

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

CP. No. S - 336 of 2018

Petitioner : Muhammad Ali through Mr. Nouman Jaffer, Advocate

Respondent-3 : Muhammad Nawab through Agha Ghulam Abbas, Advocate

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

Date of Hearing & Decision : 13 .12.2021

ORDER

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

“ It is prayed that this Honourable Court may be pleased to call for the Record and Proceedings of the above cases from learned trial and appellate courts and after hearing the counsel for the parties and perusing the R&Ps set-aside the impugned Judgment and order, allowing rent application and order for the vacation of rented premises be passed.”

2. Brief facts of the case as per memo of rent application are that the petitioner is the legal and lawful owner of the house bearing No. C/181, Unit No.11, Latifabad, Hyderabad, wherein two shops are situated and he rented out one shop bearing No.6 to the opponent through rent agreement at the rate of Rs.4000/- per month; that due to removal of one of his kidneys, the petitioner often remains ill, therefore, he wanted to accompany his sons in his own business as they were running Thelas (handcart) and due to removal of encroachment, their business was completely stopped and were sitting idle, therefore the petitioner asked the respondent No.3 to vacate the rented shop for personal bona fide use of his sons, but he refused, hence he filed the ejectment application with the following prayers:-

- a. This Court may be pleased to direct the opponent to vacate the rented premises/shop No.6, situated in House No. 181/C, Unit No.11, Latifabad, Hyderabad and hand over the peaceful possession of the applicant, and writ of possession may be issued to the applicant.

- b. This Court may be pleased to pass an order directing the opponent /tenant to deposit the rent of three months Rs.4000/- and onwards before the Nazir of this Court till the final decision of the instant application.

3. Respondent No.3/Opponent filed written statement denying the relationship of landlord and tenant. He also denied the rent agreement between the parties and possession of the shop in question. He asserted that he purchased the front side portion of Shop No.6, situated at cantonment area over plot No.181, Latifabad No.11, Hyderabad from the applicant through sale agreement dated 19.11.2015 and he also filed F.C. Suit No. 597 of 2016 (Muhammad Nawab Vs. P.O Sindh and others), hence the claim of applicant in respect of Shop No.6 is baseless, mala fide and unlawful and he has filed the rent application with mala fide intention, which is not maintainable hence he requested that the same be dismissed.

4. On the pleadings of the parties, learned Rent Controller framed the following points for determination:-

1. Whether the relationship of landlord and tenant exists between applicant & opponent?
2. Whether a rented shop is required by the applicant for his personal bona fide use?
3. What should the order be?

5. To prove his case, petitioner/applicant Muhammad Ali examined himself by filing his affidavit-in-evidence at Ex. 11 and has produced original Muhaida Krayadari dated 13.07.2015 (rent agreement), original electricity bill, copies of applications addressed to the concerned departments at Ex. 11/A to Ex.11/F. He also examined his witness namely Islam by filing his affidavit-in-evidence at Ex.12 who produced his duplicate copy of CNIC at Ex.12/A. Thereafter counsel for petitioner / applicant closed his side vide statement at Ex.18.

6. In rebuttal, respondent No.3/opponent Muhammad Nawab examined himself by filing his affidavit in evidence at Ex.20 and has produced a copy of his CNIC at Ex.20/A. He also examined his witness namely Muhammad Akhtar at Ex. 21 who produced a copy of his CNIC at Ex.21/A. Thereafter his side was closed vide statement at Ex. 22.

7. Learned Rent Controller after recording evidence and hearing the parties dismissed the Rent Application by order dated 31.7.2017.

An excerpt of the order is reproduced as under:-

“[17] From a perusal of above facts, it is necessary to note that the rent agreement was executed between parties on 01-05-2015, however from a perusal of the Ex. 11/A, the same was executed on 13-07-2015 i.e after more than two months of a tenancy. If it is presumed that verbally the tenancy was started before executing any written rent agreement even then, the same facts shall have been brought on record by the applicant especially after denial of the opponent in respect of the relationship. The witness produced by the applicant has deposed that rent agreement was executed on 01-05-2015 vide stamp paper No. 52, whereas, admittedly, no such document bearing stamp paper No. 52 and dated 01-05-2015 is placed on record before Court.

[18] It is also strange to note that as per the contention of the applicant, tenancy started on 01-05-2015, while he approached to the opponent and demanded vacant possession on 30-04-2015, which is duly mentioned in para 3 of the rent application and in para 4 of his affidavit in evidence. It means that he demanded vacant possession of premises one day before the commencement of the tenancy.

[19] From a perusal of record, it appears that the present rent application is based on written rent agreement between parties Ex.11/A, which is not identical as per verbal testimonies of the applicant and his witness, while a major contradiction is also found in statements of the applicant and his witnesses. Even no such plea of any typing mistake is ever raised by the applicant side. It appears that after denial of the opponent in respect of the relationship between parties heavy duty was lying upon the applicant to prove the relationship of landlord and tenant between himself and opponent, however, he has failed to do so, through oral as well as documentary evidence, hence point No. 1 is replied as not proved.

Point No.2

[20] Since the relationship of landlord and tenant is not established between parties, therefore, the question of personal need does not arise. However, such facts are duly mentioned in affidavit in evidence of the applicant, while the opposite side has failed to put any question during cross-examination on these facts.

[21] Point in hand is replied accordingly.

Point No. 3

[22] In view of the above discussion, the rent application under section 15 of Sindh Rented Premises Ordinance, 1979 is hereby dismissed.

