

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No. S-256 of 2003

Present

Mrs. Justice Kausar Sultana Hussain

Noor Gul son of Toor Gul.....Petitioner

V e r s u s

The Additional District Judge, No. V, Karachi (West)
And two others.....Respondents

Date of Hearing 02.12.2020

Date of Judgment 28.01.2021.

Choudhry Abdul Rasheed, advocate for Petitioner / landlord .

J U D G M E N T

Kausar Sultana Hussain, J. :- Through this Constitution Petition under Section 199 of the Constitution of Islamic Republic of Pakistan, 1973, the Petitioner / landlord/landlord has impugned a common Judgment dated 18.02.2003, passed by learned Vth Additional District Judge Karachi West in First Rent Appeal No. 713 of 1998, new (FRA No. 32 of 2001), filed by the Respondent No. 3/tenant against the Petitioner / landlord and FRA No. 742 of 1998, new (FRA No.33 of 2001) filed by the Petitioner / landlord against the Respondent No.3 / tenant, assailing thereof the Judgment dated 30.09.1998 passed in Rent Case No. 152 of 1995, by the learned IIIrd Rent Controller, Karachi West, filed by the Petitioner / landlord/landlord against the Respondent No. 3/opponent/tenant.

2. The necessary facts spelt out from instant petition are that the Petitioner / landlord (Noor Gul) is the owner / landlord of Quarter No. 31, Block-5, Tara Chand Road, Keamari, Karachi West and the Respondent No.3 / tenant (Daulat Khan) was inducted as

a tenant in the said premises on a monthly rent of Rs.35/- in the year 1992. The said land belonged to the Karachi Port Trust (KPT) had been leased out to M/s. Brig Stock Edulgee & Co. The Petitioner's / landlord's father was the permanent employee of that company and had acquired the said property on rent from his company. In the year 1969, Karachi Port Trust had transferred the land to M/s. Babul Islam Co-operative Housing Societies Limited, Karachi on 99 years lease, vide memorandum of agreement dated 24.12.1969 and in the year 1984, the Petitioner / landlord had obtained the membership of the said Society bearing membership No.524. The said Society had issued the membership certificate in favour of the Petitioner / landlord on 24.1.1984; Petitioner / landlord had paid Rs.2000/- in lump sum as the price of said premises. In this respect, public notice inviting the objections was published in the Daily "Amn", Karachi dated 25.1.1984 and after completing all the legal formalities the said Society had issued allotment and possession orders on 11.2.1984 in favour of the Petitioner / landlord. Previously Hamid Khan, the father of Respondent No.3 / tenant was in possession of the tenement in question as a tenant, who had left the tenement in question leaving his son the Respondent No.3 / tenant in the said premises, who was accepted by the Petitioner / landlord as his tenant. The Petitioner / landlord required the said premises for his personal bonafide use to accommodate his grownup married son and other family members, hence he requested the Respondent No.3 / tenant to vacate the said premises, who earlier was agreed to vacate the said premises up to 31.05.1995, but later the Respondent No.3 / tenant refused to vacate the said premises and also refused to pay the rent w.e.f. May, 1995. Respondent No.3 / tenant had filed Civil Suit No. 354 of 1995 in the Court of Civil Judge Court No. IVth Karachi West for permanent injunction, praying therein for

granting injunction against his illegal dispossession. Then the Petitioner / landlord had to file ejectment application bearing R.C. No. 152 of 1995 in the Court of Respondent No.2 on the ground of (1) personal bonafide use of the demised premises and (2) default in payment of rent w.e.f May, 1995 against the Respondent No.3 / tenant.

3. After hearing the parties' counsel, the learned Rent Controller had allowed the ejectment application vide Judgment dated 30.09.1998 by giving 60 days' time to the Respondent No.3 / tenant to hand over the peaceful vacant possession of the said premises to the Petitioner / landlord. The Respondent No.3 / tenant / tenant challenged the said ejectment order through filing FRA No. 713 of 1998 (new FRA No. 32 of 2001) so also the Petitioner / landlord had also filed FRA No. 742 of 1998 (new FRA No. 33 of 2001) against the said ejectment order and after hearing the parties counsel, the learned first Appellate Court/Respondent No.1, vide impugned Judgment dated 18.02.2003 allowed the FRA No. 32 of 2001 filed by the tenant / Respondent No.3, Daulat Khan and dismissed the ejectment application of the Petitioner / landlord by setting aside the ejectment order passed by the Respondent No.2 with the observation that the Petitioner / landlord should approach the Civil Court for determination of his title, mesne profit and possession of the tenement in question, hence this petition.

