

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CP NO.S-278/2019

Date Order with signature of Judge

1. For hearing of CMA No.3470/2019
2. For hearing of main case.

07.12.2020

Mr. Babar Ali Shaikh advocate for petitioner.

Mr. Muhammad Azhar Faridi advocate for respondents.

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Admittedly instant petition is with regard to rent jurisdiction and filed against concurrent findings recorded by both courts below. There is no dispute that respondent Muhammad Sadiq (deceased) was elder brother of petitioner, petitioner claims that such demised premises was rented out to his brother but they failed to pay the rent as well utility bills. Besides, it is contended that sale agreement prepared by respondent Muhammad Sadiq was fake. Learned counsel has relied upon PLD 1999 SC 1101 on the plea that if tenant comes with the plea that he has purchased the property through sale agreement he is *first* required to evict the premises and then to pursue his claim by way of suit for *Specific Performance of Contract*.

2. I would take no exception to principle, so laid down in the referred case but the learned counsel for the petitioner appears to have erred while making interpretation of such *principle*. The principle has *properly* been detailed in the case of *Abdul Rasheed v. Maqbool Ahmed & others* 2011 SCMR 320 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.

3. The application of above *principle* shall apply where at time of filing of eviction application, the relationship of landlord and *tenant* is not disputed but plea of *sale agreement*, taken by *tenant*, is denied. It is also needful to add here that *jurisdiction* of Rent Controller is subject to existence of such relationship between the *parties* therefore, burden to such an *extent* shall remain upon the landlord. Reference may also be made to the case of *Muhammad Nisar v. Izhar Ahmed Sheikh & Ors.* PLD 2014 SC 347 wherefrom such view finds support from following observations:-

“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 ejection 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...”

4. Worth reminding here that **Rent Law** is not only meant to regulate **relations** between landlords and tenants but also to protect their **interests** as is evident from *preamble* of the Ordinance which reads as:-

“Whereas it is expedient to make effective provisions for regulation of **relations** between **landlords and tenants** and protect their interests in respect of rented premises within urban areas;”

hence such question of existence of such *relation* shall always be of conclusive *proof*. When *legally* the *plea* of sale agreement, if taken by a **tenant**, is not applicable to fail the eviction application then equity demands that such *special course* shall not be available for an owner to get possession from an **encroacher/trespasser**, bona fide purchaser etc unless he (owner/landlord) *first* establishes relationship of **landlord** and **tenant** between him and the **opponent**. *Legally*, the Rent Controller is not competent to decide any other issue except that arising out of such relationship. Guidance is taken from the case *Afzal Ahmed Qureshi v. Mursaleen* 2001 SCMR 1434 wherein it is held as:-

“4. ... **In absence of relationship of landlord and tenant between the parties** the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court as **such controversies do not fall within the jurisdictional domain of the learned Rent Controller**. It is well-settled by now that “the issue whether relationship of landlord and tenant exists between the parties is one of jurisdiction and should be determined first, in case its answer be in negative the Court loses scission over his and must stay his hands forthwith”. PLD 1961 Lah. 60 (DB). **There is no cavil to the proposition that non-establishment of relationship of landlady and tenant as envisaged by the ordinance will not attract the provisions of the Ordinance**. In this regard we are fortified by the dictum laid down in 1971 SCMR 82. We are conscious of the fact that ‘ownership has nothing to do with the position of landlord and payment of rent by tenant and receipt thereof by landlord is sufficient to establish relationship of landlord and tenant between the parties’.

5. Having said so, the perusal of the record shows that admittedly there is no tenancy agreement and petitioner has failed to substantiate his claim with regard to tenancy by producing any rent amount received to him from his elder brother Muhammad Sadiq or his legal heirs. The failure of petitioner (landlord) in establishing existence of relationship of landlord and tenant shall *always* result in shutting door of **rent jurisdiction** upon him which (*failure*) even

can't be avoided by referral to plea of opponent that he claims to have purchased the property because such *dispute* is independent dealt with by Specific Relief Act as well *Code*.

6. Further, the *issue* of existence of relationship of landlord and tenant has *concurrently* been decided by both courts below against the petitioner. The petitioner has failed to point out any *illegality* in such conclusion except referral to said *plea* which, no way, helps to over-turn the cogent and reasonable conclusion, so drawn by two courts below hence petition merits no consideration which jurisdiction is available only to interfere if any wrong or illegal conclusion is drawn by two courts below. Reliance is made to case of *Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors* PLD 2006 SC 214 wherein it is held as:

“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.”

7. Accordingly, petition is dismissed, however petitioner would be entitled to approach civil court with regard to remedy of possession if advised so.

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