

# IN THE HIGH COURT OF SINDH, KARACHI

Before

Mr. Justice Mohammad Abdur Rahman

## CONSTITUTION PETITION NO.S-491 OF 2023

Petitioner : Nadeem Masih, through Mr. Ghulam Rasool Advocate  
Respondent Nos.1to3 :  
Date of hearing : 25 May 2023

### J U D G M E N T

**MOHAMMAD ABDUR RAHMAN---J.**, This is a Petition maintained under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 that has been preferred by the Petitioner impugning the Judgment dated 15 April 2023 passed by the learned District Judge, Malir, Karachi in First Rent Appeal No. 08 of 2023 which upheld the Order dated 23 February 2023 passed by the learned IV<sup>th</sup> Rent Controller, Malir, Karachi, in Rent Case No. 109 of 2021.

2. The Petitioner claims to be the owner of House No. C-97, Block-“C”, Christian Colony, Bin Qasim, Malir, Karachi (hereinafter referred to as the “Said Property’) on which he contends that, he has constructed a ground plus one storey bungalow. He further contends that he had through an oral agreement in September 2020 rented out the ground floor of the Said Property to the Respondent No.1 at a rent of Rs.10,000/= per month. Subsequently, in July 2001 at the request of the Respondent No.2 he included the first floor of the abovementioned property within the area that he had rented to the Respondent No.1 and who consequently has become the tenant of the Said Property at a rent of Rs.15,000/= per month.

3. That Petitioner further contends that since July 2021 the Respondent No.1 has failed to pay rent and purports to maintain the application bearing Rent Case No. 109 of 2021 before the 4<sup>th</sup> Senior Civil Judge / Rent Controller, Malir, Karachi, to evict the Respondent No.1 under clause (ii) of sub-section 2 of the Sindh Rented Premises Ordinance, 1979 for default on the payment of rent and under clause (vii) of sub-section 2 of the Sindh Rented Premises Ordinance, 1979 in good faith for the personal use of the Petitioner as he contends that he needs the Said Property to house his brothers and their families.

4. That Respondent No.1 filed his written statement to Rent Case No. 109 of 2021 when he *inter alia* contended that:-

- (i) this Rent Case was one in a series of legal disputes that are ongoing as between the Petitioner and the Respondent No.1;
- (ii) the Respondent No.1 was the owner of House No. C-97, Block-"C", Christian Colony, Bin Qasim, Malir, Karachi, which he purchased from Muhammad Yasin on 20 May, 2019; and
- (iii) No relationship of landlord and tenant existed as between the Petitioner and the Respondent No. 1 to allow for the exercise of the jurisdiction by the Rent Controller under the provisions of the Sindh Rented Premises Ordinance, 1979

5. After recording evidence and hearing the Petitioner and the Respondent, the IV<sup>th</sup> Senior Civil Judge and Rent Controller Malir, Karachi was pleased to dismiss Rent Case No. 109 of 2021 on the ground that:

- (i) the onus of proving the relationship of landlord and tenant was on the Petitioner;
- (ii) that no written agreement had been produced to show that a Tenancy Agreement was executed as between the Petitioner and the Respondent No.1 to establish their relationship of landlord and tenant as prescribed

under Section 5 of the Sindh Rented Premises Ordinance, 1979;

- (iii) the Petitioner had failed to produce even one rent receipt to establish that the Petitioner had ever received any rent from the Respondent No.1;
- (iv) the evidence produced by the Petitioner witness did not prove the relationship of landlord and tenant.

6. The Petitioner being aggrieved and dissatisfied by the order of the learned IVth Senior Civil Judge and Rent Controller Malir, Karachi in Rent Case No. 109 of 2021, the Petitioner therefore preferred First Rent Appeal No. 08 of 2023 before the learned District Judge, Malir, Karachi which was also dismissed on 15 April 2023 on the ground that:-

- (i) there was no evidence on the record to establish the oral tenancy agreement as between the Petitioner and the Respondent No.1;
- (ii) that in the absence of a written agreement or an oral agreement, not even one receipt had been produced by the Petitioner to indicate that he was receiving rent from the Respondent No.1;
- (iv) that in the facts and circumstances no relationship of landlord and tenant was established as between the Petitioner and the Respondent No.1.

