

## IN THE HIGH COURT OF SINDH AT KARACHI

**C.P. No.S-627 of 2022**

Petitioner : Muhammad Nizamuddin through  
Mr. Sami Ehson, advocate

Respondents No.1,2, 4 - 8 : Nemo

Respondent No.3 : Abdul Qudoos through Mr. Tajmu.  
Huusain Lodhi advocate

Date of hearing : 11.10.2022

Date of announcement : 11.10.2022

### J U D G M E N T

**SalahuddinPanhwar, J:** This petition assails judgment dated 28.05.2022 passed by Appellate Court in FRA No.09/2021 and order dated 13.01.2021 passed by Rent Controller concerned in Rent Case No.30/2020, whereby present petitioner was directed to vacate the demised premises.

2. Briefly the facts of the case are that respondent No.3/applicant had filed Rent Application for ejectment of petitioner/opponent from a shop constructed on ground floor on plot No.9, Sector 9-E, Banaras Town, Orangi, Karachi, the demised shop, on the ground to accommodate his son for running his personal business.

3. Petitioner contested the ejectment application by filing written statement, whereby he denied the relationship of landlord and tenant and stated that he is owner of the demise shop under an Agreement of Sale dated 30.04.1995 executed between him and the respondent No.3, being attorney of his father Ghulam Hafiz, who was the lawful owner of the demised shop. It is further stated that initially the demised shop was acquired by the petitioner from the father of the respondent No.3 at a monthly rent of Rs.500/- in the year 1991. Father of the respondent No.3 executed General Power of Attorney

in favour of the respondent No.3, who with the consent of his father, sold out the demised shop to the petitioner for sale consideration of Rs.290,000/-, which amount was paid to the respondent No.3.

4. Learned counsel for the petitioner contended that learned Rent Controller and learned Appellate Court passed the impugned judgment/order without taking into consideration the material brought before them; that there exists no relationship of tenant/landlord between the parties; that the agreement of sale and payment receipt prove the entitlement of petitioner which could not be discarded without reference of tangible material; that the Rent Controller and learned Appellate Court have not applied their mind judiciously while passing the impugned judgment/order; that the respondent No.3 falsely alleged that the demised shop is required for his son, which he has failed to prove at trial, hence he prayed for setting aside the judgment/order of the Rent Controller/ Appellate Court. He relied upon the cases of 1993 CLC 1074, 1984 PLD SC 38, 1996 SCMR 1501, 1986 CLC 677, 2014 MLD 23 and 1996 SCMR 877.

5. On the other hand learned counsel for the respondent No.3, while supporting the impugned judgment/order contended that respondent No.3 required the demised shop for his son for running a business, which plea has been successfully established at trial; that the learned Rent Controller and learned Appellate Court passed well-reasoned judgment/order after evaluating the evidence and material brought on record, hence their findings do not require any interference by this Court.

6. Heard the respective sides and carefully examined the available material.

7. Now, before proceeding further, it needs to be reiterated that this Court, *normally*, does not operate as a Court of appeal in rent matters rather this jurisdiction is *limited* to disturb those findings which, *prima facie*, appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to Appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather *tightened*. It is pertinent to mention here that captioned petition fall within the *writ of certiorari* against the judgments passed by both

courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence. The instant petition is against concurrent findings recorded by both the Courts below, thus, it would be conducive to refer paragraphs of the appellate Court, which reads as under:

“7. I have heard and considered the arguments of the learned counsel for the parties and have examined the propriety of impugned order. First of all it reveals that the opponent was inducted as a tenant in respect of the demise shop under a tenancy agreement which fact has been admitted by the opponent. Secondly the opponent has denied the relationship of landlord and tenant on the basis of alleged sale agreement executed in between the parties in respect of the demise shop. There are numerous case laws on the point that in such circumstances the opponent should first vacate the rented premises and then approach the competent civil court to agitate his civil right for performance of such agreement. It is well settled that the rent Controller is not empowered to determine the question of title between the parties which can only be determined by the competent court of civil jurisdiction. In this regard I have relied on the following case laws:-

“In case law reported in 2006 SCMR 1068 SC it has been held that Ejectment of tenant---Declaratory suit, pendency of---Recovery of possession---Procedure---Relationship of landlord and tenant was denied by the tenant and civil suit for determination of rights of the parties was pending---Rent Controller passed eviction order which was maintained upto High Court---Plea raised by the tenant was that till the decision of civil suit, his possession could not be disturbed and he could not be ejected---Validity---If a tenant denies the proprietary rights of the landlord then he is bound to first deliver the possession of premises in question and then to contest his proprietary rights in the property and if ultimately he succeeds in getting relief from the Court and decree passed in his favour, only then he can enforce the same according to law with all its consequences---Leave to appeal was refused.

“In case law reported in **PLD 2007 SC 45** it has been held that Ejectment of tenant---Landlord and tenant, relationship of---Determination---Question related to legal status of parties vis-a-vis premises and nature of their relationship inter se, is a mixed question of law and fact to be decided in the light of evidence---In absence of any evidence in rebuttal of title of landlord, there would be a strong presumption of existence of tenancy between the parties.”

“-In normal circumstances, in absence of any evidence to the contrary, owner of property by virtue of his title would be presumed to be landlord and person in possession of premises would be considered as tenant under the law.”

“In case law reported in PLD 2009 Supreme Court 546 it has been held that that a sale agreement did not confer any title on the person in whose favour such an agreement was executed and in fact it only granted him the right to sue for such a title and further that such an agreement did not affect the rights of any third party involved in the matter---Till such time that a person suing for ownership of property obtained a decree for specific performance in his favour, such a person could not be heard to deny the title of landlord or to deprive the landlord of any benefits accruing to him or arising' out of the property which was the subject-matter of the litigation--- Postponing the ejection proceedings to wait the final outcome of a suit for specific performance would be causing serious prejudice to a landlord and such a practice if approved by Supreme Court, would only give a licence to unscrupulous tenants to defeat the interest of landlords who may be filing suits for specific performance only to delay the inevitable consequences and to throw spanners in the wheels of law and justice.

