

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-497/2019

Date

Order with signature of Judge

25.08.2020

Mr. Javed Ahmed Abbasi advocate for petitioner.

Mr. Altaf Ahmed Shaikh advocate for respondent No.1

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SALAHUDDIN PANHWAR, J: Heard and perused the record.

1. Precisely case of present petitioner is that he is landlord by virtue of sale deed of demised premises which was previously owned by one Hakeem Khan; there is default on part of the respondent No.1 as well premises is required for personal *bona fide* need therefore he filed the ejectment petition but both the court (s) below have wrongly declined such application while holding non-existence of relationship of landlord and tenant.

2. In contra, counsel for respondent No.1 contends that though he was tenant in the demised premises but same ceased its effect due to sale agreement with Hakeem Khan, thus he filed suit for specific performance of contract; subsequently as per counsel, such suit was withdrawn. Counsel for respondent No.1 contends that findings of both courts below are very correct as tenancy was ceased when sale agreement was signed, besides petitioner filed suit for possession as well.

3. I do not find myself to agree with contention of the learned counsel for the respondent no.1 that '*execution of the sale agreement results in ceasing the relationship of landlord and tenant in all cases*'. This contention can only prevail when there is no denial or

dispute but if denial or dispute comes in **any** shape including by way of sale to third party then such contention would have no place to hold the field because such *like* plea shall always be easily available for a tenant to raise. This has been the reason that remedy, available to a tenant for such plea, has been settled. To this, it would suffice to refer the operative part of the judgment of honourable Supreme Court in the case of Muhammad Nisar v. Izhar Ahmed Sheikh & Ors. PLD 2014 SC 347 which reads as:-

“6. ... In our opinion such averment cannot displace the law itself since per section 2(j) of the Sindh Rented Premises Ordinance, 1979 each legal heir of the tenant after his demise becomes a tenant and consequently the learned lower forum below have correctly held that there was a relationship of landlord and tenant between the parties. Per settled in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies (which has already been done) and vacate the premises and thereafter if he succeeds he would be entitled to take possession of the premises again....”
(underlining is for emphasis)

In the instant matter following facts are not disputed i.e:-

- i) the respondent no.1 was tenant of previous owner;
- ii) previous owner sold out the premises to present petitioner;
- iii) the respondent no.1 claiming to have purchased the premises through **sale agreement**;

therefore, I have no hesitation in concluding that such contention of the respondent no.1 was / is entirely misconceived and even the lower court (s) below have ignored such *settled principle* while forming contrary view. Being relevant, paragraph No.15 of impugned order is reproduced herewith:-

“It is on record that the appellant has not brought anything to show that the respondent has paid rent to the previous owner after date of alleged sale agreement to substantiate that the respondent remained tenant of previous owner till he

transferred the demised shop through registered sale deed in his favour, meaning thereby **the tenancy between respondent and previous owner ceased to exist.** Furthermore, the date of alleged sale agreement appears to have been executed prior to registration of sale deed in favour of appellant. The respondent claims the sale agreement was within notice and knowledge of appellant who happened to be estate agent. The respondent produced his witness Asad Bhutto who filed his affidavit in evidence and deposed that the appellant has business of estate and in his presence the appellant delivered agreement of sale dated 09.03.2012 purportedly to be in between owner of the shop and the appellant, during cross examination he deposed that he is working as serving boy at the demised shop for the respondent since 8/9 years and he knows Hakeem Khan and the appellant delivered agreement of sale dated 09.03.2012 in his presence at Kadhara State Agency. **Admittedly, the matter in relation to sale agreement is adjudicated before civil court in civil suit No.904 of 2012 between the parties also prior to filing of ejection application wherein the respondent has also challenged the registered sale deed of respondent.** It is well settled by now that the issue is one of jurisdiction and should be determined first, in case its answer be in negative the court loses jurisdiction over *lis* and must stay its hands forthwith as held by honourable supreme court in reported case 2001 SCMR 1434.”

Another *legal* aspect appears to be involved in the matter which needs to be attended. The status of the present petitioner is that of ***subsequent / new owner***. To have such status the Ordinance *itself* allows both the ***owner*** and a *third person* as is evident from referral of Section 18 of the Ordinance which reads as :-

“18. Change in ownership:- Where the ownership of a premises in possession of the tenant has been transferred by **sale**, gift, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post to the tenant and the tenant shall not be deemed to have defaulted in payment of the rent for the purpose of clause (ii) of subsection (2) of section 15, if the rent due is paid within thirty days from the date when the intimation should, in normal course, have reached the tenant.”

The bare reading of the above provision is sufficient to *safely* conclude that there is no *bar* on transfer of ownership of *premises* even without consent of the ***tenant*** which even does not relax the legal obligation of the *tenant* to pay timely rent to the known ***‘owner/landlord’***. The obligation to ensure information of such

change of ownership is only to inform the *tenant* that by now he (*tenant*) has to make payment to *new / changed* owner. In short, this is a protection to the *tenant* only for clause (ii) of subsection (2) of section 15 of the Ordinance. The right to make a legal and lawful transfer, in short, cannot be an excuse to get a tenant declared *defaulter* by keeping such transfer of ownership under dark. I am guided in such view with the case of *Shezan Ltd. v. Abdul Ghafoor & Ors* (1992 SCMR 2400) wherein the honourable Supreme Court has observed regarding object of section 18 of the Sindh Rented Premises Ordinance, 1979 as:-

... Since, it is a beneficial provision, designed and intended for the benefit of tenants, it is to be construed liberally so that it may suppress the mischief aimed at, and may advance remedy. I am, therefore, of the view that a notice in terms of above section is mandatory even when a transfer of ownership pertains to a partial interest. I may also observe that if a new owner of premises fails to serve above notice on his tenant and if the latter, **without having knowledge of the transfer of ownership continues to pay rent to this previous landlord**, he shall not liable to pay rent to the new owner for the period, for which the tenant might have paid rent to the previous owner.

Here, it is also worth to refer operative part of the case of *Hameed & 3 others v. Jitendra & 2 others* (2010 CLC 561) wherein it is held as:-

“..... In the case of Muhammad Yousuf v. Mairajudin reported in 1986 SCMR 951 , it was held that if the notice with regard to the change of ownership was not served this by itself would not amount to absence of relationship of landlord and tenant. The eviction application itself is to be treated, as notice and if rent is not tendered directly to the new landlord within the statutory 30 days of the knowledge of change in ownership then the tenant becomes liable for eviction...”

4. In view of the above legal position, I am of the clear that the learned lower court (s) have committed serious error

while holding non-existence of the relationship of landlord and tenant between merely for reason of *execution* of *alleged* sale agreement in favour of the respondent no.1 as well not considering the legal effects of the section 18 of the Ordinance.

5. Legal effects of above settled principles of law allow me to say that there is relationship between the petitioner and landlord regarding tenancy of demised premises hence findings of both courts below are hereby set aside. Case is remanded back with direction to the Rent Controller to decide the issue in the matter *afresh* as per law while accepting the relationship of landlord and tenant between parties.

Disposed of.

J U D G E

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