7. The Advocate for the Petitioner advanced arguments that both the IV-Senior Civil Judge and Rent Controller Karachi and the District Judge, Malir had:

- (i) not properly appreciated the evidence adduced by the Petitioner in respect of the relationship of landlord and tenant as between the Petitioner and the Respondent No.1;
- (ii) failed to rely on utility bills for the said property that were produced and which were in the name of the Petitioner which would establish his title over the said property;
- (iii) in fact decided the title of the Petitioner which could not be done in the jurisdiction vested in the Rent

Controller under Section 15 of the Sindh Rented Premises Ordinance, 1979;

- (iv) failed to appreciate that on the evidence adduced that the relationship of landlord and tenant existed as between the Petitioner and the Respondent No. 1.

The Advocate for the Petitioner did not rely on any case law at the time of the hearing of the Petition.

8. That I have heard the Advocate of the Petitioner and perused the record. The jurisdiction of this Court in a Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1979 to review an order of the Rent Controller under the provisions of the Sindh Rented Premises Ordinance, 1979 has been settled by the Supreme Court of Pakistan in the decision reported as **Shajar Islam vs. Muhammad Siddique**<sup>1</sup> wherein it was held that:<sup>2</sup>

“ ... The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal.”

However it is to be noted that in **Allies Book Corporaiton vs. Sultan Ahmed**<sup>3</sup> the Supreme Court of Pakistan was pleased to hold that:<sup>4</sup>

“ ... 2. With regard to the contention that the High Court in exercise of constitutional jurisdiction would not be competent to set aside the concurrent findings of the forums below and substitute the same with its own findings, Mian Mushtaq Ahmad submitted that the contention advanced by Mr. Neel Keshav was without any substance as it was not supported by the pronouncements of this Court in large number of cases wherein this Court categorically held that where the finding suffered from illegality, infirmity, misreading and non-reading of evidence on recoil, misconstruing the evidence or based on extraneous material then the

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<sup>1</sup> PLD 2007 SC 45

<sup>2</sup> *Ibid* at pg.47

<sup>3</sup> 2006 SCMR 152

<sup>4</sup> *Ibid* at pg. 158-159

High Court would be justified in setting aside such concurrent findings of the forums below and to substitute the same by its own findings. From the above discussion it can safely be deduced firstly, that a special forum or Tribunal proceeding with a case under a special statute is legally bound to decide the case rightly and in accordance with law and it has no arbitrary or fanciful discretion to decide the case wrongly in view of the pronouncement of this Court in case of Utility Stores Corporation Pakistan Limited v. Punjab Labour Appellate Tribunal and others (supra); and secondly, that the High Court is possessed of power in exercise of its constitutional jurisdiction to substitute the findings of the forums below with its own findings as per the pronouncements made by this Court in the cases of Muhammad Sadiq v. Punjab Labour Court No.1, Lahore and another; Haji Mohibullah & A Co. and others v. Khawaja Bahauddin and Messrs Olympia Spinning and Weaving Mills Ltd. and another v. State Life Insurance Corporation of Pakistan (supra). Mr. Neel Keshav failed to advance arguments or refer us to any authority of this Court in rebuttal of the settled principles so as to require us to deviate or take a different view relative to the pronouncements made in the above noted cases.”

In addition, again averring to this Courts jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to review an order of the Rent Controller under the provisions of the Sindh Rented Premises Ordinance, 1979, the Supreme Court of Pakistan has clarified in **Muhammad Hussain Munir vs. Sikandar and others**<sup>5</sup> wherein it was held that:<sup>6</sup>

“ ... It is wholly wrong to consider that the above constitutional provision was designed to empower the High Court to interfere with the decision of a Court or tribunal of inferior jurisdiction merely because in its opinion the decision is wrong. In that case, it would make the High Court’s jurisdiction indistinguishable from that exercisable in a full fledged appeal, which plainly is not the intention of the Constitution makers.”

