

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

C.P. No.S-06 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of MA-23/22 (fast track)
 For orders on office objection
 For hearing of MA-25/22 (u/s 16(1) SPRO)
 For orders on MA-919/22
 For orders on MA-920/22
 For hearing of main case

08.04.2022

Mr. Muhammad Nauman Jaffar advocate for petitioners.
 Attorney of respondent No.3 namely Syed Rizwan Moin Kazmi is
 present in person.

Mr. Wali Muhammad Jamari, Asstt. A.G.

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ZULFIQAR AHMED KHAN, J:- The petitioners have challenged judgment dated 10.12.2021 passed by learned IX-Additional District Judge / MCAC-I, Hyderabad in FRA No.14/2021, that he maintained the judgment dated 11.03.2021 passed by learned Vth-Senior Civil Judge / Rent Controller, Hyderabad, who dismissed the Rent Application No.42/2019 filed by the petitioners under section 15 of Sind Rented Premises Ordinance, 1979 against the respondent No.3.

2. Brief facts of the case are that petitioners filed Ejectment Application under Section 15 of Sindh Rented Premises Ordinance, 1979 against the respondent No.3 on the grounds of default in payment of monthly rent and utility bills as well as they were also seeking personal bonafide use. Admitted facts are that A-Type Residential Plot No. 79, Measuring 1200 Sq. Yd, Block "A", Unit No.6 Latifabad, Hyderabad was allotted to the father of applicant No.1 / petitioner No.1 and grandfather of petitioner / applicants No.2 and 3 through registered lease deed No.1115 dated 09.11.1961 and Correction Deed No.882 dated

10.06.1972, upon which plot, father of applicant No.1 and grandfather of petitioners / applicants No.02 & 03 had constructed a Bungalow, comprising of Ground Floor with a Lawn and First Floor. By virtue of Declaration of Oral Gift, duly registered No.347 dated 20.03.1999 Mushfiq Ali Khan orally gifted a part and portion of said premises, measuring 238.5 Sq. Yd, to his wife Mst. Waltraut Elsbeth Maria Liane, who later on, gifted it to her son the petitioner No.1 through Declaration of Oral Gift duly Registered No.842 dated 30.06.2001. The said Mushfiq Ali Khan by way of Declaration of Oral Gift duly registered No.348 dated 20.03.1999 also gifted part and portion of Bungalow measuring 432.1. Sq. Yd, on ground floor to his son petitioner No.1 & 2015 Sq. Ft, on the first floor, so also gifted portion of said Bungalow to his grandsons petitioners No.02 & 03 through Gift Deed Registered No.349 dated 20.03.1999, resultantly the petitioners are absolute and exclusive Co-owners/landlords of the subject undivided Bungalow, constructed on Plot No.79, Block-A, Unit No.4, Latifabad, Hyderabad. The petitioner No.1 Muhammad Haziq Ali Khan for himself and on behalf of remaining applicants No.02 & 03 who were minors at that time orally let out half portion on ground floor of the said bungalow to respondent No.3 / opponent at monthly rent of Rs.10,000/- per month and locked remaining portion on ground floor and the entire first floor. Per learned counsel for the petitioners, the respondent No.3 / opponent paid rent up to August-2005 and thereafter stopped paying the rent from September-2005 onwards till date. Learned counsel next states that the respondent No.3 / opponent is also shown as statutory tenant of petitioners / applicant as per findings given on Issues No. 01 and 02 in Judgment & Decree passed in First Class Suit No.370 of 2011, which has not been assailed by respondent No.3 / opponent in any Court. The respondent No.3 / opponent taking undue advantage of the absences of applicant No.01 from Pakistan illegally broke open lock of remaining half

portion on ground floor and the entire first floor usurping the household belongings, electric machineries & furniture etc. It had been further stated by the petitioners' counsel that the petitioners under wrong advice of their counsel instituted Suit No.370 of 2011 for possession against the opponent which was dismissed with directions to proceed with the issue of landlord / tenant under Sindh Rented Premises Ordinance,1979. Furthermore, since rent of said premises had increased many fold and the opponent was occupying whole of the bungalow, liable to pay Rs.10,000/- per month for half of the ground floor and for rest of ground floor and whole first floor at the rate of Rs.25,000/- per month totaling to Rs.35,000/- per month for last three years preceding to the institution of the rent application. Per learned counsel, the arrears of rent totaled Rs.1,260,000/- from February-2016 to February-2019 alone, as well as, the opponent failed to pay utility bills for electricity, water and gas totaling Rs.1,452,418/-. Lastly as the subject premises was needed by the applicants for their own personal bonafide use in good faith, they moved the subject ejectment application making the following prayers:-

