

IN THE HIGH COURT OF SINDH AT KARACHI

FRA No. 24 of 2014

Mr. Nasir Hussain & others	-----	Appellant
	Versus	
Mr. Mumtaz Ali	-----	Respondent

AND

FRA No. 25 of 2014

Mr. Mushtaq Hussain	-----	Appellant
	Versus	
Mr. Mumtaz Ali	-----	Respondent

Date of Hearing: 20.10.2017

Appellant: Through Mr. Anwar Ahmed Advocate

Respondent: Through Ali Asghar, Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J: These two appeals arising out of a common order dated 14.7.2014 passed on identical reasoning and documents by the Additional Rent Controller, Clifton Cantonment, Karachi in Rent Case Nos.52/2012 and 53/2012 whereby the relationship of landlord and tenant between the appellants and respondent was held to be in existence and as consequence whereof evicted appellants from the premises in question hence these appeals.

2. Brief facts are that the appellants claimed to be in possession of demised premises since early 80s. Appellants in this appeal are niece and nephews of respondent whereas the appellant in connected appeal is a real brother of the respondent. They claimed to have occupied the premises since long. In the year 2012 two ejectment applications bearing R.C. Nos.52/2012 and 53/2012 were filed by the respondent on the ground of default. In R.C. No.52/2012 the alleged tenant was real brother and in RC No.53/2012 the alleged tenant were sons and daughter

of his other real brother. The parties recorded their evidence as to this crucial issue of relationship amongst them as being tenant and landlord and after assigning reasons the appellants were evicted from the demised premises as being tenant and defaulter. The issue no.1 as framed by the Rent Controller is as under:-

“1. Whether there exists relationship of landlord and tenant between the parties or not?”

3. The Rent Controller purely on the strength of a lease deed vide registered “C” lease with Defence Housing Authority on consideration of Rs.50,000/- held the respondent to be a landlord and appellant as being tenant. The Rent Controller has assigned reason that there was no complaint against the registration of “C” lease in the name of Mumtaz Ali, the respondent. Respondent has relied upon the cross examination of one of the appellant who stated that he could not produce any written document in respect of co-ownership with respondent Mumtaz Ali in respect of 3rd floor of the demised premises. Based on the analysis as being the actual owner as per record of Cantonment Board Clifton in Military Land Office the appellant stated to have committed a willful default in the payment of rent. Although the answer of this issue is in affirmative but the language of the issue as framed required it to be answered in specific words since the issue which is framed is whether there exists a relationship of landlord and tenant between the parties or not. Be that as it may, it is presumed that the Rent Controller held the relationship between the parties as landlord and tenant.

4. The appellants on the other hand has heavily relied upon a chequered history of litigation between them. The facts are that at one point of time wife and children of respondent who is claiming to be the owner filed a suit for possession and mesne profit in respect of the property in question through Attorney Muhammad Tauseef Ali Hashmi son of Mumtaz Ali, the respondent. Appellants further relied upon the

contents of cross examination to show that even earlier the respondent attempted to initiate proceedings under Illegal Dispossession Act treating them as alleged occupant and was also issued notices accordingly. Counsel has also contended that there is nothing stated in the ejectment applications at all as to what rate of rent was fixed and what is payable now and it is only in fiction that the appellants were held to be defaulter. The cross examination is also silent insofar as the payment of any rent at any rate and at any time is concerned.

5. I have heard the learned Counsels and perused the material available on record.

6. At the first, it is imperative to go through the evidence of the parties which they have recorded in respect of the preliminary issue as to the existence of relationship of landlord and tenant. In this regard the cross examination of respondent's attorney Muhammad Tauseef Ali Hashmi who also acted as Attorney of his mother when she filed suit for possession as being owner, is important. The Attorney has admitted in his affidavit-in-evidence in para-27 that he has not mentioned regarding letting out of 2nd and 3rd floors to the appellants. He has also admitted that he has not paid the property tax of 2nd and 3rd floors of the property in question. He further admitted that though he has not initiated proceedings under Illegal Dispossession Act however the fact remains that a notice to initiate proceedings under Illegal Dispossession Act was issued on 28.1.2012 just prior to filing of rent case which apparently in terms of verification clause appeared to have been filed in July 2005. He has also admitted the fact that Suit No.241/2012 was filed by Mst. Nasreen and the Attorney himself and Fahim for possession in the Court of Vth Senior Civil Judge, Karachi (South) as being owner of the subject property. It is also admitted by the Attorney, in reply to a question, that the petitioners are illegal occupants of 2nd and 3rd floors. In the cross examination of the appellant Mushtaq Ahmed, a self destructive

question was raised by the respondent's Counsel that the appellant did not raise any objection to the "family settlement". This family settlement declared all three brothers as co-owners. Appellant stated that they had filed a suit before this Court in respect of the property in question seeking declaration that they are the co-owners. He admitted that at the relevant time the property was liable to be transferred in the name of one person and hence it was transferred in the name of Mumtaz Ali, the respondent. In reply to a question the appellant Mushtaq Ahmed admitted the suggestion that on the basis of such forged documents (i.e. family settlement) Suit No. Nil/2011 was filed, perhaps this forged document arising out of a question that is put into the mouth of the witness. Even if remotely and without prejudice to any body's case, that document is considered to be a forged document that may not be a crucial fact to hold the relationship of landlord and tenant. On the basis of these questions and answers the Rent Controller went to hold that there could "**only**" be a relationship of landlord and tenant. The Rent Controller ignored the fact that in the rent case throughout it was neither shown at all as to what was the rate of rent that they were inducted upon nor shown the current rent, yet the Rent Controller on his own fixed the "average rent" of one floor as Rs.30,000/- for a period of three years and directed the appellant to deposit arrears of rent forthwith. This is just surmises and conjunctures that in fiction the relationship was held and average rent for each floor was fixed as Rs.30,000/-.