4. I have heard the learned counsel for the Petitioner / landlord, perused the written arguments submitted by the learned counsel for the Respondent No.3 / tenant and also have gone through the entire case file. While perusing the record of the case file and impugned Judgments, it reveals that the instant matter is pertaining to legal as well as factual controversies as narrated in

the pleadings of the parties. The contents of the Rent Case No. 152 of 1995 disclosed by the Petitioner / landlord on factual side are that the Petitioner / landlord required eviction of the Respondent No.3 / tenant from the demised premises on following three grounds:-

- i) Personal need of the demised premises for his family,
- ii) Default in payment of rent from May, 1995,
- iii) Sub-letting of the demised premises without Petitioner / landlord's permission.

5. The learned Rent Controller while deciding the Rent Case No. 152 of 1995 of the Petitioner / landlord Noor Gul did not frame a point regarding alleged default in payment of rent, however, the points in respect of personal need of the demised premises (issue No.5) and subletting (issue No.6) were framed and discussed in the impugned Judgment dated 30.09.1998. The issue No.5 (personal bonafide need of the demised premises) had been decided in favour of the Petitioner / landlord as affirmative, while issue No.6 due to lack of evidence of the Petitioner's / landlord's witnesses had been decided as negative.

6. As for as the legal controversy raised by the Respondent No.3 / tenant in his written statement is concerned the learned Rent Controller has framed the following issues i.e. :-

- i) Whether this Court has jurisdiction to decide and declare the title of the ownership of the property?
- ii) Whether there exists relationship of landlord and tenant between the parties?
- iii) Whether being a KPT or / and the case premises being a KPT quarters as per notification, this Court has jurisdiction to try this case?
- iv) What should the order be?

7. The learned Rent Controller on the point of jurisdiction of the Court of Rent Controller to decide and declare the title of the owner of the demised premises had opined that *“the Court of Rent Controller has no jurisdiction to decide the title of ownership of the property (ies).”* In instant case before the learned Rent Controller, the Petitioner / landlord had claimed that he is the owner of the demised premises being its allottee on the basis of allotment issued by the Babul Islam Co-operative Housing Society Limited in his favour. In support of his contention regarding Petitioner / landlord’s ownership of the demised premises the Petitioner’s / landlord’s attorney while leading his evidence had produced photocopies of the title documents of the Petitioner / landlord. The learned trial Court on the basis of evidence of the Petitioner / landlord and his witnesses had decided that there is relationship of landlord and tenant between the parties. On the contrary the learned Appellate Court in FRA No. 32 of 2001 and FRA No. 33 of 2001 had decided as under :-

“It is well settled principle of law that title in respect of the tenant in question has not to be decided by the Rent Controller being the Court of limited jurisdiction. The dispute regarding title has to be decided by the Civil Court being the Court of general jurisdiction. In this regard the reliance is placed on the principle of law laid down in 1990 CLC 1529 and 1995 CLC 1708. The gist of principle of law laid down in these authorities is that the Rent Controller is not a Court much less the Civil Court, but being specific Court empower to regulate relationship between landlord and tenant without entering into intricate question of ownership and title of the property. Thus, the parties should have approached to the Civil Court for the determination of title dispute.

Reverting to the question of relationship as landlord and tenant between the parties initial burden

lies on the respondent / landlord applicant to prove the relationship as landlord and tenant between the parties. In this regard it is pointed out that admittedly there was no tenancy agreement between the parties and no rent receipt has been placed on record in order to establish the relationship as landlord and tenant between the parties. No rent receipt or counter foil of the rent receipt has been placed on record. It is well settled principle of law that the pleadings are no evidence. The respondent/ applicant was required to prove the relationship as landlord and tenant between the parties by producing authentic document but there is word against word only. Affidavit in evidence of Abdullah Noor Muhammad is regarding ownership of the tenement in question of the respondent/applicant and the same has no concern with the payment of rent by the appellant/opponent to Respondent/applicant.

So far version of Abu Bakar, Faqir Muhammad, Ahmed S/o Soomar is concerned, para 4 of their affidavit in evidence is the ditto copy of the affidavit in evidence of each other. They have not deposed regarding payment of rent by the appellant / opponent to the respondent/applicant in their presence. Their version in their affidavit in evidence is stereo type and no reliance can be placed on such type of stereo type evidence. The respondent/applicant may be the owner of the tenement in question, but he has not produced any documentary proof in order to establish the relationship as landlord and tenant between the parties. There is no cavil from the principle of law laid down in the authorities referred by the learned counsel for the respondent/applicant, but the facts and circumstance of the case reported in these authorities are quite distinguishable from the facts and circumstances of the case in hand.

I am, therefore, of the view that the respondent / landlord / applicant has failed to discharge his initial burden to prove the relationship as landlord and tenant between the parties, therefore, ejectment application was not maintainable, therefore,

there is no need to discuss other points / issues as the same has become redundant.”