- a) *This Honourable Court may kindly be pleased to pass an Order, directing the Opponent to vacate the said Premises / Bungalow No: 79, Block "A", Unit No: 4, Latifabad, Hyderabad, and to put the Applicants in possession thereof.*
- b) *Direct the Opponent to deposit in Court Arrears of Rent up to date, as claimed herein before, in Para No: 10 above.*
- c) *The Opponent be saddled with Cost of these proceedings.*
- d) *Grant any other relief, deemed fit and proper, under the circumstance of the case.*

3. Learned counsel of the petitioners by way of background also elaborated that the petitioners filed F.C. Suit No. 370/2011 against the respondent No.3 for Possession, Mesne profits and Injunction, which suit

per learned counsel, was decided vide judgment dated 30.11.2015 (page-197), wherein while the trial Court admitted the title of the petitioners, but having observed that the dispute as to the tenancy had come on the surface the Court directed the petitioners / plaintiffs to file appropriate application under Sindh Rented Premises Ordinance, 1979. Per learned counsel, the said judgment and decree was challenged by the present petitioners in Civil Appeal No.03 of 2016 (page-441), which appeal was however, dismissed on extraneous grounds since certain Constitutional Petitions had already been filed by the respective parties for renewal of the lease term, which per learned counsel was later on extended in favour of the petitioners. Learned counsel, however, does not fail to show from the judgment of the appellate Court that “on every date Mr. Ameer Moin Kazmi was associated with one person namely Kamran Moin, who upon query of the Court admitted that he is a brother of present respondent and acted harshly during the proceedings”. Relevant Paragraph-13 of the said judgment (available at page-449) is reproduced hereunder:-

“ A very strange thing was also noted that on every date this respondent Ameer Moin Kazmi was associated with one person namely Kamran Moin who had on query by this Court admitted that he is a brother of present respondent. This gentleman namely Kamran Moin though not a party in the suit, argued more loudly and rashly against the plaintiffs / appellants and against the case of the appellants, when this Court asked this man if there is any of his interest involved in this subject property why don't he file an application to be a party, he remained unwilling to be a party but all the time hindered and interrupted whenever appellant's counsel advanced his arguments. He tried his utmost that appellant may not be heard. “

4. Through the instant Constitutional Petition, it is accordingly prayed that the judgments passed in FRA No.14 of 2021 and in R.A. No.42 of 2019 be declared illegal, unlawful, without legal authority, ultra vires, ab-initio void and in contravention of judgment and decree passed by VIth. Senior Civil Judge, Hyderabad in F.C. Suit No.370/2011 and judgment

and decree passed by IXth. Additional District Judge in Civil Appeal No.03 of 2016 wherein respondent No.3 was declare as statutory tenant of the petitioners as per issue No.1,2 and 5 and to set aside the judgment passed by Vth. Rent Controller, Hyderabad as well as the judgment of IXth. Additional District Judge, Hyderabad and by allowing the application under Section 15 of Sindh Rented Premises Ordinance, 1979 direct the respondent No.3 to vacate the subject premises and the Court to order the respondent No.3 to pay the electricity bill of Rs.1723257/-(One million seven hundred twenty three thousand two hundred and fifty seven only), water bill of Rs.209361/-(Two hundred nine thousand three hundred sixty one only), gas bill of Rs.24960/- (Twenty four thousand nine hundred sixty only) and rent @ from February, 2006 till to date @ 35000/- per month 2205000/-(Two million two hundred five thousand only) total Rs.4162578/- (Rupees four million one hundred sixty two thousand five hundred seventy eight only).

