

matter property with a delay of 11 years and eviction application was preferred two years before the SMA. With regard to title, litigation is pending between the legal heirs. Para 'D' of written statement is admission to the extent of tenancy, however, there is plea that there are two flats, one flat is in possession of the petitioner's mother whereas, second is in possession of petitioner and petitioner is paying rent under protest in MRC.

3. The counsel for the respondent no.1, however, opposed strongly while submitting that there is no, *prima facie*, illegality in concurrent findings of two Courts below.

4. At the outset, I do find substance in the plea, raised by counsel for respondent, to the effect that this Court, *normally*, does not operate as a Court of appeal therefore mere possibility of another conclusion can't be a ground to invoke Constitutional jurisdiction of this Court which, in rent matters, could only disturb those findings which, *prima facie*, appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. Reference may be made to the case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* 2010 SCMR 1925

"8. that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court. Therefore, mere fact that upon perusal of evidence, High Court came to another conclusion would not furnish a valid ground for interference in the order of the appellate Court, which is final authority in the hierarchy of rent laws i.e Sindh Rented Premises Ordinance, 1979."

5. In another case of *Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors* PLD 2006 SC 214

"8. The High Court, no doubt, in the exercise of its constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 can interfere if any wrong or illegal conclusion are drawn by the Courts below which are not based on facts found because such an act would amount to an error of law which can always be corrected by the High Court. The findings of the appellate Court were cogent and consistent with the evidence available on the record. Its conclusions were in accordance with the facts found. The finality was attached to its findings which could not be interfered with merely because a different conclusion was also possible. The High Court, in the present case, in our view, exceeded its jurisdiction and acted as a Court of appeal which is not

permissible under the law. Therefore, the High Court ought not to have undertaken the exercise of the reappraisal of the evidence.

There have been raised number of contentions wherein main pleas are that of plea of purchase; not possessing both flats but one and that there have been dispute between legal heirs.

6. The dispute between co-owners (legal heirs) *legally* can't be of any help for a tenant as the same has no relevance in rent matters. The grounds for eviction (section 15 of Ordinance) are *specific* which, nowhere, allow any adjudication on any other issue except that defined (limited) by the Ordinance *itself* i.e relationship of **landlord and tenant**. A referral to below case laws of Apex Court shall satisfy one of the contentions i.e regarding dispute between legal heirs which are:-

"Abdul Ghani v. Abrar Hussain 1999 SCMR 348"

".. It seems to be a well-settled proposition of law that a co-owner can file ejectment proceedings against a tenant without impleading his other co-owners under the Rent Laws the ejectment proceedings against a tenant without Rent impleading all the co-owners."

"Muhammad Hanif & another v. Muhammad Jamil Turk & 5 others 2002 SCMR 429"

"On the contrary, general rule of law has been that a co-sharer can file ejectment proceedings against a tenant without impleading other co-sharers. The wisdom behind such principle is that co-sharer acts on behalf of and represents the interest of all the co-owners of the property."

Thus, the plea of dispute, if any, between legal heirs is of any help, more particularly when the tenant (petitioner) admits to be tenant and depositing rent in MRC.

7. As regard the plea of ***purchasing*** the premises, it would suffice to say that taking of such a plea (filing and pendency of such *lis*) by a tenant leaves him with no option but to do what has been enunciated by Apex Court i.e "to put the landlord into possession and then to *proceed* for enforcement of his rights". Reference may be made to Abdul Rasheed v. Maqbool Ahmed & others 2011 SCMR 320 wherein it is held as:-

5. ... It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails..... Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.

