

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-609 and 610 of 2014

Muhammad Moin in both the petitions
Versus
Muhammad Siddique & others in both the petitions

Date of Hearing: 14.11.2017

Petitioner: Through M/s. Muhammad Ramzan Tabassum
and Zayyad Khan Abbasi Advocates.

Respondent No.1: Through Mr. Masood Hussain Khan Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These petitions are against the concurrent findings of two Courts below. The Rent Controller in Rent Cases No.365 and 366 of 2010 adjudged that there is no relationship of landlord and tenant and consequently dismissed the applications, which orders were affirmed by the Appellate Court. Since the facts of the two petitions are same except the shop numbers hence the same are being disposed of by this common judgment.

2. I have heard the learned counsel appearing for petitioner while no one appeared on behalf of respondent No.1 and have also perused the material available on record. Respondent's counsel however later filed written synopses which were taken into consideration.

3. Brief facts are that the petitioner filed the ejectment applications on the ground of personal need and default. The relationship of landlord and tenant was denied in the written statement and in fact it was claimed that the respondent Muhammad Siddique purchased the properties i.e. demised premises from one Zulfiqar in the name of Ghulam Jeelani. He admitted Ghulam Jeelani to be the step father of the petitioner. He has also admitted that a sale deed was registered in

favour of the petitioner after the said demise of Ghulam Jeelani. The sale deed was executed between petitioner and the legal heirs of Ghulam Jeelani. The respondent also claimed to have filed a suit bearing No.1446 of 2012 however the plaint was rejected which order is available at page 89 passed on 18.09.2013. The attempts were made to establish the relationship of landlord and tenant by filing affidavit-in-evidence. In support of his claim petitioner/owner filed his affidavit-in-evidence along with copy of sale deed and he was subjected to cross-examination. Two witnesses of the petitioner also filed their affidavit-in-evidence i.e. Sakhawat Khan son of Shoukat Khan and Raeesuddin Khan son of Allauddin Khan, both were subjected to cross-examination. On behalf of opponent/respondent, Muhammad Sadiq (opponent/respondent) filed his affidavit-in-evidence and he was also subjected to cross-examination.

The Rent Controller while disposing of the main application, in response to Issue No.1, which relates to relationship of landlord and tenant, held that notice under section 18 of Sindh Rented Premises Ordinance, 1979 was not served and there is no piece of evidence that the respondent was inducted into the premises as tenant as he (opponent) is claiming to be the real owner of the property. It was also observed by the Rent Controller that the petitioner has not produced any document to show that he had paid the sale consideration to previous owner Mr. Zulfiqar for purchasing the subject property in the name of Ghulam Jeelani.

Admittedly, there is no written tenancy agreement or rent receipts. It is only on the basis of evidence that has come on record that this relationship was decided. In support of his assertion this petitioner has not only filed his affidavit-in-evidence, duly supported by registered sale deed in his favour, but has also filed affidavit-in-evidence of two

witnesses who have deposited that respondent was inducted in the premises by Ghulam Jeelani i.e. previous owner against monthly rent. Though one of the witnesses Sakhawat Khan, who was stated to be closely related to the petitioner, was cross examined but no material questions were put by the respondent's counsel to this witness as against evidence/claim of the petitioner. From the evidence of the petitioner and the two witnesses nothing was brought through cross-examination on record that he (Respondent) ever purchased the subject property or paid the sale consideration which otherwise is a domain of Civil Court.

In respect of defence that the respondent had purchased this property from his own funds in the name of Ghulam Jeelani he had filed a suit bearing No.1446 of 2012 however the plaint was rejected on 18.09.2013. It is claimed that the respondent has not challenged this order and hence has attained finality. Thus, the contention/claim of the respondent that he is actual owner of the demised premises and Ghulam Jeelani was only a Benamidar has lost its credibility. Though, the subject order whereby the plaint was rejected was not available at the time of deciding the ejectment application, yet it was very much available before the Appellate Court who has ignored to consider/scrutinize the findings reached by the trial Court on the strength of the order passed in the above suit. In the presence of such reasoning and rejection of the plaint it does not lie in the mouth of the respondent to claim that the subject property was purchased by him in the name of Ghulam Jeelani.

In the ultimate part of the impugned judgment of the appellate Court it was observed that there is only "word against word and oath against oath" from both the sides. This is not expected from the appellate Court to dispose of these contested appeals on such reasoning. The appellate Court is required to peruse the record minutely and give valid reasons while passing the judgment/decision. The impugned order

of Appellate Court is absolutely without any reasoning or justification. There is no challenge to the sale deed executed between the petitioner and the legal heirs of Ghulam Jeelani. There is no rebuttal to the evidence of the two witnesses who were examined by the petitioner.

There appears to be no attempt on the part of the respondent to tender the rent once the notices of the application for ejectment were served upon him. In the cross-examination of the petitioner on the second page at line 23 respondent's counsel himself suggested that the shops in question were purchased by late Ghulam Jeelani from one Zulfiqar. In paragraph 5 of affidavit-in-evidence the petitioner stated that the demised premises is required for personal bona fide need in good faith to settle his sons which statement on oath was not disturbed in the cross-examination. Hence, in view of the above facts and circumstances, the impugned orders are liable to be set aside as not only the relationship is established but a case of default and personal bona fide requirement is also made out.

In view of the above these petitions are allowed and the impugned orders of the Courts below are set aside however the respondent is directed to vacate the demised premises within sixty days from the date of this order subject to payment of outstanding rent including future rent in advance on/or before 10th of each calendar month and utility charges as required under the law.

Dated:

Judge