5. Mr. Rizwan Moin Kazmi is present in person, who initially denied that he has any concern with the suit property, however, later on admitted that he is appearing in this Court as an attorney of his brother namely Syed Amir Moin Kazmi (respondent No.3) and had submitted before this Court through his Statement dated 02.04.2022 a Power of Attorney. A perusal of the said statement shows that along with it an unsigned document has been attached and original of which has not been produced in the Court where only on reverse side of the document, certain signatures appear, however, it could not be ascertained from the photostat copy that the said reverse belonged to the front page where no signatures are available. Conduct of the said attorney is also highly unreasonable as he continued to disturb the proceedings. It is important to observe here that the said respondents (Kazmi Family) filed an F.C.

Suit bearing No.926/2015, plaint of which suit was rejected on an application made under Order 7 Rule 11, CPC by the present petitioners vide order dated 04.01.2017, even the application made by the respondents under section 151 CPC for the return of the written statement, was also dismissed. The said respondent in response to this petition has moved numerous applications along with his objections to application u/s 16(1) of Sindh Rented Premises Ordinance, he has even challenged very existence of the petitioners as they are admittedly foreign nationals. It is alleged by him that as claimed by the petitioners that there was an oral agreement between the parties hence the petitioners could not claim ownership of the property. He has also filed a lengthy document titled "Objections on the instant Constitutional Petition" and had taken the trouble of finding out that that petitioners are German nationals, but has not produced a single paper showing in what capacity he is sitting in the 1200 yards double stories Bungalow in one of the posh areas of the city.

6. Learned A.A.G supported the case of the petitioners and stated that there is a plethora of case law decided by the Hon'ble Supreme Court that yields to the effect that where a tenant fails to show any written proof of his tenancy or to show his competency to occupy a premises and where the other party with the aid of registered documents shows ownership of the property, courts have chosen to evict the tenant and has handed out property to the registered owners, which is the case at hand and prays that the petition be allowed as prayed.

7. Heard both the sides and the learned Assistant A.G.

8. At the very outset it could be seen that courts below have failed to appreciate the finding of learned VI-Senior Civil Judge in F.C. Suit No.370/11 while deciding issues No.1,2 and 5 wherein the respondent No.3 was declared statutory tenant of the petitioners. It is also on record

that the respondent No.3 while claimed himself as owner of rented premises in C.P. No.1866/2011, but later on he claimed that he is stranger over the rented premises in C.P. No.2845/2015, hence such conduct of the respondent No.3 infringes Article 114 of the Qanoon-e-Shahadat Order. It is also a fact that the respondent No.3 alongside his brother namely Syed Kamran Moin Kazmi filed CP No.D-206/2013 and CP No.D-466/15 on the basis of certain agreement of sale which was consolidated with CP No.D-1718/2014 and decided vide consolidated order dated 03.12.2015 of this Court, which was complied with by Hyderabad Municipal Corporation through order dated 21.05.2020 and extended the lease by transferring the names of the petitioners in their record after receiving the amount of lease money. The unholy alliance of the respondent No.3 with his brother Syed Kamran Moin Kazmi was exposed by the learned appellate Court while deciding the Civil Appeal No.03 of 2016, where the plaint of F.C. Suit No.926 of 2015 filed by brother of respondent No.3 on the basis of certain agreement of sale was rejected on 04.01.2017 by VI-Senior Civil Judge, Hyderabad, against which Civil Appeal No.23 of 2017 was also dismissed by VIII-Additional District Judge, Hyderabad vide judgment dated 11.04.2018 and IInd. Appeal NO.27 of 2018 was also dismissed on 03.10.2019 by this Court. Admittedly, the property rights enshrined under Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan stand at much higher pedestal than the tenancy rights, hence an owner cannot be deprived from the possession until the tenant proves his legitimacy of possession over the rented premises. It is also an admitted position that special jurisdiction under Sindh Rented Premises Ordinance,1979 cannot exclude the general jurisdiction of Civil Court under Specific Relief Act and where a tenant who denies the title of the landlord, first has to vacate the premises and contest the right before the competent Court of law

