

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No.S-673 of 2019

Abdul Rehman
Versus
Saim Mehmood & others

A N D

C.P. No.S-674 of 2019

Abdul Rehman
Versus
Ayaz Mehmood & others

Date of Hearing: 24.12.2020

Petitioner: Through Mr. Muhammad Ibrahim Azmi Advocate

Respondent No.1: Through Mr. Wazir Ali Lakhani Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Abdul Rehman, husband of Hameeda Yasmeen as being her attorney, filed two eviction applications i.e. Rent Case No.402 and 403 of 2017 in respect of premises bearing No.R-65, Ibrahim Villas, Phase-II, Jamia Millia Road, Malir, Karachi. The premises were rented out to two individuals i.e. Saim Mehmood son of Mehmood Lateef and Ayaz Mehmood son of Mehmood Lateef, being two independent tenancies. Both the eviction applications were allowed on the ground of personal requirement in consideration of the evidence on record. The respondents/tenants preferred their respective appeals before the appellate Court, which reversed the findings of the Rent Controller and dismissed the eviction applications hence against the conflicting findings of two Courts below these petitions have been filed, which are being decided through this common judgment as being on similar facts and law.

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

3. The quality of evidence in this rent matter is beyond appreciation however the fate of this case is dependent on the evidence which is available on record. The petition is filed by one "Abdul Rehman" directly instead of being an attorney of Hameeda Yasmeen hence I ignore this as being a typing error as the eviction application was filed through him as attorney of Hameeda Yasmeen.

4. Hameeda Yasmeen who is presently married to Abdul Rehman had also remained wife of Abdullah, brother of Abdul Rehman with whom she had a son Umair. There is no direct evidence on record if she was divorced by Abdullah before his demise or that he died leaving Hameeda Yasmeen and son Umair as his legal heirs. The appellate Court understood the facts and the evidence that came on record as if Hameeda Yasmeen was one of the legal heirs of Abdullah and that she co-owned a property as being one of the legal heirs of Abdullah where she was residing with him previously i.e. 12/55-4 Model Colony, Malir, Karachi.

5. The appellate Court while considering the cross-examination of the petitioner, attorney of landlady Hameeda Yasmeen, who is also present husband of the landlady, conceived that he admitted that the tenement where she resides belongs to husband of the landlady who has filed eviction applications and that the legal heirs are none other than her son and she herself.

6. Let us now scrutinize the cross-examination of the attorney which was relied upon by the appellate Court to believe that she (landlady) was residing in her husband's house. Last part of the cross-examination could be read in consideration of the contention of learned counsel for respondent. Such cross-examination is reproduced as under:-

"It is incorrect to suggest that the legal heirs of Abdullah are Mst. Hamida and her son. Vol. says, Umair is his legal heir. It is correct to suggest that the name of the wife of

Abdullah is Mst. Hamida and the name of his son is Umair. It is correct to suggest that Mst. Hamida is now my wife and her son from her previous husband (Umair) is my step son. It is incorrect to suggest that I am residing in the House No.12/55-4 in capacity of tenant.”

7. The appellate Court reversed the findings by allowing the appeal of the tenants/respondents whereas the eviction order was passed by the Rent Controller in Rent Case Nos.402 and 403 of 2017. The reasons that prevailed before the appellate Court in reversing the findings were that she (landlady Hameeda Yasmeen) admitted (through attorney Abdul Rehman) in the cross-examination that the tenement belongs to her husband (previous) and that the legal heirs are none other than she herself, therefore, it prevailed before the appellate Court that she being one of the legal heirs of Abdullah is living in her own premises as being co-owner.

8. This apparently seems to be a case of misreading of evidence. It is alleged by the petitioner that Hameeda Yasmeen was divorced by Abdullah with whom she had a son called Umair. She then solemnized marriage with his (Abdullah's) brother Abdul Rehman with whom she is residing in same premises, bearing No.12/55-4, Model Colony, Malir Karachi. In the cross-examination it was suggested to the attorney Abdul Rehman that the legal heirs of Abdullah are Mst. Hameeda and their son Umair, which suggestion is denied. Whereas she through her attorney denied a suggestion that she is residing in House No.12/55-4 in the capacity of a tenant. But this later statement would not turn anything. She could be living in a house of her son not being a tenant. So nothing could turn on this for respondent.

9. The requirement of law is that if the landlord/landlady could establish a case of personal requirement, there is no reason that Rent Controller or appellate Court should deny such relief. This fact alone would not deprive the petitioner Hameeda Yasmeen to file eviction

applications on the ground of personal requirement. She was not stated to be exclusive owner of the premises in which she is residing and that she has disclosed this in paragraph 4 of affidavit-in-evidence that the family members of late Abdullah stated to vacate the premises in question, which could be her son being of marriageable age. She intends to live in a house independently owned by her i.e. subject premises, not the one wherein she is stated to be a co-sharer to the extent of 1/8.

10. Thus, I may sum up that the suggestion of the respondent's counsel to the attorney of petitioner/landlady that the legal heirs of Abdullah are Mst. Hameeda Yasmeen and her son was denied. It was categorically stated by the witness that Umair is the legal heir. Abdul Rehman the attorney and his wife Hameeda Yasmeen, the landlady, may not have been living in House No.12/55-4 in the capacity of tenant but that itself does not conclude that they are living in their independent, and/or exclusively owned house. It neither came on record that she was divorced nor there is any positive evidence that Abdullah died leaving behind Hameeda Yasmeen and their son Umair as his legal heirs. There is therefore nothing in the evidence to confidently conceive that she was one of the legal heirs, particularly when the attorney of the landlady categorically stated that she was not the legal heir of his brother Abdullah, perhaps on account of her divorce.

11. In view of above the petitions are allowed and the impugned orders passed by appellate Court in First Rent Appeals No.153 and 154 of 2018 are set aside and that of the Rent Controller in Rent Case Nos.402 and 403 of 2017 are maintained.

Dated:

Judge