

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

F.R.A. No. 31 of 2019

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGES</b>
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1. For orders on office objection
2. For hearing of CMA No.4021/2021
3. For hearing of main case.

**6<sup>th</sup> June, 2022**

Mr. Ahmed Ali Hussain, Advocate for appellant.  
Mr. Iftikhar Javed Kazi, Advocate for respondents.

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**Omar Sial, J.:** S.M. Abdul Fetouh, who is now dead, has filed this appeal, through his legal heirs, one of whom is his widow Zainab Adavi. The Fetouh family is referred to as the “**Appellants**” hereinafter. The Appellants were dissatisfied with an order dated 23.05.2019 passed by the learned Additional Controller of Rent, Clifton Cantonment, Karachi in terms of which the Appellants were ordered to vacate a property situated on the eastern portion of plot number 10/1 situated on Zamzama Boulevard, Clifton, Karachi and hand over possession to Major (R) Zakauddin Khan, who has also died and was represented by his legal heirs. The Khan family is hereinafter referred to as the “**Respondents**”.

2. Facts necessary for the present purposes are as follows:

(i) It was claimed by Respondents that they had inducted the Appellants as tenants of the property in January 1984 on a monthly rent of Rs. 5,000 exclusive of all utility expenses incurred.

(ii) An application under section 17 of the Cantonments Rent Restriction Act, 1963 was filed by the Respondents on 12.01.1987 (Rent Case No. 04/1987) seeking eviction of the Appellants from the eastern portion of the subject property, on the ground of default in payment of rent. It was alleged that the Appellants had not paid any rent since October 1984. The Appellants on the other hand denied that they were tenants and disputed that a relationship of landlord and tenant existed between the parties.

(iii) The learned Additional Controller of Rent after hearing the parties reached the conclusion that a landlord tenant relationship did exist and further that a default in rent had also occurred hence the Appellants should vacate the property within 30 days.

3. Mr. Ahmed Ali Hussain, learned counsel for the Appellants in these proceedings has also urged the sole ground that the learned Additional Controller of Rent erred in holding that a landlord-tenant relationship existed between the parties. Mr. Hussain has argued that Appellants, had agreed to purchase a plot of land bearing the address 10/1-A, East on Zamzama Boulevard on 04.04.1983 from the Respondents and for that purpose an agreement to sell was entered into between the parties. The entire sale consideration was not paid by the Appellants with the understanding that the unpaid sale consideration would be made when the sale deed for the property would be registered. It is an admitted position that a sale deed was never registered transferring ownership of the property to the Appellants. The Appellants however had taken possession of the property. As the Respondents would not execute and register a sale deed, the Appellants filed a suit seeking specific performance of the agreement to sell (Suit No. 302 of 1987 subsequently renumbered as Suit No. 2229 of 1996).

4. Mr. Iftikhar Jawaid Qazi, learned counsel for the Respondents, on the other hand has argued that the Respondents are the owners of the subject property and that the title documents proving the same are on record. The ground taken by the Appellants that they had purchased property bearing No. 10/1-A is absolutely incorrect and that the no such address exists. He further argued that Suit No. 2229 of 1996 which the Appellants had filed seeking specific performance of the agreement to sell ostensibly entered into between the parties was dismissed on 18.08.2010 by the learned 4<sup>th</sup> Senior Civil Judge, Karachi South and that as no appeal was preferred against that judgment, the same has reached finality. Mr. Hussain has not rebutted or argued to the contrary. Mr. Qazi further argued that the true facts of the matter are that the Appellants had left Pakistan and that the current appeal has been filed by an unauthorized person by the name of Ashfaq Ahmed Pathan. The power of attorney which Pathan has produced is a forged one, which is apparent from the very face of the said document.

5. I have heard the learned counsels and have gone through the record of the proceedings. My observations and findings are as follows.

6. It is an admitted position that the suit that the Appellants filed seeking specific performance of the alleged agreement to sell entered into between the parties has been dismissed. The dismissal has also reached finality. Hence, the Appellants stance that they had purchased the property from the Respondents could not be proved. It further appears that Ayman A Fatouh, son of S.M. Abdul Fetouh, who appeared as witness in the rent case also admitted that there was no property with the address 10-1-A (which the Appellants had claimed was the address they had purchased from the Respondents).

7. At trial before the learned Additional Rent Controller, Lt. Colonel (R) Riaz Mohiuddin appeared as witness and testified that he was present when the Respondents had inducted the Appellants as tenants on the eastern portion of the premises identified as 10/1, Zamzama Boulevard Clifton for a monthly rent of Rs. 5000 and that the rent was to be paid in advance on or about the 5<sup>th</sup> of each month. He further stated that an amount of Rs. 50,000 was paid by the Appellants to the Respondents as advance rent. Another witness Major (R) Jawed Iqbal also testified on similar lines. It is interesting to note that though the Appellants claim that they were not tenants but owners, it was they themselves who submitted an agreement to lease dated 20.01.1984 entered into between Major (R) Zakauddin Khan shown as owner of the property and S.M. Abdul Fetouh as the lessee. This agreement to lease was ostensibly given by the Appellants to the erstwhile T & T Department in order to get a telephone connection. This fact in itself is sufficient to establish the landlord-tenant relationship as far as the Appellants are concerned though subsequently they challenged the same relationship.

8. There is evidence on record to show that Fetouh was deported from Pakistan as far back as in the year 1996 and in this connection the official letter of the Ministry of Interior dated 31.07.1996 is on record. The Government of Pakistan was of the view that he was acting in a manner prejudicial to the external affairs and security of Pakistan.

9. Prima facie Mr. Qazi is absolutely correct that the power of attorney ostensibly executed by Zainab Adavi in favour of Ashfaque Ahmed Pathan (the

original of which is on record) is an immensely suspicious and dubious document. A mere cursory look at the document and the changes made in it by hand in themselves leads a reasonable mind to that conclusion.

To conclude:

- (i) The Appellants failed to prove that they were the owners of the property in question.
- (ii) The Appellants failed in their suit seeking specific performance of the agreement to sell which they claimed the parties had executed.
- (iii) There is a tenancy agreement on record which establishes the landlord-tenant relationship.
- (iv) There were witnesses examined at trial who testified that the tenancy agreement was finalized before them.
- (v) The power of attorney showing Ashfaq Pathan as attorney of Adawy appears to be a heavily manipulated document.
- (vi) The bonafides of the Appellants are doubtful.
- (vii) The Appellants have not come to court with clean hands.

10. In view of the above, I find no reason to interfere with the impugned order. The appeal stands dismissed. I have shown judicial restraint by not imposing costs on the Appellants for having initiated what appears to be frivolous litigation.

JUDGE