

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

C.P. No. S - 19 of 2020

Petitioner : Shahzad through Mr. Muhammad Arshad S. Pathan, Advocate

Respondents : Mushtaque Ahmed and others through Mr. Mazhar Hussain Kalwar, Advocate

Mr. Rafique Ahmed Dahri, Asstt: A.G.

Date of Hearing : 05.11.2021

Date of Decision : 26 .11.2021

ORDER

ADNAN-UL-KARIM MEMON J: Through instant petition, the petitioner as prayed as under:-

- a. To issue writ declaring that the judgment dated 10.05.2019 passed by 5th Senior Civil Judge & Rent Controller Hyderabad in R.A. No. 107 of 2014 and order dated 29.11.2019 passed by the Model Civil Appellate Court No. II / 6th Additional District Judge Hyderabad in FRA No. 29 of 2019 are illegal, unlawful, in violation of order passed by Honourable High Court in CP No. S- 1953 of 2017 and both judgment and order are liable to be set-aside and Rent Application and Appeal are liable to be dismissed.
 - b. To suspend the operation of judgment dated 10.05.2019 passed by 5th Senior Civil Judge & Rent Controller Hyderabad in RA No. 107 of 2014 and order dated 29.11.2019 passed by the Model Civil Appellate Court No. II / 6th Additional District Judge Hyderabad in FRA No. 29 of 2019 and restrain the respondents from acting upon the orders and act of dispossession in any manner whatsoever.
2. Brief facts of the case as per memo of Rent Application No.107 of 2014 under section 15 of Sindh Rented Premises Ordinance 1979, filed by respondent No.1 namely Mushtaque Ahmed, before Vth Senior Civil Judge / Rent Controller, Hyderabad, claiming to be the owner of property bearing CS No. G/55/2 consisted of two shops on the ground floor and a house on the upper floor situated at Sakhi Pir Road Colony Hyderabad (subject premises); the father of the petitioner was the tenant in the shop at the rate of Rs. 500/- per month, which was let out by the late father of respondent No.1, namely Haji Muhammad

Shafi, in the year 1994, with rent receipts; that the father of respondent No.1 died on 27.02.1999, leaving behind respondent No.1 and widow Mst. Sharifan and later on she also died, leaving behind respondent No.1, being the owner of the property in question; that rented premises/ shops are required by him for personal bonafide use for setting up the office and sale-point of Aatta (Flour Mill), as he is running Atta Chakki at Ground Floor portion of the property, adjacent with the rented shop. According to respondent No.1, he and his mother before rent application; had filed an ejectment application, which later on was withdrawn due to certain legal defects; it was alleged that the petitioner had damaged the rented shop by cutting the Beams, so also committed default in payment of monthly rent; therefore, he filed ejectment application before the learned Rent Controller on 17.1. 2020.

3. After service, the petitioner Shahzad Khan filed written objections denying the relationship of tenant and landlord between him and respondent No.1, stating that respondent No.1 is not the owner of shops, as he is not the legal heir of late Haji Muhammad Shafi and Mst. Sharifan; and, according to him, one Abdul Sattar and Mst. Zaitoon is the only legal heirs of deceased Muhammad Shafi and Mst. Sharifan and further the documents attached with the rent application are forged and managed one; that respondent No.1 and Mst. Sharifan filed suit for Declaration and Mesne Profit and application for joining the legal heirs therein, bearing F.C. Suit No: 27 of 2002 before the Court of learned IIIrd Senior Civil Judge, Hyderabad, which was dismissed on 17.04.2010. The petitioner denied the fact of personal use of respondent No.1 and default in payment of rent, so also damage of shop in question. Lastly, it has been submitted that respondent No.1 is not entitled to possession of the shop in question; therefore, the rent application may be dismissed with cost.