In summary the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 to review the Judgment dated 15 April 2023 passed by the learned District Judge, Malir, Karachi in First Rent Appeal No. 08 of 2023 and the Order dated 23

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<sup>5</sup> PLD 1974 SC 139

<sup>6</sup> *Ibid* at pg. 142

February 2023 passed by the learned IV<sup>th</sup> Rent Controller, Malir, Karachi, in Rent Case No. 109 of 2021 would be as follows:

- (i) Where this Court comes to the conclusion that Judgement or Order passed are arbitrary, capricious, in excess of the jurisdiction of those courts or where the decision amounts to a miscarriage of justice, this court can interfere with the Judgment or Order in its jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973;
- (ii) While assessing whether the question of whether or not the Judgment or Order was passed within the jurisdiction of the Courts below, this Court should see whether the jurisdiction that has been exercised by the Courts below has been exercised either correctly or incorrectly and if it is found that the jurisdiction has been exercised by either the Rent Controller or by the Appellate Court incorrectly e.g. by not properly appreciating the evidence that was adduced, then this Court has the power under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, even if there are concurrent findings of the Courts below, to “substitute the findings of the forums below with its own findings”;
- (iii) The jurisdiction of this Court “to substitute the findings of the forums below with this Courts own findings” is however subject to the exception that where it is found that the Courts below **have exercised their jurisdiction correctly** but that on the facts and the evidence a different decision was also

possible, it is not open for this Court in such a situation to sit as a court of appeal or a court of revision and substitute the findings of the forums below with its own findings.

9. Under Section 5 of Sindh Rented Premises Ordinance, 1979 it has been prescribed that:

“ ... 5. (1) The agreement by which a landlord lets out any premises to a tenant shall be in writing and if such agreement is not compulsorily registerable under any law for the time being in force, it shall be attested by, signing by, and sealing with the seal of, the Controller within whose jurisdiction the premises is situate or, any Civil Judge or First Class Magistrate.

(2) Where any agreement by which a landlord lets out any premises to a tenant is compulsorily registerable under any law for the time being in force, a certified copy of the registered deed and where the agreement is not so registerable, the original deed duly attested under sub-section (1), shall be produced and accepted in proof of the relationship of the landlord and tenant:

Provided that nothing in this section shall affect any agreement between the landlord and tenant immediately before coming into force of this Ordinance.”

The interpretation of this Section was subject to much debate in this Court and before the Supreme Court of Pakistan. In **Hakim Ali vs Muhammad Salim**<sup>7</sup> it was held that:<sup>8</sup>

“ ... 7. There is yet another difficulty in the way of the appellant. The tenancy was created in 1982, much after promulgation of Sindh Rented Premises Ordinance, 1979, section 5 whereof provides that the agreement by which a landlord lets out any premises to a tenant shall be in writing and if such agreement is not compulsorily registrable under any law for the time being in force, it shall be attested, signing by and sealing with the seal of the Controller within whose jurisdiction the premises is situated or any Civil Judge or First Class Magistrate. According to the appellant he had let out the premises to the respondents on the terms mentioned on the back of the printed rent receipt. Therefore, he relied on this agreement but this agreement does not satisfy the requirements of section 5 inasmuch as it is not signed and attested, as provided in section 5 of the Ordinance, by the Controller or by any Civil Judge or a First Class Magistrate. However, question does arise that what is the effect of non-compliance of the provisions of section 5 of the Ordinance. In this regard Mr. Fakhruddin G. Ebrahim. learned

<sup>7</sup> 1992 SCMR 46

<sup>8</sup> *Ibid* at pg. 51-53

counsel for the appellant, referred to the case of Mst. Fatima v. Mst. Hanifa 1986 C L C 1613, wherein our brother Salim Akhter, J. held that since no penalty was provided for non-compliance of the provisions of section 5 of the Ordinance, the provisions were directory and not mandatory. He further held that section 5 being in the nature of procedural provisions, agreement not made in the form described in the section not to be nullified or invalidated nor the parties to be debarred from proving the relationship of landlord and tenant by producing and proving such agreement or other admissible evidence as provided under law.

