

THE HIGH COURT OF SINDH AT KARACHI

C.P.No.S- 372 of 2014

Petitioner : Mirza Sohail Ahmed Baig through Mr. Masjood Ali Memon, advocate

Respondent No.1 : Azra Shaeen (late) through her legal heirs through Mr. Kamran Mirza, advocate

Date of hearing : 05.10.2022

Date of judgment: 05.10.2022

J U D G M E N T

Salahuddin Panhwar, J: This petition assails judgment dated 12.02.2014 passed by appellate Court in FRA No.155/2011, whereby while setting aside the order dated 18.05.2011 passed by learned Rent Controller in Rent Case No.237/2010, allowed the ejectment application and directed the petitioner/opponent to vacate the demised premises within 90 days.

2. Briefly the relevant facts are that respondent No.1 filed an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 before the learned Rent Controller on the ground of personal bonafide need against the petitioner seeking his ejectment from shops No.1 and 3 situated in double storeyed House bearing No.A-377, Block No.1, Gulshan-e-Iqbal, Karachi. The demised premises were initially rented out to the mother of the petitioner namely Mrs. Idrees Begum in the year 1999, while tenancy started in the name of the petitioner in the year 2006 at a fixed rent of Rs.13,500/- against a fixed deposit of Rs.150,000/-.

3. Learned counsel for the petitioner contended that learned Appellate Court has passed the impugned judgment without taking into consideration the material brought before it; that learned Rent Controller rightly dismissed the ejectment application of the respondent No.1 while assigning sound reasons, but the learned Appellate Court has not applied his mind judiciously while passing the impugned judgment; that the respondent No.1 falsely alleged that the demised premises are required from her son, however, on the other hand she entered into an agreement to sell with the petitioner and received an amount of Rs.74,00,000/-; that it is clearly established from the evidence

adduced at trial by the respondent No.1 and her son that there was no personal need and a false plea has been agitated by the respondent No.1 in order to deprive the petitioner from the property for which he has paid a handsome amount and there was also no relationship of tenant and landlord between the parties after execution of such Sale Agreement, therefore, he prayed for setting aside the impugned judgment.

4. On the other hand learned counsel for the respondent No.1 while supporting the impugned judgment contended that the learned Rent Controller did not take into consideration the material brought on record and dismissed the Rent case filed by the applicant No.1 against the settled principles which on appeal before learned Appellate Court was set aside through impugned judgment which is based on cogent and well-reasoned findings and does not require any interference by this Court.

5. Heard and perused the record.

6. Before proceeding further, it would be conducive to refer relevant paragraph of the Order of the Rent Controller, whereby the ejection application filed by the respondent No.1 was dismissed, which is that:-

“The applicant in the present case has only alleged but even not specifically alleged that when, how and in what circumstances they intended to start a business of Medical and General Store in the said shops which she has already sold to the opponent through sale agreement and received a huge amount from him and even no notice or letter has been produced to show that the sale agreement was cancelled for any reason. The selling of property in question by sale agreement is not denied. Under such circumstances, there is no clear and bonafide intention on the part of landlord and appears to be malafide on the part of landlord that she had taken money for selling the property but later on it appears that she changed his mind. This cannot be deemed to be bonafide need on the part of landlord.

The Sindh Rented Premises Ordinance, 1979 is created and the same gives protection to both the parties. The opponent is running business in premises in question since 2006. The strong and honest evidence is required uproot the tenant from the premises in question and deprive him from his livelihood particularly when he intended to purchase the property for which he paid considerable amount to the applicant as per agreement to sale dated 01.03.2009. The tenant is otherwise regular in payment of rent as no allegation of default in payment of rent by the applicant has come on record. Under above circumstances, I am satisfied that the need of applicant is not genuine and in good faith. The point is accordingly decided in negative”

7. However, the learned Appellate Court reversed the findings arrived at by the learned Rent Controller and allowed the Rent Appeal filed by the respondent No.1 through the impugned judgment which reads as under:

"Be that as it may, where the sale agreement or any other transaction relied upon by the respondent/tenant is seriously and bonafide disputed by the landlord, the respondent/tenant cannot be allowed to retain the possession during the litigation, where he continues to deny the ownership of the landlady who had inducted him as a tenant, without any condition and/or reservation. It has been ruled that in such cases although the tenant has a right to adduce evidence and take a short time for that purpose to remain in occupation despite having set up a hostile title which is denied by the landlord, but on the well-known bar of estoppel in this behalf, he (the tenant) cannot be permitted to remain in occupation and fight the litigation for long time. Accordingly, the tenant is at liberty to prosecute the litigation wherein he should try to establish his claim but it should not be at the cost of the landlady/owner. It should be at the cost of himself. I take guidance from case law reported in PLD1991 Supreme Court 242. Hence in the light of above discussion I am of the humble opinion that the section 53-A CPC is not applicable under the attending circumstances.

No doubt, the proceedings before Rent Controller with regard rent premises being quasi-judicial in nature, who cannot travel beyond the scope of provision of SRPO 1979 and stepped into shoes of civil court. However, being a statutory authority exercising quasi judicial functions when required to determine any question, which, under the law, it has the authority to determine should decide all the questions arising before it. The case laws relied by the learned counsel for the appellants are attracting with the circumstances of the instant appeal.

With all fairness and in the light of the dictum laid down by the Hon'ble superior courts as well as keeping in view of the facts and circumstances of the instant case, I am of humble opinion that the impugned order dated 18.05.2011 passed by the learned Rent Controller is contrary to the law and facts of the case, hence, nullity in the eyes of law, having no legal effect, the same is hereby set aside, in consequences, the First Rent Appeal is allowed accordingly and ejectment application No. 237/2010 is hereby allowed as prayed. The opponent/respondent is directed to vacate the demised premises within the period of 90 days from the date of this order and handover its vacant and peaceful possession to the appellants without fail. The parties are left to bear their own cost."

8. In the present case, the petitioner has denied relationship of tenant/landlady between the parties on the basis of Sale Agreement executed between him and the landlady, however, it would suffice to say that though petitioner is claiming to have purchased the subject property but during his evidence, it has been admitted by him that he did not pay the remaining sale consideration to the respondent No.1. In any event 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."

9. 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."

10. It is also a matter of record that present petitioner does not deny or challenge the status of the respondent No.1 as *lawful owner* of the subject matter and since such suit for Specific Performance, so filed by the petitioner, is also pending before this Court on its original side. 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 *purchase* of the subject property.

11. With regard to the ground of personal bonfide need, the same is also proved as the petitioner during is cross-examination admitted that son of the respondent No.1 is jobless. The respondent No.1 in her evidence has asserted that her son is graduate, who wants to run Medical and General Store. It is a general principle that if the statement of landlord comes on oath if consistent with application for ejectment and not shaken in cross-examination, it is sufficient to prove that requirement of landlord is bonafide. Reliance is placed on the case reported as (1980 SCMR 593).

12. For what has been discussed above, I find no illegality in the judgment *impugned*, which is accordingly maintained. Resultantly, the petition in hand is hereby dismissed. These are the reasons for the short order announced on 05.10.2022.

J U D G E

Sajid