

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No.S-1033 of 2020

Ahsanullah

Versus

Sultan Shah and another

Date of Hearing: 20.04.2021
Appellant: Mr. Iftikhar Ahmed Gohar, advocate
Respondent No.1: Through Mr. Muhammad Ibrahim M. Sahito, advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J.- These rent proceedings were initiated by respondent No.1 in terms of an application under section 15 of the Sindh Rented Premises Ordinance, 1979. In term of the pleadings, the respondent No.2 was claimed as original tenant on the basis of alleged rent agreement whereas applicant claimed that he handed over the same to the petitioner and consequently an eviction application was filed against both of them. The rent application was resisted by the petitioner as the relationship of landlord and tenant was seriously denied whereas alleged original tenant did not contest. It is stated in the written statement of petitioner that he was given possession under a sale agreement by the brother of respondent No.1/applicant, who is now claiming himself to be the landlord of the premises. He thus claimed to be in occupation of its being owner on the basis of sale agreement. The eviction application was allowed by the Rent Controller vide order dated 14.01.2020 and appeal was dismissed. The Rent Controller framed the following issues:

1. Whether there is relationship between the parties as landlord and tenant?
2. Whether the opponent committed willful default in payment of monthly rent, utility charges?
3. What should the order be?

The relationship between the parties was held by the Rent Controller which order was maintained by the appellate Court in FRA No.3/2020.

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

Before I proceed and discuss the evidence of the parties, it may be important to note that neither the petitioner nor any of the respondents have filed any title documents. In fact, the counsel for the parties, while arguing conceded that they have just the possession of the land in question, which is situated at Cattle Colony, Newabad, Landhi, District Malir, Karachi, and then both of them conceded that it is Government land and was occupied. The respondent No.2 Aurangzeb did not appear, who is claimed to be the original tenant in respect of the premises in question. The respondent No.1/applicant was cross-examined and he admitted that he had not filed any document regarding the ownership of the property and that there is no number of shop for which the eviction is sought. The rent agreement he produced was allegedly between respondent No.1 and petitioner and that the shops are situated on unauthorized land. Witness Dilawar Shah was examined as witness of respondent No.1/alleged landlord and he had admitted that Opponent No.2/petitioner had forcibly and illegally occupied the shop in question. He also admitted that no agreement was executed between respondent No.1/applicant/alleged landlord and opponent No.2/petitioner. He, however, denied the suggestion that it was sold to the petitioner by a sale agreement. Petitioner, the alleged occupant, was also examined and his cross-examination is of vital importance as it goes to the root of issue No.1. The alleged landlord's counsel suggested that after shifting of Aurangzeb (the previous occupant), petitioner/ present occupant has forcibly occupied this place. The petitioner/present occupant has shown ignorance about the

previous occupant Aurangzeb or any relationship with him. It was again suggested by the counsel of respondent No.1/alleged landlord that the present occupant has forcibly occupied the premises and is in occupation since 2016. This forcible occupation by respondent No.1 does not lead to a conclusion that there was a relationship of landlord and tenant between them. The two courts below have erred while not reading this part of evidence rather ignoring this part of evidence and on the strength of the statement of respondent No.1 that he is in occupation of the premises as being tenant, relationship was held. The issue of relationship has to be proved independently and irrespective of the fact whether the previous occupant Augangzeb was the tenant of respondent No.1 or not, the present occupant had to be proved as tenant or sub-tenant independently and on the strength of the pleadings and the evidence petitioner cannot be considered as a tenant of respondent No.1.

It is pertinent to note that all of them had admitted to be in illegal occupation of this land and Karachi Metropolitan Corporation (KMC) being the authority in respect of the land in question having territorial jurisdiction is sitting indolent. Nothing on record is available to show that any action in this regard was/is taken against these unauthorized occupants.

I, therefore, in view of the above facts and circumstances though allowed this petition that there is no relationship of landlord and tenant between the petitioner and respondent No.1 but at the same time direct the office of this Court to send the copy of this judgment to the Land Department, Karachi Metropolitan Corporation to take prompt action and initiate proceedings against the unauthorized occupants. Although the dispute in this petition is governed by the special law, i.e. Sindh Rented Premises Ordinance, 1979, but a valuable property of Karachi Metropolitan Corporation is in occupation of unauthorized occupants and

the action shall be initiated promptly so that the due course of law be triggered against the unauthorized occupants.

With the above observations, the petition is allowed.

J U D G E