4. It is also stated in the memo of the petition that one Abdul Sattar and Mst. Zaitoon filed Revenue Appeal before Assistant Commissioner City Hyderabad with a prayer to cancel the false entry kept by respondent No.1 in his name and khata may be restored in the name of Muhammad Shafi and likewise in F.C. Suit No. 27 of 2002 learned IIIrd Senior Civil Judge, Hyderabad while deciding the application under Order 22 Rule 3 CPC held that Muhammad Shafi and Mst. Sharifan during their lifetime had no legal heir but after the death of Muhammad Shafi Mst. Sharian adopted respondent No.1 and

under Muhammad Law and Law of Inheritance the adopted son is not entitled to inheritance.

5. Learned rent controller after framing preliminary issue regarding tenant and landlord and after hearing the parties allowed the Rent Application. The said Judgment and Decree of learned rent controller were challenged in First Rent Appeal which was subsequently transferred to Model Civil Appellate Court No. II / 6th Additional District Judge, Hyderabad, who vide order dated 29.11.2019 dismissed the appeal maintaining the order of the trial Court.

6. Mr. Muhammad Arshad S. Pathan learned counsel for the petitioner has argued that the judgment passed by learned 5th Senior Civil Judge and Rent Controller Hyderabad and the Order passed by Model Civil Appellate Court No. II / 6th Additional District Judge Hyderabad in RA No. 29 of 2019 are against the canons of justice, equality, and a good conscience; that the trial court without considering the documentary as well as oral evidence has decided the preliminary issue and has not considered Form A & B of Registration earlier to that of NADRA; that the trial court miserably failed to consider the documents that respondent No.1 is not the actual son of deceased Muhammad Shafi; that learned trial court failed to consider that there was litigation between the family of respondent No.1 inter-se; that the trial court failed to consider that at no time Mst. Sharifan widow of Muhammad Shafi ever recorded any independent statement but all proceedings have been shown to have been filed jointly by Mst. Sharifan and respondent No.1 meaning thereby the proceedings were filed through false & fake signature of Mst. Sharifan; that the trial court nowhere discussed the parentage of respondent No.1 and further no notice under Section 18 of SRPO was issued to the petitioner, if at all, he was entitled to claim ownership as well, as bonafide use of the subject premises; that learned trial court committed illegality in deciding issue concerning default in payment of rent against the petitioner as in absence of notice under Section 18 of SRPO and after the death of Muhammad Shafi, when no any claimant was in the picture as such the petitioner seeing no way just deposited rent in Court; that learned appellate court failed to examine the Judgment passed by the trial court in the manner as ordered by this Court in CP No. S- 1953 of 2017 wherein preliminary issue was framed and no any independent evidence in respect thereto has been recorded or

preliminary issue has been decided independently and both Judgment and order are in violation of the orders of this Court.

7. I have heard learned counsel for the parties and perused the material available on record.

8. The main argument advanced by the petitioner is the denial of the relationship of landlord and tenant between the parties as well as execution of rent agreement; besides, the pendency of civil litigation between legal heirs of deceased Muhammad Shafi even at the stage of Revision application before this court against the respondent No.1, therefore no rent is required to be given to the respondent No.1 until and unless he proves himself to be the legal heirs of deceased Muhammad Shafi. Prima-facie these are bizarre assertions on the part of the petitioner. Petitioner was/is the tenant of the subject premises; he has nothing to do with the litigation between the legal heirs of deceased Muhammad Shafi. The story as put forward by the petitioner to retain the possession of the subject premises disentitled him in all respect to deprive the owner of the subject premises, for the reason that institution of the civil suit, appeal, and now pendency of revision application on the subject property per se between the legal heirs of deceased Muhammad Shafi does not merit allowing the constitutional petition to keep the owner out of possession. The learned courts below have dealt with the issue in a very elaborative manner. In this regard, Honorable Supreme Court has held in its various pronouncements that determination of pivotal question related to the legal status of the parties' vis-à-vis the premises and the nature of their relationship inter se, would certainly be a mixed question of law and fact to be decided in the light of the evidence.