[P.548] A”.

8. The evidence of the applicant shows that he required the demise shop for the personal bonafide need of his son Wajahat Hussain who is aged about 23/24 years. He is jobless and wants to start business of cloth in the demise shop. The applicant has recorded his evidence on oath, therefore, in such circumstances his statement cannot be disbelieved with regard to personal bonafide need of the demise shop for his son Wajahat Hussain. The opponent in his evidence could not discard the plea of personal bonafide need of the applicant.”

8. As well it would be conducive to refer relevant paragraphs of the order of the Rent Controller, which is that:-

“POINT NO. 1

9. The applicant has to prove his relationship of the tenancy with the opponent. In this regard applicant appeared in witness box and furnished his affidavit in evidence wherein he stated that he is the attorney of the owner of the property and the father of the Applicant rented out the rented premises in 1991 for eleven years for the rent of Rs. 450/-per month. He further stated that the lease deed executed by KMC in the name of Applicant dated 23-12-2013 is a legal and valid document. He further stated that the rented premises is required for the son of applicant who is now aged about 23/24 years, who is jobless nor can do any business due to the fact that he has no shop in his possession. He is a young man thereafter he claimed the ownership on the basis of sale agreement between him and the

applicant. Opponent has also admitted that he has not produced any receipt of payment between him and applicant. Opponent has produced copy of sale agreement whereby it was shown that applicant has sold out the premises to opponent against sale consideration Rs.2,90, 000/- but in said agreement it was not mentioned that whether the property was on rent with applicant, when the tenancy expires, it was also not mentioned that advance rent amount was to be fulfilled in final sale consideration. It is also matter of record that opponent has filed civil suit before this court which is pending between the parties, opponent has not yet been declared as owner of the property mere filing of the suit would not restrain the applicant to approach special forum to establish his right of tenancy. While dealing with the rent matter a Rent Controller has no power to adjudicate upon the title or another cause of action accrued over the same premises other than the tenancy.

19. In view of the above position, the point No.1 is opponent cannot takes shelter of civil suit to defeat rent proceeding of this matter. However, he reserves the right of his civil suit. This point is replied as proved.

26. Since the Hon'ble Supreme Court of Pakistan held that selection of business is the sole prerogative of the landlord so also choice of the rented shop. Non-mentioning of the nature of business is no matter. It was clearly mentioned in the 2019 CLC 1063, by his lordship Mr. Justice Nazar Akbar, Hon' ble Judge of High Court of Sindh that the learned appellate Court by insisting that landlords' son should be examined by rent controller on the issue o personal bonafide need was in violation of settled law laid down by superior Courts including the two cases cited before the appellate Court.

27. Eminent elegance of reliance raised as above and preceding discussion it has been demonstrated that applicant has sought the premises for his son in good faith. Point is responded as proved."

9. Initially, the petitioner denied relationship of tenant/landlord between the parties and claimed that he is lawful purchaser/owner of the demised shop under the Sale Agreement, it would suffice to say that a *sale* agreement is not a title document but at the most grants a right to sue for such title as well rights arising out of such agreement. Such *right* never comes to an end even if order of *ejectment* is recorded in Rent jurisdiction nor such order could *legally* cause any prejudice to legal entitlement of the *purchaser*, if he succeeds in such *lis*. Reference may well be made to the case of Syed Imran Ahmed v. Bilal & Ors (PLD 2009 SC 546) wherein it is held as:

*“5. It is principle too well established by now that a sale agreement did not itself create any interest even a charge on the property in dispute that unlike the law in England, the law in Pakistan did not recognize any distinction between the legal and equitable estates, that a sale agreement did not confer any title on the person in whose favour such an agreement was executed and in fact it only granted him the right to sue for such a title and further that such an agreement did not affect the rights of any third party involved in the matter. It may be added that till such time that a person suing for ownership of a property obtains a decree for specific performance in his favour, such a person cannot be heard to deny the title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the property which is the subject-matter of the litigation. Postponing the ejection proceedings to await the final outcome of a suit for specific performance would be causing serious prejudice to a landlord and such a practice, if approved by this Court, would only give a license to un-scrupulous tenants to defeat the interests of the landlords who may be filing suits for specific performance only to delay the inevitable and to throw spanners in the wheels of law and justice.”*

10. In another case of *Abdul Rasheed v. Maqbool Ahmed & others* (2011 SCMR 320), it has been 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 exists.”*

11. In the present case, the petitioner denied the lease in the name of respondent No.3, but admitted that it is in the name of Ghulam Hafiz (father of the respondent No.3), however, the petitioner has failed to produce any proof that the lease in the name of the respondent No.3 is fake. However, it is contended by the learned counsel for the petitioner that the petitioner has also filed a civil suit in this respect, which is pending adjudication before the competent Civil Court. The *legal* adjudication of such suit shall protect all the rights of the petitioner, claiming under sale agreement which includes restoration of possession and *damages* even therefore, once the relationship as *landlord* and *tenant* is found it would always be better to allow the *landlord*

continuing taking fruit of his *admittedly* owned property, particularly when *tenant / opponent* stops paying rent under plea of *purchaser*.

12. As to the case law cited by the learned counsel for the petitioner, in support of his submissions, the facts and circumstances of the said case is distinct and different from the present case, therefore, I find no illegality in the order *impugned* which is accordingly maintained. In consequence thereof the present petition is hereby dismissed.

**J U D G E**

Sajid