ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

C. P. No. S-543 of 2019

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE

1. For orders on M. A. No.518/2020.
2. For orders on office objections.
3. For orders on M. A. No.310/2020.
4. For hearing of M. A. No.1027/19.
4. For orders on maintainability of main case.

Petitioners : Ali Jan Barijo & another.

Respondents : Mohammad Mithal Qureshi & others.

Mr. Ghulam Mohammad Barejo, advocate for the petitioner.

Mr. Zamir Ali Shah, advocate for respondent No.1.

Mr. Liaquat Ali Shar, Addl. Advocate General.

Date of hearing : 20.08.2020.
Date of Order : 20.08.2020.

O R D E R.

Through this petition, the petitioner has impugned order dated 26.06.2019, passed in Rent Appeal No.01/2019 by the Additional District Judge-II, Kamber, maintaining order dated 16.02.2019, passed in Rent Application No.04/2015 by the Rent Controller, Kamber, through which the ejectment application of respondent No.1 was allowed.

2. Learned Counsel for the petitioner has argued that the ejectment application was filed under Section 15(2)(iii)(a) of the Sindh Rented Premises Ordinance, 1979 (SRPO); however, there was no prayer to the effect that the petitioner has sublet the property in question; that the property in question was owned by the petitioner pursuant to two agreements of sale dated 11.07.2009 and 02.07.2011, hence the

relationship of landlord and tenant was missing; that when the rent application was filed, the relationship of earlier tenancy was no more in existence; that the Courts below have failed to appreciate the evidence, especially the one led by the respondent No.1 and, therefore, the petition be allowed.

3. On the other hand, the learned Counsel for respondent No.1 has supported the judgments of the two Courts below.

4. I have heard both the learned Counsel and perused the record.

5. Insofar as the objection regarding filing of the rent application under Section 15(2)(iii)(a) of the SRPO is concerned, even if there was no prayer to that effect, it does not render the rent application void or illegal inasmuch as on the basis of such assertion respondent No.1 has sought the prayer of possession and directions for vacating the premises in question. More importantly, in the memo of the application it has been averred that in addition to subletting, the petitioner has also defaulted in payment of timely rent. The entire case as set up on behalf of the petitioner, as reflected from the evidence led by him, is premised on the fact that the property in question was purchased pursuant to two separate agreements dated 11.07.2009 and 02.07.2011, therefore, the question of default does not arise. However, admittedly, no suit for specific performance was ever filed and while confronted the Counsel for the petitioner was not in a position to satisfy such query from the Court.

6. Be that as it may, even if a suit for specific performance is filed by a tenant on the ground that the property has been purchased from the landlord, the same does not entitle the tenant to first withhold payment of rent; and then come up with a plea in an ejectment application that he is

the owner of the property. It is settled law that a mere agreement does not confer any title to a party. It is also settled that even if there is an agreement and not denied by the landlord (which is not the case here), the proper course as mandated in law is to vacate the premises after handing over possession to the landlord and then file a suit for specific performance and possession. This cannot be treated as a defence against admitted default. The learned Trial Court has correctly relied upon the case reported as ***Iqbal v Mst. Rabia*** (**PLD 1991 SC 242**). Similar view has been expressed in ***Abdul Rasheed v Maqbool Ahmed*** (**2011 SCMR 320**) and ***Dr. Babur Hussain Advocate v Ch. Islamuddin*** (**2012 CLC 1453**). Reliance may also be placed on a recent pronouncement of the Hon'ble Supreme Court reported as ***Mst. Kubra Amjad v Mst. Yasmeen Tariq*** (**PLD 2019 SC 704**), wherein it has been held that;

> "……Admittedly she came into possession of the subject property as a tenant and not pursuant to or in part performance of agreement to sale which commenced over two decades prior to the sale agreement. Under the facts and circumstances of the case, and keeping in view that the writ jurisdiction as invoked by the appellant is sparingly exercised in such like case, more particularly when the appellant remained indolent in seeking specific performance of the agreement within reasonable time from the date of its alleged execution by the deceased vendor".