9. On the issue of personal bona fide need, it is established law that even the sole testimony of the landlord is sufficient to establish his personal bona fide need if the statement of the landlord on oath is consistent with his averments made in the ejectment application, which testimony is available on record. In the instant case, the Petitioner has failed to rebut the evidence of the respondent No.1 on this point. Primarily petitioner has been non-suited by both the courts below, thus no fresh ground is available to him to retain the subject premises furthermore.

10. In the present case, the petitioner is the only tenant of the subject premises; therefore, the presumption of the existence of

tenancy between the parties exists. The law on the subject is very clear that even the landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties. However, in normal circumstances, in absence of any evidence to the contrary, the owner of the property under his title is presumed to be the landlord and the person in possession of the premises is considered as a tenant under the law or the tenancy may not necessarily be created by a written instrument in express terms rather may also be oral and implied.

11. In principle, tenant as defined in Section 2 (f) (j) of Sindh Rented Premises Ordinance, 1979, which enumerates that a person who was in possession or occupation of premises owned by someone else, although he may not have undertaken to pay rent to the owner thereof, was normally bound to pay rent to him as consideration for being in possession or occupation of that premises. Such a person should be treated as a tenant. It is well-settled law that once the petitioner is shown to be inducted as the tenant of the demised premises, he could not claim any exemption from payment of rent to the landlord on account of the institution of the suit filed by the legal heirs of deceased Muhammad Shafi. It is well-settled law that no tenant of immovable property shall, during the continuance of the tenancy be permitted to deny the title of his landlord on the subject premises. The relationship of landlord and tenant is not severed even if the execution of sale deed/agreement to sell is admitted.

12. Under Section 16 Rule 1 of Ordinance, 1979 the petitioner was not absolved of his responsibility of payment of arrears and future rent. The learned Rent Controller based his findings keeping in view all facts and circumstances of the case and even looked into the relationship of landlord & tenant between the parties. The learned Appellate Court concurred with the view of the trial Court in an elaborative manner.

13. In my considered view, both the courts below have appreciated the evidence brought on record and discussed every aspect of the case.

14. Record further reflects that respondent No.1 in his affidavit in evidence has asserted that he needed the subject premises for his personnel bonafide need, the said factum was considered by both the courts below.

15. Reverting to the issue of the relationship of landlord and tenant between the parties, I am of the view that mere denial of the relationship of landlord and tenant between the parties and pendency of Revision Application does not take away the jurisdiction of Rent Controller to entertain Rent Case; Therefore, the petitioner based on the pendency of Revision Application before this court cannot restrain the owner of the subject premises from claiming his legal right or deprive him of the benefit accruing or arising out of the said property. Hence, no proceedings before the Rent Controller can be stopped to wait for the outcome of said suit/revision. In such circumstances, the tenant must vacate the subject property and if succeeds in obtaining a Decree in the suit then he can be given easy excess to the subject premises. Reliance is placed upon the case of AMIN and others v. HAFIZ GHULAM MUHAMMAD and others (P L D 2006 Supreme Court 549).

16. I am of the view that in rent matter, Constitutional Jurisdiction of this Court is limited and confined only to ascertain whether the subordinate Courts have flouted the statute or failed to follow the law relating thereto? In the instant case, there is no perversity, illegality, and infirmity in the orders of courts below. Besides, I do not see misreading and non-reading of evidence which warrants interference of this Court.

17. In the light of facts, circumstances and the law cited above, the instant Constitutional Petition is dismissed along with the pending application(s); resultantly, the judgment dated 10.05.2019 passed by 5th Senior Civil Judge & Rent Controller Hyderabad in R.A. No. 107 of 2014 and order dated 29.11.2019 passed by the Model Civil Appellate Court No. II / 6th Additional District Judge Hyderabad in FRA No. 29 of 2019 are maintained. The petitioner is directed to vacate the premises in question and hand over its vacant and peaceful possession to respondent No.1 within sixty days from the date of this Order. In case of failure, the petitioner shall be evicted from the subject premises without any notice, with police aid.

JUDGE

Fahad Memon