8. Our brother differed from the following view taken by another learned Judge of the Sindh High Court in the case of Habib Ahmed v. Liaquat Hussain PLD 1985 Kar. 741.

“ It would be noted from the subsection (1) of above section that every agreement by which any premises is to be let out has got to be reduced to writing. The use of word "shall" in the said subsection denotes the intention which clearly is that it is mandatory for the parties to have such agreement in writing. In other words the oral agreement in respect of such transaction will have no legal force and hence will not be permitted to be used as the basis for any litigation in respect of any matter including ejection of tenant under the Ordinance. This is clear from subsection (2) hereinabove which requires the written agreement to be produced and accepted as proof of the relationship of landlord and tenant between the parties.

In view of the legal position stated hereinabove, the respondent, in the instant case, could not base his application of ejection on the oral agreement and as such the application for eviction of the appellant based on such agreement was incompetent. The respondents, if so desired, could seek the ejection of the appellant at legal forum other than the Court of Rent Controller, if so permitted by any law. Perhaps he could have recourse to Civil Court for this purpose. Thus the learned Rent Controller had no jurisdiction to entertain the ejection application which could be dismissed for want of written agreement alone.?

11. There is no doubt that section 5 of the Ordinance does not provide that if the tenancy agreement containing the terms and conditions on which the premises is let out, is not in writing and executed in the manner provided in section 5, then that would be the consequences. But, it is well settled that when the law gives direction to do a thing in a particular manner, it shall be done in that manner or not at all. In my opinion, in such a case one consequence would be that no relationship of landlord and tenant between the parties in respect of the premises will come into existence. If the existence of the relationship is otherwise admitted but the agreement is not in writing or executed in the manner provided in section 5 of the Ordinance, the terms and conditions which are contained in such an agreement, if they are inconsistent with any provision of the Ordinance, they would be invalid to the extent of inconsistency. In other words if the tenancy is admitted the parties shall be deemed to have held the tenancy in accordance with the provisions of the Ordinance. The

object of section 5 seems to avoid any controversy as to the existence of relationship of landlord and tenant between the parties and to provide documentary proof thereof, and also to provide documentary proof of the terms and conditions on which the premises is let out to the tenant.

12. However, as regards the premises which have been let out prior to the coming into force of the Ordinance, section 5 of the Ordinance makes exception and provides as follows:

"Provided that nothing in this section shall affect any agreement between the landlord and tenant immediately before coming into force of this Ordinance."

Accordingly, if a premises is let out prior to the coming into force of the Ordinance on terms and conditions printed on the receipt or its back, they would be binding on the parties provided the tenant expressly acknowledges that he has agreed to such terms and conditions in some form or the other by signing counterfoil of the receipt below such words as. "Agreed to the terms and conditions printed on the receipt or its back". Merely printing of the terms and conditions without evidence that the tenant agreed to the same would not, and could not, in my opinion, be effective for the reason of absence of mutuality and the parties being ad idem"

10. Conversely in **Faiz Sons vs. Hakim Sons (Impex) Private Limited**<sup>9</sup> it was held that:<sup>10</sup>

" ... So far as the provisions of section 5 of the Rent Ordinance are concerned, no doubt, the said section enjoins that a tenancy agreement shall be in writing and if such agreement is not compulsorily registerable under any law for the time being in force, it shall also be attested and signed and sealed with the seal of the Controller, as provided in subsection (1) of the said section. Although, the provisions of the Rent Ordinance do not indicate further as to what will be the consequences in case of non-compliance of the said provisions, nevertheless the legislative intent clearly appears to be that the said provisions be followed. In *Hakim Ali v. Muhammad Salim* (1992 SCMR 46), the effect of non-compliance with the provisions of section 5 was examined by this Court and it was held that, in case existence of relationship of landlord and tenant between the parties was not in dispute, the tenancy would be governed only by the provisions, of the Rent Ordinance. It was further held that the object behind section 5 only seems to be to avoid any controversy as to the existence of such relationship between the parties and to furnish proof in respect thereof and the terms and conditions on which the premises are let out to the tenant. However, in *Muhammad Rafique v. Messrs Habib Bank Limited* (1994 SCMR 1012), it was observed that denial of tenancy merely on a technical ground of absence of a written agreement as required by section 5 cannot serve the cause of justice or deprive a tenant of his tenancy rights. Although, in the earlier judgment it was observed that in case a tenancy agreement is not executed in the manner provided in section 5 of the Rent Ordinance, the terms and conditions contained therein would be invalid in case the same are found to be inconsistent with any provision in the Ordinance, but that in no way can lead to an inference that in such case all the provisions contained in a tenancy agreement would be rendered invalid or void. If such was the intent, the same would have been indicated more explicitly in the Rent Ordinance. If what the parties agreed can be clearly