8. Being aggrieved by and dissatisfied with the above order, the petitioner filed F.R.A. No. 66 of 2017 which was also dismissed vide Judgment dated 12.02.2018. An excerpt of the order is reproduced as under:-

POINT NO.1

13. Burden to prove the above point lies upon the appellant/applicant who claimed that the respondent/opponent being his tenant over the demised shop.

14. To prove the above point, appellant Muhammad Ali relied upon rent agreement produced by him at Ex-11/A alleged executed in presence of attesting witnesses Islam and Muhammad Irfan out of whom, he examined the witness Islam. It is observed that demised shop No. 6, Commercial Area Block-C/181, Unit No. 11, Latifabad Hyderabad as per rent agreement as Ex-11/A was let out to the respondent/opponent at the rate of Rs. 4,000/- per month and such original rent agreement on stamp paper bearing No. 52 issued on 13-07-2015 has been produced wherein, it is mentioned that the demised shop was let out on rent for the period from 01-05-2015 to 01-05-2016 means the demised shop was let out as per agreement as Ex-11/A for a period prior to the date of purchase of said stamp paper which does not mention that the demised shop was ever rented out prior to execution of agreement as Ex-11/A. It is pertinent to mention that witness Islam in his affidavit-in-evidence as Ex-12 mention that rent agreement as Ex-11/A was executed on 01-05-2015 through stamp paper No. 52 whereas, the number of stamp paper mentioned over it as 51 was rightly discussed by the learned Rent Controller. The respondent/opponent in his written statement specifically stated that he has purchased front portion of shop No. 6 situated at Commercial Area Plot No. 181 Unit No. 11, Latifabad, Hyderabad through agreement of sale dated 15-11-2015 and in spite of above plea raised in written statement, the counsel for appellant failed to rebut the same but on the contrary put suggestions to the respondent/opponent in this regard, for which, the respondent/opponent replied as under:-

“It is correct to suggest that I have no such shop but I have an iron cabin on which a iron shutter is affixed. It is correct to suggest that Muhammad Ali received two lacs rupees from me in respect of iron cabin.”

15. Thus, fact about purchase of cabin in front of demised shop No. 6 from above suggestions put by the counsel for appellant/applicant amounts admission particularly when the appellant/applicant failed to prove the occupation of demised shop No. 6 by the respondent/opponent. Even no application was moved for inspection of site and in spite of specific plea with regard purchase of front portion of the demised shop No. 6 raised in written statement, the appellant/applicant failed to utter a single word about selling the cabin in front of demised shop No. 6 and thereby version of respondent/opponent also strengthen with the above suggested questions put by the counsel for appellant/applicant during cross-examination of the respondent/opponent when he admitted the fact about respondent having no such shop but an iron cabin purchased by him from the appellant/applicant after payment of rupees two lacs thereby learned Rent Controller rightly arrived at conclusion that the appellant/applicant failed to prove the relationship of landlord and tenant. Onus to prove the relationship lies upon the person who would suffer if such relationship not established. Reliance in this regard is placed upon 1991 MLD 945. Consequently, the point No.1 is answered in negative.

POINT NO.2

16. In view of the above discussion, since the appellant/applicant failed to prove the relationship of landlord and tenant, hence the question of demised premises required for personal bona fide does not arise and the same is answered in negative.

POINT NO. 3

17. In view of the above discussion on points No.1 and 2, appeal being without merits is dismissed with no order as to costs.

The petitioner being aggrieved and dissatisfied with the above decisions preferred the instant constitutional petition.

9. Learned counsel for the petitioner argued that learned trial Court did not appreciate the oral as well as documentary evidence properly and ignored such aspects of the case. He further contended that the impugned order is based upon misreading and non-reading of evidence hence the same is liable to be set aside; that learned rent controller dismissed the rent application on technical basis whereas it is settled law that all the matters should be decided on merits; that the courts below have not considered the evidence as whole but has taken a piece of evidence to decide the matter against the petitioner. He lastly prayed for allowing the instant petition and set aside the decisions of both the courts below.

10. Mr. Agha Ghulam Abbas learned counsel for the respondent has refuted the claim of petitioner on the premise that there is no relationship of tenant and landlord between the parties; that the premises which is not the purported premises, rather the respondent purchased a cabin on which an iron shutter is affixed from the petitioner on certain amount thus he cannot be called as tenant of the petitioner; he supported both the judgments rendered by the courts below. He prayed for dismissal of the instant petition.

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

12. Today, when the respondent who is present along with his counsel confronted the rent agreement he candidly recognized his signature on the rent agreement dated 13.07.2015; however, he insisted that he has purchased this property from the petitioner in the sum of Rs.200000/-. Be that as it may, it requires a probe, which cannot be undertaken in a constitution petition. However, I am not

impressed by the arguments of learned counsel for the respondent that he is the bonafide purchaser of subject premises, which factum requires evidence and that can only be done by the trial Court. Additionally, the record reflects that the respondent filed F.C Suit No. 597 of 2016 before the learned Senior Civil Judge-VIII, Hyderabad which was fixed for evidence of the plaintiff on 28.2.2018 but the respondent-Muhammad Nawab Ali did not turn up to record evidence, compelling the trial court to dismiss his suit for non-prosecution vide order dated 28.2.2018.

13. In view of the above facts and circumstances of the case, this petition is allowed and the judgment and decrees passed by the Courts below are set aside. Respondent No.3 is directed to vacate the subject premises, within one month from the date of receipt of this order and handover its possession to the petitioner till the respondent proves the title of subject premises in his favor, through evidence before the competent court of law, thereafter he be put in possession accordingly, however subject to all just exception as provided under the law.

14. Petition stands disposed of in the above terms.

JUDGE