ultimately if the tenant himself is claimant and he objects the title of owners, he cannot put his own feet in another's shoes but in any case, he has to vacate the rented premises. It appears to be the case that the judgments of courts below are against sections 2(f) and 2(j) of Sindh Rented Premises Ordinance, 1979 which clearly state that the owner of the property is landlord and person in possession is deemed as tenant, resultantly the impugned judgments are clearly outcome of misreading and non-reading of evidence. Respondent No.3 could not bring any evidence that he is not a defaulter of rent under section 2(i) of Sindh Rented Premises Ordinance, 1979. Also being in possession of the demised property, it appears that the respondent No.3 in his cross has admitted that he was paying rent, however, took the plea that the property belonged to his brother, but at the same breath admitted that *"It is a fact that I did not produce any document of our ownership upon the rented premises"*. At another place with regards the alleged Sale Deeds, he stated that *"It is a fact that such instrument in favour of my brother Syed Kamran Moin Kazmi had not been produced before any Court during the course of litigation in between we both parties."* As to the power of attorney in favour of Syed Rizwan Moin Kazmi (the individual standing in the Court) in his cross Syed Aamir Moin Kazmi (the respondent No.3) has admitted that *" It is a fact that I had also executed a Power of Attorney in favour of Syed Rizwan Moin Kazmi. Again says later on same was cancelled by me on the objection of the applicant side."* It is also mentioned that oral tenancy was commenced in the month of November, 2002 and the respondent No.3 paid the rent till August, 2005 and the amount of security deposit of Rs.30,000/-was adjusted in rent, whilst the brother of respondent No.3 in F.C. Suit No.370 of 2011 claiming that he purchased the rented premises in year 1995 through agreement of sale, but it could be noted the telephone connection which was installed in the

name of petitioner No.1 was in use of the petitioner till August, 2002 as well as the gas bill even of Feb-2019 is in the name of petitioners (page-191). Also the respondent No.3 in his cross has answered that the rent agreement was executed but not executed in presence of witness Mst. Rubina. One also notes that F.C Suit No.370 of 2011 was decided after recording of evidence of witnesses and in evidence the witness namely Qadafi deposed that the respondent No.3 was inducted as tenant in the rented premises. In order to prove the petitioner / applicant No.3 Muhammad Faraz Ali Khan being Attorney of applicants No.1 and 2 has filed this affidavits in evidence and additional affidavit in evidence and appeared in the witness box reiterated its contents on Oath and admitted it to be true correct and bear his signatures. He had produced original Special and general Power of Attorneys executed in his favour by other applicants, at Exs. No.25/A & 25/B. He further produced original utility bills (two in number) at Ex. 25/C and 25/D. He also produced certified true copy of judgment and decree passed in F.C. Suit No.370 of 2011 (Re: Muhammad Haziq Ali Khan and others vs Syed Aamir Moin Kazmi) at Ex.25/E & 25/F. He further produced certified true copy of order dated 05.01.2017 passed in F.C. Suit No.926 of 2015 (re: Syed Kamran Moin Kazmi vs. Mst. Waltraut Elsveth Maria Liane and others) by Vth. Senior Civil Judge, Hyderabad at Ex.25/G, certified true copy of another order passed in said suit dated 04.01.2017 at Ex.25/H and certified true copy of judgment and decree passed in Civil Appeal No.23 of 2017 (re: Syed Kamran Moin Kazmi vs. Mst. Waltraut Elsveth Maria Liane and others) by VIIIth. Additional District Judge, Hyderabad at Ex.25/I and 25/J. The applicants / petitioners witness No.2 namely Mst. Rubina Khan had filed her affidavit in evidence who stepped into the witness box and reiterated its contents on oath to be true, correct and bears her signature. She had produced original telephone bill, original duplicate electricity bills, original

declaration of oral gift, another original declaration of oral gift executed on 20.03.1999, certified true copy of gift deed executed on 20.03.1999, original declaration of oral gift executed on 30.06.2001, certified attested copy of order passed by the Municipal Commissioner Municipal Corporation, Hyderabad dated 21.05.2020, original three challan receipts, certified true copy of judgment and decree passed by IX-Additional District Judge, Hyderabad in Civil Appeal No.03 of 2016 (re: Muhammad Haziq Khan and others vs. Syed Aamir Moin Kazmi), certified true copy of statement for withdrawal statement in IInd. Appeal No.21 of 2016 (re: Muhammad Haziq Khan and others vs. Syed Aamir Moin Kazmi), certified true copy of order passed in said IInd. Civil Appeal dated 21.08.2020, certified true copy of order dated 03.12.2015 passed in CP No.D-206 of 2013 (re: Syed Kamran Moin Kazmi vs. Iqbal Shaikh and others) and certified true copy of order dated 03.10.2019 passed in IInd. Appeal No.27 of 2018 (re: Syed Kamran Moin Kazmi vs. Mst. Waltraut and others) at Exs. 29/A to 29/P and both the witnesses cross examined by the respondent No.3 and petitioners side was closed. Resultantly, judgments passed by Court below appear to be against the facts, law and equity, as both the courts have failed to exercise jurisdiction vested in them while dismissing the rent application as well as rent appeal, therefore, they have committed illegality and irregularity while passing the impugned judgments because the same are based upon misreading of pleading, documents and evidence on record.

