the decisions rendered by the learned Rent Controller and Appellate Court.

5. The record reflects that notices have been issued to the respondent No.1 through all modes except publication but he has chosen to remain absent. However, learned counsel for the petitioner argued the whole case on merits.

6. Mr. Muhammad Sajjad Abbasi, learned counsel for the Petitioner has contended that petitioner's mother namely Mrs. Munawar Zahoor purchased the subject premises as per Agreement dated 24.07.1999 from Mst. Kausar Barlas wife of Khalid Barlas; that petitioner is in possession and having original title documents of the subject premises; that petitioners mother is owner of the subject premises after having knowledge of fraud filed Civil Suit 323/2010 for Declaration, Cancellation, Permanent Injunction, specific Performance against the original owner namely Kausar Barlas along with respondent No.1 by challenging the conveyance deed dated 26.06.2006 of the respondent No.1 which is pending before Senior Civil Judge-VI Karachi East and is fixed for final arguments ; that the impugned orders passed by both the courts below are without jurisdiction, therefore, the same may be set aside; that impugned orders are result of misreading and non-reading of the evidence of the parties; that both the Courts erred in holding that there is relationship of landlord and tenant between the parties, he further emphasized that there is no relationship between the petitioner and respondent No.1, per learned counsel there is no tenancy agreement and the respondent No.1 has managed the whole story to usurp the property of the petitioner by filling rent case against the petitioner with malafide intention; that all the documents produced in evidence explicitly show that Petitioner's mother has purchased the subject premises from Mst. Kausar Barlas and the title of RespondentNo.1 is disputed but the said evidence was not considered and wrongly ordered for eviction of the petitioner from the subject premises by the learned trial Court; that till decision of the said Suit the Rent Case could not have been entertained and allowed and Appeal

should not have been dismissed; that Respondent No.1 had no locus standi to file Rent Case against the Petitioner because he is not owner of the subject premises. Therefore, both the orders passed by the learned Courts below need to be reversed by this Court. Learned counsel in support of his contention has relied upon the case of Afzal Ahmed Qureshi vs. Mursaleen (2001 SCMR 1434).

7. I have heard the learned counsel for the petitioner and perused the material available on record as well as case law cited at the bar.

8. Perusal of record and findings given by the learned Rent Controller as well as learned Appellate Court do not show any illegality or irregularity in the impugned judgments.

9. I am of the view that mere denial of relationship of landlord and tenant between the parties and pendency of Civil Suit for Cancellation, Permanent Injunction and Specific Performance of Contract does not take away jurisdiction of Rent Controller to entertain a Rent Case. That a Sale Agreement does not create any interest or confer any title on the person in whose favour such agreement is executed. Therefore, the Petitioner on the basis of a Sale Agreement cannot restrain the owner of the subject premises from claiming his legal right or deprive him from benefit accruing or arising out of the said property. Hence, no proceedings before the Rent Controller can be stopped to wait for the final outcome of the said suit. In such circumstances, the tenant must vacate the subject property and if succeeds in obtaining Decree in the suit then he can be given easy excess to the subject premises.

10. On the point of default in payment of rent the Respondent No.1 claims that Petitioner has not paid rent with effect from May, 2006 till date. On the other hand Petitioner is claiming that he is bonafide purchaser of the premises in question with further assertion that when the petitioner is not the tenant then he is not liable for any payment to any person or department. In such a situation when the Petitioner is denying the relationship of landlord and tenant and is claiming purchase of the subject premises in the year 1999, it means that he has not paid

the rent, therefore the learned trial Court has rightly observed that the petitioner has committed willful default in payment of rent since May 2006.

11. I am of the view that in rent matter Constitutional Jurisdiction of this Court is limited and confined only to ascertain whether the Appellate Court has flouted the statute or fail to follow the law relating thereto? In the instant case, neither there is any jurisdictional error nor any perversity, illegality or infirmity in the orders passed by both the learned trial Court as well as Appellate Court. Besides, I do not see misreading or non-reading of evidence which could warrant interference of this Court.

12. The case law cited by the learned counsel for the Petitioner is distinguishable from the facts and circumstances of the present case.

13. In the light of facts, circumstances and law mentioned above, the instant Constitution Petition is dismissed alongwith pending application(s) and the orders passed by the learned VI Rent Controller, Karachi, East and learned IX-Additional District Judge, Karachi East are maintained.

14. The Petitioner is directed to vacate the premises in question and handover its vacant and peaceful possession to the Respondents No.1 within thirty days from the date of this Order. In case of failure, the Petitioner shall be evicted from the subject premises without notice.

JUDGE