

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
CP.No.S-811 of 2020

Date	Order with signature of Judge
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1. For orders on office objections as at "A".
2. For hearing of main case.
3. For hearing of CMA No. 4282 of 2020 (Stay).

11th November 2020

Mr. Naveed Ali, advocate for petitioner.
Mr. Muhammad Rashid, advocate files vakalatnama on behalf
of respondent No.1; taken on record.

Heard and perused record.

2. Since petitioner admits tenancy agreements of 2003 and 2016 respectively with the respondent, however, he contends that both tenancy agreements were relating to 74 sq.yds, which consists upon two shops which are lying vacant and petitioner has no objection if possession is handed over to the respondent, whereas respondent claims ownership of 300 square yards. Petitioner contends that since possession was not handed over to him pursuant to agreements regarding 22 square yards, whereas rest of area is in possession of petitioner and his father for which they have filed suit for declaration and specific performance against the respondent claiming therein that by way of sale agreement they have purchased 174 sq.yds from respondent; tenancy agreements with regard to 300 square yards are not in dispute, though technically father of the petitioner has taken plea of sale agreement with respondent in respect of 174 sq.yards.

3. Admittedly, petitioner and his father have filed suit for specific performance which is pending adjudication. It is pertinent to mention that the alleged sale agreement executed after the first tenancy agreement, hence, plea of purchase, taken by the tenant and his father appears collusive to deprive the respondent from her right of possession.

4. At this juncture, it would be conducive to refer judgment of Hon'ble apex Court reported as Abdul Rasheed v. Maqbool Ahmed & others 2011 SCMR 320, wherein the Honourable Supreme Court has held that taking of such a

plea (filing and pendency of such *lis*) by a tenant leaves him with no option but to do what has been enunciated by Apex Court i.e. “to put the landlord into possession and then to *proceed* for enforcement of his rights”. The relevant portion of the judgment reads as under:

5. ... *It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails..... Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.*

5. Under these circumstances, this court has no option except to dismiss the petition. Accordingly, instant petition is dismissed alongwith pending application(s) with direction to hand over the possession to the respondent No.1 within two months.

J U D G E

Sajid