The learned trial Court has considered the evidence led by the petitioner, wherein he has not denied the rent agreement and his status as a tenant in his cross-examination. The same reads as under:-

> "**Cross-examination by Mr. Syed Zamir Hussain Shah, Advocate for defendant.**
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> It is incorrect to say that I took over possession of premises as tenant. It is correct to say that it was mentioned in affidavit-in-evidence that there was rent agreement in writing of premises in 2006. It is correct to say that till 2007, I used to pay monthly rent at the rate of Rs.4500/- to applicant. It is correct to say that the rent agreement was in writing made till 2007. It is correct to say that after expiry of the agreement in writing we remained in possession as tenant as per oral agreement. IN 2009, I had purchased half portion of premises through sale agreement from applicant.

> It is correct to say that I have mentioned in affidavit-in-evidence that remaining portion of premises was purchased in 2011. It is incorrect to say that the sale agreement produced during evidence along with affidavit-in-evidence is false and forged. It is correct to say that my two CNIC's are appearing viz. one on sale agreement and other on supporting affidavit file with affidavit-in-evidence issued from Balochistan. It is incorrect to say that the signature of applicant namely Mithal is appearing on sale agreement is false. It is correct to say that I did not file any suit for Specific Performance of Contract. It is incorrect to say that the receipt of receiving balance amount is false and forged. It is incorrect to say that the signatures on receipt are forged. It is incorrect to say that there is no name and signature of witness is available on receipt. Further, stated that one receipt showing the name and signature of witness on receipt. It is incorrect to say that I have committed default in payment of monthly rent since 2013 till date. It is incorrect to say that I have not purchased the property through agreement. It is incorrect to say that I have committed default."

7. Perusal of the aforesaid evidence led by the petitioner himself reflects that neither the agreement has been denied nor the payment of monthly rent; however, against default it has been averred that the property was purchased from the landlord. As already noted hereinabove, this is no defence against an admitted default. The appellate Court has also arrived at a just and fair conclusion after going through the record and the relevant observations are as under:-

> "10. After hearing the counsel for the parties, I have perused the record and found that during the trial of the suit in question, the landlord has produced his relevant documents viz., rent agreement, water supply bill issued by Municipal Committee, Shahdadkot and electricity bills, to which, the learned counsel for the appellants/defendants has not put any question to the landlord/defendant in order to deny the rent agreement and bills. During the course of cross-examination of the appellant No.01/defendant, he has admitted that he used to pay monthly rent to the landlord at the rate of Rs.4500/- and also admitted that rent agreement in writing was made till 2007 and after expiry of that agreement he remained in possession as tenant as per oral agreement. Meaning thereby, the relationship of landlord and tenant is established. However, it is settled law in the spirit of Qanun-e-Shahadat, 1984, that the facts admitted needed not be proved, for the sake of convenience, I would like to reproduce the relevant article of the said order as under:-
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> > "**Article 113. Facts admitted need not be proved. No fact need be proved in any proceedings which the parties thereto or their agents agree to admit at the hearing, or which, before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the them they are deemed to have admitted by their pleadings."**

"Provided that the Court may, in its discretion, require the facts admitted to be proved otherwise than by such admission."

11. It could easily be assessed from the available record, the relationship of landlord and tenant cannot be created either by some oral agreement or by force of any statute. Such relationship comes into existence when one agrees to let out his premises on fixed rental or terms to another, however, such relationship does not alter whether appellants choose to call them as owner or purchaser of the shop in question. The learned counsel for the appellants has taken plea that they have purchased the demised premises later on through sale agreement from the landlord, and same was denied by the respondent No.1/landlord, in this regard, firstly, the tenants should have to vacate the possession of demised shop and then they had to file a suit for specific performance. The learned counsel for the appellants has also taken plea that the landlord/respondent No.1 has sold out the demised premises to the appellants through agreement of sale, to the contrary, the agreement of sale did not create any title, therefore, the question of title could not be proved through rent controller, as the rent controller has no jurisdiction to decide the ownership. In this regard, I am benefited from the case law reported as **2013 CLC 1179.**"

8. In view of hereinabove facts and circumstances of this case, it appears that no case for exercising the limited jurisdiction available to this Court is made out as there are concurrent findings of two Courts below and nothing has been shown to this Court so as to upset those findings in the Constitutional jurisdiction. Accordingly, the petition is dismissed along with pending application(s), if any.

JUDGE

Qazi Tahir PA/*