7. The cause of action of the rent case is also very significant which for the convenience is reproduced as under:-

"25. That cause of action accrued to the applicant since the occupancy of Flat in 1990, secondly when the opponents started interrupting in the matter of shops, thirdly when the applicants let their shops for rent to Bank Al Habib Ltd and fourthly, when the opponent along with other relative filed suit before the Honourable High Court

of Sindh at Karachi and is continue till the filing of captioned application.”

8. The entire cause of action is silent as to whether the appellants have committed any default at all. Throughout the period, the respondent and his family members including wife and children took contrary actions. In the year 2012 before filing the ejectment application they treated the appellant to be illegal occupant and attempted to initiate proceedings under Illegal Dispossession Act. The wife and son of respondent then filed a suit for possession as Suit No.241/2012. Although in the said suit they have stated that they were inducted on nominal rent yet they filed a suit. The suit was filed by son of respondent as mother’s attorney. The same son acted again as attorney of his father and filed rent case in the year 2012. In reply the appellants filed written statement in Suit No.241/2012 and stated that the property was held as benami by respondent and if at all they considered appellants as their tenants then the jurisdiction has not been exercised properly by filing a suit. This statement by no stretch of imagination amounts to conceding as far as relationship of landlord and tenant is concerned as it was without prejudice to their rights and it is only said on the basis of statement made in the plaint. The title in the name of respondent in the shape of “C lease should not alone went on to prove that whosoever occupies premises of the alleged owner could only be a tenant and nothing else. He could neither be a licensee nor a trespasser, lawful or illegal occupant. The Rent Controller has not explained as to what evidence is available to prove that his induction or occupation in the premises is only as a tenant and nothing else.

9. Reliance has been placed on several cases which are discussed and distinguished as under.

- i. ***Tasadduq Hussain vs. Mst. Muneer Fatima reported in 2014 SCMR1744.*** It was a case of sale agreement and the alleged

tenant did not plead specifically the date and time as to how and in what manner he was put in possession. This case is distinguished in the sense that in the instant case the respondent himself has took three modes to occupy the premises, initially holding as illegal occupant and attempted to initiate proceedings under Illegal Dispossession Act and then filed a suit and then by filing a rent case.

In the instant matter the question before the Court is as to what should the basis of holding a relationship of landlord and tenant between the parties and only a sale deed or a lease cannot demonstrate that whosoever is in occupation other than owner, could only be treated as tenant.

- ii. Ahmed Ali vs. Nasiruddin reported in PLD 2009 SC 453.* It was a question of ownership that is being claimed in this referred case whereas in the case in hand though Rent Controller was not obliged to determine the title of one who was in occupation yet the relationship of landlord and tenant is independent of any title. In the reported case, as above, a protection was sought under a sale agreement and possession was not protected any by term of the sale agreement and his induction to the premises prior to the alleged agreement of alleged sale was of tenant which was considered and a subsequent sale agreement could not alter this relationship.
- iii. Shajarul Islam vs. Muhammad Siddiq reported in PLD 2007 SC 45.* In this the occupant was not able to prove his possession on his own right and no substantial oral or documentary evidence was produced whereas in the instant case the respondent himself earlier considered the appellant as illegal occupant hence a suit for possession was filed and ultimately a rent case was filed.

10. Relationship of landlord and tenant being crucial and complicated one hence mere words of landlord would not be sufficient to discharge the onus. Mere fact that a person becomes owner of property would not *ipso facto* create relationship of landlord and tenant between the parties. In absence of tenancy agreement mere word of person possessing title documents of premises in dispute that he had let out premises to respondent is not sufficient. Nothing on record available to suggest that appellant was ever inducted as tenant by respondent nor there being any cogent evidence to show that rent in respect of premises was being paid to the respondent. Sale deed regarding disputed premises in favour of alleged landlord would not necessarily lead to conclusion that relationship of landlord and tenant existed between such vendee and tenant.

11. The evidence i.e. available on record and three contrary versions and the pleadings of the rent case wherein no amount of rent was stated to be in existence or fixed and the cause of action alone was enough to establish that the cause was not on account of non-payment of any rent and it is only on account of interference caused by the appellant in renting out shops to different individuals that respondents furious to file the ejectment application. I do not approve the reasoning assigned by the Rent Controller in deciding the relationship of landlord and tenant and accordingly the order is set aside and the appeal was allowed with no order as to costs by a short order dated 20.10.2017. Above are the reasons for the same.

Judge