<sup>9</sup> 1999 SCMR 2771

<sup>10</sup> *Ibid* at pg. 2773-2774

spelt out and the provision in the agreement sought to be enforced is also not in conflict with the statute, the mere fact that the agreement was not executed in the manner as required by section 5 cannot render such agreement invalid. Provisions of a statute which do not provide for consequences which may follow upon their non-compliance have been generally held to be directory and such strict consequences, therefore, cannot flow from their non-compliance. In the present case, existence of fresh agreement, whereby the rate of rent was enhanced by the parties, is neither in dispute nor the said provision in the agreement is claimed to be inconsistent with any of the provisions of the Rent Ordinance. Consequently, even if the said agreement was not executed in the manner as provided by section 5 of the Rent Ordinance; the same was still valid and operative between the parties.”

11. While noting that the judgment of the Supreme Court of Pakistan passed in **Faiz Sons vs. Hakim Sons (Impex) Pirvate Limited**<sup>11</sup> has discussed the earlier decision in **Hakim Ali vs Muhammad Salim**<sup>12</sup> and has come to the conclusion that the provisions of Section 5 of the Sindh Rented Premises are not mandatory and being a full bench it would seem that **Faiz Sons vs. Hakim Sons (Impex) Pirvate Limited**<sup>13</sup> has in effect overruled the earlier judgment of **Hakim Ali vs Muhammad Salim**.<sup>14</sup> From the findings as given by the Supreme Court of Pakistan the position of law that emerges is that:

- (i) the purpose of Section 5 of the Sindh Rented Premises Ordinance, 1979, was to create a mechanism whereby the issue of the relationship of landlord and tenant could be put beyond doubt on the basis of the compliance of the provision of that Section;
- (ii) the provisions of Section 5 are directory and not mandatory and a failure to execute a tenancy agreement in compliance with that section would not **automatically** oust the jurisdiction of the Rent Controller under the provisions of the Sindh Rented Premises Ordinance, 1979;

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<sup>11</sup> 1994 SCMR 1102

<sup>12</sup> 1992 SCMR 46

<sup>13</sup> 1994 SCMR 1102

<sup>14</sup> *Ibid*

- (iii) in the event that compliance has **not** been made with the provisions of Section 5 of the Sindh Rented premises Ordinance, 1979 but the landlord and tenant in their pleadings admit that relationship, then no further evidence is required to be adduced by either party to establish the relationship of landlord and tenant;
- (iv) in the event that compliance has not been made with the provision of Section 5 of the Sindh Rented Premises Ordinance, 1979 and there is a dispute as to whether the relationship exists, the burden to prove such a fact is on the landlord and which he can prove by adducing evidence of either an oral or written agreement of a tenancy through evidence

Reliance in this regard may be also be placed on the decision of the Supreme Court of Paksitan in **Haji Abdul Sattar vs. Additional District Judge, Rawalpindi**<sup>15</sup> wherein it was held:<sup>16</sup>

“ ... 7. However even otherwise, in the absence of proper evidence in regard to the existence of oral tenancy and in the face of the pleadings of the respondents before the settlement authorities denying the existence of any tenancy and also without examining the legal capacity of the respondents to create such tenancy, the High Court had clearly fallen in error in holding, for the first time, that an oral tenancy did exist from 1959. No document has been produced from the Wattan Textile Mills to show the existence of such tenancy or payment of the to the respondents in pursuance of the tenancy for any period during the span from 1959 to 1972 when the Mills was attached. On the basis of material on record, the respondents cannot claim to have established the existence of relationship of landlord and tenant between them and the Mills, between them and the appellant.”