8. While deciding two FRAs of the respective parties the learned Appellate Court had declared all the issues as redundant except the issue No.(ii) regarding existence of relationship between the parties as landlord and tenant. The learned Appellate Court had observed that there exist no relationship between the parties as landlord and tenant. The Petitioner / landlord has assailed the said Judgment of the learned Appellate Court before this Court, whereby he has challenged the observation of Appellate Court not only to the extent of relationship of the parties as landlord and tenant especially but also challenged the observations of the learned Appellate Court for declaring other issues as redundant

9. While going through the pleadings and entire evidence of the parties and their respective witnesses, I found that in instant matter the Respondent No.3 / tenant had not produced any documentary evidence of his ownership although he had claimed his ownership and title over the demised premises. However, the Petitioner's / landlord's case is at better footing than the case of the Respondent No.3 / tenant as the Petitioner / landlord in support of his claim of relationship between them as landlord and tenant had produced sufficient ocular and documentary evidence. The Petitioner's / landlord's witnesses while leading their evidence had corroborated the version of the Petitioner / landlord by deposing that they being old tenants of the premises located in the same vicinity and neighbours of the parties are well aware that the Respondent No.3 is a tenant of the Petitioner / landlord and in their presence several times the Respondent No.3 / tenant had paid rent to the Petitioner / landlord. The learned counsel for the Respondent No.3 / tenant could not shake the version of the

Petitioner's / landlord's witnesses during their respective cross examination. Besides this, the Petitioner / landlord had produced General Secretary of Babul Islam Co-operative Housing Society Ltd / councilor panchayat chairman who deposed in favour of the Petitioner / landlord that the Society allotted the demise premises to the Petitioner / landlord for 99 years lease and Respondent No.3 is a tenant of the Petitioner / landlord. The Petitioner's / landlord's witness namely Meer Zaman Khan the Honrary Secretary of Babul Islam Co-operative Housing Society also fully supported the version of the Petitioner / landlord regarding his title and relationship of the Petitioner / landlord and Respondent No.3 / tenant as landlord and tenant by deposing that ***“that the quarter of the Applicant mentioned above i.e quarter No.31, and all other quarters from quarter No.1 to 31 are properties of Babul Islam Co-operative Housing Society Limited by virtue of Memorandum of Agreement duly registered before Sub-Registrar “T” Division vide Registered No.1061 page 131 to 140 volume 86 of Book No.I Addl. Dated 27.12.1969 for 99 years between KPT and Babul Islam Co-operative Housing Society Limited and the possession of the same was handed over to the said society by the KPT including quarter of the Applicant is bounded by clear demarcation boundaries separating the same from KPT area. The copy of the said agreement filed by the Applicant as Exp/9 is true and genuine document. The original copy is with the society which I am ready to produce for the satisfaction of this Hon’ble Court.”***

10. On the contrary, the witness of Respondent No.3 / tenant namely Noorullah Khan could not corroborate evidence of the Respondent No.3 / tenant even his witness could not deny the

Petitioner's / landlord's claim. The Respondent No.3 / tenant had also failed to justify his possession over the demised premises as according to his own statement his father Hamid Khan was a Docks Worker and authorized to occupy the quarter in question since 1955 and residing there alongwith his co-villagers and after his retirement he went back to his home town Kohat and now he is in possession of the demised premises being owner and using it as his Dera. Per Respondent No.3 / tenant, Government had given the demised premises to the occupant workers, but he has failed to bring on record any document in support of his claim of ownership. However, determination of ownership of either party is not a function of Rent Controller as the Civil Courts have been authorized to resolve the controversy regarding disputed ownership.

11. It has been settled by the Hon'ble Supreme Court of Pakistan in the case reported in 1987 SCMR-577 that *"exemption under Notification No.VIII(3) 501/75 dated 15.03.1981 applies only to those properties that are owned and occupied by Port Trust and not to those that are perpetually leased out by Port Trust to the Lessees who are entitled to recover rent from sub-lessee."*

12. In the light of the evidence led by the Petitioner / landlord / landlord and his witnesses before learned Rent Controller, I am of the view that the Petitioner / landlord has proved that there is relationship between the parties as landlord and tenant. Admittedly, the Respondent No.3 / tenant has not paid rent to the Petitioner / landlord as he himself disclosed in his written statement, affidavit in evidence and during cross examination, hence on the point of default, I am of the clear view that the Respondent No.3 / tenant had committed default in payment of rent as Petitioner / landlord claimed. The learned trial Court has

rightly reached at the conclusion that the Respondent No.3 / tenant should hand over the vacant peaceful possession of the demised premises to the Petitioner / landlord within 60 days as Petitioner / landlord has proved his case against the Respondent No.3 / tenant, I therefore, maintained the said order dated 30.09.1998 passed by the learned trial Court and set aside the order dated 18.02.2003 passed by the learned Vth Additional District & Sessions Judge Karachi-West, Petition of the Petitioner / landlord is therefore allowed as prayed with no order as to cost. The Respondent No.3 / tenant is directed to vacate the demised premises within 60 days from the date the Judgment passed by this Court and hand over its vacant peaceful possession to the Petitioner / landlord. Petition is therefore decided accordingly.

J U D G E

Faheem/PA