

# **IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

## **Civil Revision No. S – 176 of 2010**

(Ghous Bux & others vs. Province of Sindh & others)

**Date of hearing: 28.03.2022**  
**Date of Order: 28.03.2022**

Mr. Tariq G. Hanif Mangi, Advocate for the Applicants  
Nemo for the Private Respondents  
Mr. Asfandyar Kharal, Assistant Advocate General

### **JUDGMENT**

**Muhammad Junaid Ghaffar, J.** – Through this Civil Revision, the Applicants have impugned judgment dated 28-06-2010 passed by 1<sup>st</sup>. Additional District Judge, Ghotki, whereby, Civil Appeal No.77 of 1993 has been dismissed and Judgment of the trial Court dated 27-10-1993 passed in Suit No. 46 of 1987 has been maintained, whereby the Suit of the present Applicants was dismissed.

2. Heard Applicants Counsel, whereas, despite repeated notices and service upon private Respondents, nobody has turned up to assist the Court and since this Civil Revision Application pertains to 2010, therefore, the same is being decided with the assistance of Applicants' Counsel and on the basis of available record.

3. It appears that the Applicants being aggrieved by notice dated 12.4.1987 and 26.4.1987 issued by the Official Respondents had filed a Suit for declaration and injunction seeking the following prayers;

- (i) To declare the plaintiffs as owner in possession of the property in suit and the notice and action taken by the defendants No.2 and 3 at the instance of defendant No.4 is illegal, malafide and without jurisdiction.
- (ii) To restrain the defendants from interfering with the peaceful possession of the plaintiffs over the suit property in any manner whatsoever and from ejecting them from their house.
- (iii) To award the costs of the suit to the plaintiffs.
- (iv) To grant any other relief which this Hon'ble Court deems fit and proper under the circumstances of the case."

4. The said Suit was dismissed by the trial court; however, the Appellate Court had set-aside the judgment of the trial Court by allowing the Appeal of the present Applicants and then the matter came up before this Court in Civil Revision No. S-49 of 1997, and the Appellate order was then set-aside and matter was remanded to the said Court with certain directions. The order dated 14-04-2006 passed by this Court in Civil Revision No. S-49/1997 reads as under;-

“It appears that the respondents No.1 to 8 has filed suit for declaration which was dismissed against which an appeal was preferred which was allowed against the applicant and the applicants have preferred this revision. The stand of the applicant in suit was that the respondents predecessor-in-interest were the tenants of the applicant and they were called upon to vacate the premises and their tenancy was terminated and in terms of the Transfer of Property Act have become trespasser and they would be ejected.

Mr. Lachhmandas states that the tenancy was prior to the promulgation to the rent laws and therefore the ejectment could only be sought through filing of the suit which admittedly was not filed so far by the applicant. Through in this impugned judgment, the learned appellate court while setting aside the judgment of the trial court which has dismissed the suit had observed that the remedy of the ejectment of the applicant is available and the applicant may approach the appropriate forum for ejectment of the respondents. The impugned judgment on one side has declared the respondents as owner and on the other hand, the finding in the impugned judgment that the remedy of the applicant to seek ejectment of the respondents, inter-alia, on the ground of rent agreement is self contradictory. Additionally even if the appeal of the respondents had failed before the appellate court the applicant could not have ejected the Respondents without recourse to filing of suit before the appropriate forum and no proceeding of any nature has yet filed by the Applicant till date. In these circumstances while setting aside the impugned judgment I remand the case to the appellate court to rehear the matter and determine the status of the Respondents **as to whether they are tenant of the applicant and whether the or tenancy is ceased to have the effect on account of its termination by the Applicant.** It will however be opened to the Applicant to approach the appropriate forum for seeking relief of ejectment of the respondents. This revision stands disposed of in the above terms. Office is directed to send the R & Proceedings forthwith.”

5. Perusal of the aforesaid order reflects that the matter was remanded with directions only on two counts. Firstly, whether the present Applicants (Respondents in the said Revision) were tenants of the present private Respondents; and secondly, whether such tenancy has ceased to have effect on account of its termination by the Applicants. These were the only two issues on which the matter was remanded. At the same time, it was further observed that the present Respondents could approach any appropriate forum for seeking relief of ejectment of the present Applicants.

6. Perusal of the order as above reflects that the Appellate Court in the second round has not strictly adhered to the directions of the remand order and has in fact, decided the entire case including the claim of declaration or ownership by the present Applicants. It is well settled principle that on remand the Court trying the suit has to regulate the proceedings and proceed with the case in terms of the order of remand passed by the higher court<sup>1</sup>. It is further settled that in cases where matter in controversy is sent by higher Court to domestic forum, any attempt to side track the issue and decide the matter in a manner not directed by higher Court is nothing short of sheer defiance of the remand order and such conduct cannot be approved<sup>2</sup>. It suffices to observe that on post remand proceedings, the Court is required to adhere to such directions as are given by the Superior Court while remanding the matter. It ought not travel beyond such scope. In the instant matter, the claim of the Applicants as to seeking a declaration of ownership had already been impliedly dismissed through the above remand order, and the only controversy which was to be decided by the Appellate Court was, that whether the present Applicants were tenants of private Respondents. It is a matter of record that the private Respondents had pleaded that the predecessor-in-interest of the Applicant was their tenant and in support some rent agreement was also produced in evidence. However, admittedly none of the witnesses or the scribe of the agreement were produced in evidence as all had expired, whereas, except production of the agreement no further corroborative evidence was led by the private Respondents to overcome this impediment. It further appears that while admitting the present Applicants as their tenants (though seriously disputed by the Applicants), a complain was made to the Assistant Commissioner who then issued a notice giving a cause of action to the Applicants for filing of instant Suit. This apparently was not a legal way to deal with purportedly a tenant in any manner. Either a Suit was required to be filed for ejectment or possession, if Rent laws do not apply; or if so, then the Rent Controller was to be approached. Nothing of that sort was done by the private Respondents. Nonetheless, the agreement by itself whereby tenancy was claimed has not been proved satisfactorily.

7. Therefore, after examination of the Appellate Courts order on the touchstone of the remand order, it could be safely held that the private

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<sup>1</sup> Jameel Ahmed v Saifuddin (PLD 1994 SC 501)

<sup>2</sup> Mst. Aqila Begum v PECHS (PLD 2004 Karachi 1)

Respondents have not been able to establish that the present Applicants are their tenants in any manner. At the same time, it may be of relevance to observe that this by itself does not give a declaration in favour of the present Applicants that they are owners of the property being in possession. That issue already stands decided in the above referred order passed by this Court which was never impugned any further, hence the present Applicants are now barred to raise any such claim.

8. In view of hereinabove facts and circumstances of this case, this Civil Revision Application is allowed by modifying the findings in respect of Point No.2 settled by the Appellate Court for determination to the extent that the present Applicants are not tenants of the private Respondents, however, at the same time the private Respondents are not precluded from seeking any ejection of the present Applicants in accordance with the law as already observed by this Court in aforesaid order. The Civil Revision Application is allowed / disposed of in the above terms.

**Judge**

ARBROHI