9. From the above, it appears that petitioners have shown beyond any reasonable doubt that they are owners of the property in question. The respondent who admittedly was occupying the subject property could not be occupying it in any capacity other than as a tenant, as determined in the F.C. Suit No.370 of 2011. The respondent to the contrary also filed

a F.C. Suit No.926 of 2015 claiming that they had purchased the subject property, however, its plaint was rejected through an order under section 7 Rule 11, CPC. Learned Rent Controller even after having made determination of landlord and tenant chose to refer the parties to a Civil Court, which directions in my humble view were not legal and not maintainable. Article 115 of Qanoon-e-Shahadat Order, 1984 placed down that no tenant of immoveable property shall during continuance of the tenancy is permitted to deny that the landlord did not had a title to such property. Courts always have held that the relationship of landlord and tenant cannot be severed if even there was an existence of an agreement to sale. As regards the legal proposition in circumstances where a tenant denies his relationship with the landlord or claims that the landlord is not the owner or the tenant has acquired the property, guidance can be sought from the case reported as ***Amin and others v. Hafiz Ghulam Muhammad and others*** (PLD 2006 Supreme Court 549) which yielded to the dictum that in all such circumstances the tenant must vacate the subject property and if latter succeeds in obtaining a decree in any suit, he could be given excess to the subject property in accordance with law. The term 'landlord' as defined in section 2(f) of Sindh Rented Premises Ordinance, 1979 is wide enough to include a person who having been authorized or entitled to receive rent, therefore, question as to ownership usually subsides at the initial stages.

10. In the case at hand, application of the petitioners /landlord for ejecting the tenant was based on default and bonafide use merit grant in the circumstances detailed above. The learned Rent Controller was eligible to eject the tenant straightaway when the required relationship of landlord and tenant was proved in affirmative. This view finds supports from the case of ***Rab Nawaz vs. Haji Muhammad Iqbal*** (2003 SCMR

1476) and ***Abdul Hamid and others vs. Syed Abdul Qadir and others*** (PLD 2001 SC 49). In the case reported as **AHMAD ALI alias ALI AHMAD v. NASAR-UD-DIN and another** (PLD 2009 SC 453), the Hon'ble Supreme Court has also held the same views.

11. In the case reported as **ABDUL RASHEED v. MAQBOOL AHMED and others** (2011 SCMR 320), the Hon'ble Supreme Court has observed that in circumstances where the tenant made plea that it has purchased the demised premises and where on the other hand the landlord had moved an application for ejectment, the apex Court gave directions that in these circumstances tenant had to vacate the premises and to follow the Suit for specific performance if it had any merit.

12. The upshot of the above discussion compels me to allow this petition, resultantly the impugned judgment dated 10.12.2021 passed by learned IX-Additional District Judge / MCAC-I, Hyderabad in FRA No.14 of 2021, that maintained the judgment dated 11.03.2021 passed by Vth. Senior Civil Judge / Rent Controller, Hyderabad, who dismissed the Rent Application No.42/2019 filed by the petitioners u/s 15 of Sindh Rented Premises Ordinance,1979 against the respondent No.3 are set aside. Since ample time has already lapsed in this litigation, therefore, the tenant / respondent No.3 is directed to vacate the demised premises in his possession forthwith from the date of this judgment and hand over its vacant and peaceful possession to the petitioners / landlord. However, the petitioners would be at liberty to follow the suit for the recovery of unpaid utility bills etc for the period from September, 2005 till date through appropriate forum.

JUDGE