8. Now, before attending the plea of not possessing premises but one flat, it would be conducive to refer relevant adjudication with regard to pleadings of the parties by the learned trial court:

*"Reverting to the another controversy in between the parties with regard to possession of two flats i.e. Flat No.1 & 2 applicant has urged that both are in possession of opponent as a occupant after demised of his two brothers namely Iqbal and Muhammad Ikram. But the opponent Afzal is bent upon holding that **he has become tenant of Flat No.1 whereas his mother Mst. Akhtari Begum has become tenant of Flat No.2.** Be that as it may, it is the matter of record and admitted position even by the Muhammad Afzal Khan that **earlier both flats were under tenancy in their father's name i.e. Inam Khan** however, rent receipts were used to be issued in the name of Iqbal Khan and Ikram Khan both deceased brothers of opponent. This admission brought in the written statement as well as in the recorded evidence clearly reflects that **he is a statutory tenant with regard to both flats in question, admittedly having only one outer door of both flats under one joint electric meter shows his possession being tenant thereof.** His plea with regard to Flat No.2 as alleged under the tenancy of his **mother Mst. Akhtari Begum does not stand on its feet when admittedly there is no fresh rent agreement or rent receipt in her name produced or placed at any stage to the satisfaction of this court.** Even otherwise the same opponent did not take any pain to bring his mother or file any application to participate in the proceedings or even cited her as a witness in order to clarify the actual position, if any. Such silence on the part of opponent ultimately supports the version of applicant. I, therefore, answered this point in affirmative.*

9. Legally, the legal heirs of the **tenant** are not permissible to deny their status as that of **tenant** if they occupy premises as is evident from section 2(j)(ii) of Ordinance which reads as:

"heirs of the tenant in possession or occupation of the premises after the death of the tenants; and"

The findings, referred above, *prima facie*, show that flats were under tenancy of father of petitioner hence petitioner legally can't escape consequence of referred definition merely by uttering that his **mother** is in occupation as ***independent tenant***. The petitioner and his mother can't take an exception to an *undeniable* fact of being **legal heirs of main tenant**. Here, it may be advantageous to refer relevant portion of evidence of the petitioner which, *prima facie*, affirms that petitioner acquired possession on death of his father and that he and his mother never claim to have entered into independent relations as **tenants** but possessing premises as heirs.

".....Vol. says my father had acquired this premises from Aslam son of Ishaque.... It is correct to suggest that I have not annexed any fresh tenancy agreement if executed in between me and the applicant in respect of Flat No.1. It is correct to suggest that I have also not annexed any fresh tenancy agreement in the name of my mother MohtarmaAkhtari Begum. ... It is correct to suggest that I have affixed one gate of both flats bearing No. 1 & 2. Again says that this gate was available since inception of our possession. It is correct to suggest that both flats have joint electric meter which is in the name of Aslam Ishaque. It is correct to suggest that both flats have one gas meter in the name of my late brother namely Iqbal. I do not know if applicant is residing in rented premises. It is correct to suggest that I have not produced any proof to show possession of Flat No.2 lying with my mother. It is incorrect to suggest that I have deposed false statement on several occasions and the contents of my affidavit of evidence"

This plea, thus, was not tenable particularly when no such material was produced on record, as rightly observed by learned Rent Controller.

10. I would add that the tenant, *legally*, is never competent to question the ownership of subsequent purchaser (owner). Without saying much, the ejectment petition has been filed on *personal ground* and this was affirmed in evidence; respondent no.1 has been residing in rented

premises hence such ground of *personal bona fide* need was proved in line of settled principle, as has been enunciated in the case of *Shakeel Ahmed* supra as:-

"6. For seeking eviction of a tenant from the rented shop, the only requirement of law is the proof of his bona fide need by the landlord, which stands discharged the moment he appears in the witness box and makes such statement on oath or in the form of an affidavit-in-evidence as prescribed by law, if it remains un-shattered in cross-examination and un-rebutted in the evidence adduced by the opposite party. If any case law is need to fortify this .."

11. In consequence to what has been discussed above with reference to settled principles of law as well available material, I am of the clear view that adjudication made by both courts below are reasonable, hence, *writ of certiorari* under these circumstances cannot be exercised in favour of petitioner, hence, captioned petition was dismissed.

J U D G E

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