(Emphasis is added)

It would therefore follow that where the relationship of “landlord” and “tenant” has been denied by an opponent in Rent Case, the landlord to establish a relationship of “landlord” and “tenant” cannot discharge such a burden by showing his title to the tenement. In addition, the landlord has to show that a relationship of “landlord and “tenant” exists either by an oral

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<sup>15</sup> 1984 SCMR 925

<sup>16</sup> *Ibid* at pg. 929

or a written tenancy agreement and which can *inter alia* be confirmed by the payment and receipt of rent either by the production of a rent receipt or through other evidence. If no relationship of “landlord” and “tenant” is established the rent controller would lose his jurisdiction under the provisions of the Sindh Rented Premises Ordinance, 1979 to entertain the *lis* and which jurisdiction would thereafter be assumed by the civil courts.

12. That Petitioner in his affidavit-in-evidence has stated that:-

- “ ... 3. That I say that I am owner of House No.C-97, Block-C, Christian Colony, Eidu Goth, Bin Qasim, Malir, Karachi and constructed double storey house, which was purchased by me on 11.06.2019 from Manzoor Masih.
- (Photocopy of Sale Agreement is attached with plaint as Annexure-A)
4. That I say that I have entered in a oral rent agreement with opponent and given ground floor of rent premises on basis of monthly rent in September 2020 at the rate of Rs.10,000/=/- per month.
5. That I say that thereafter the opponent has requested me for giving the double storey of said rent premises and thereafter I have given the opponent double storey of said rent premises on monthly rent at the rate of Rs.15,000/= per month as a whole in the month of July 2021 and handed over the possession of rent premises to the opponent.”

That during deposition the Petitioner has made the following admissions:

“ ... It is correct to say that I have not submitted Tenancy Agreement before this Court as per paras-4 of affidavit-in-evidence. It is correct to say that Grace of Covenant Assembly of God Church was not situated in same name in the year 2019. My source of income was salary from Church in the Year 2019. It **is correct to say that locality is Katchi Abadi.** I entered into the Sale Agreement on 11.06.2019. I paid sale consideration amount on same day. I brought Stamp paper of sale agreement. It is correct to say that the stamp paper was issued on 10th June 2019 and same was entered on the same date and executed on 11th June, 2019”

(Emphasis is added)

Regarding his title over the property the Petitioner has averred that he purchased the property from one Manzoor Masih by an Agreement of Sale on 11 June 2019 and which fact was confirmed by Manzoor Masih in his

capacity as the seller of the property. However, when a question was framed as to whether Mr. Manzoor Masih had any knowledge of the existence of a tenancy agreement as between the Petitioner and the Respondent No.2 he replied by saying:

“ ... I do not know any Tenancy Agreement executed between Nadeem Masih and Azeem Yousuf”

13. Conversely during his cross examination the Respondent No.1 deposed that he had purchased the property from one Muhammad Yameen on 20 May 2019, He during his deposition stated that:

“ ... I have been residing in Eidu Goth since 2002. I know Pester Pervaiz for last about 15 years. It is correct to say that Pester Pervaiz has visiting terms with me. It is incorrect to say that son of Manzoor Masih namely Sabir resides adjacent to my residence. It is incorrect to say that total area of plot No.C-97 is about 240 square yards. It is correct to say that Sanad was issued in name of Manzoor Masih in respect of plot No.C-97. It is correct to say that SSGC bill is being issued in name of Sabir Masih. It is correct to say that K-electric is being issued in name of Nadeem Masih. Vol. says that K-Electric bill was initially in the name of Sabir Masih for about last 6 months. K-electric bill is being issued in the name of Nadeem Masih. It is incorrect to say that I am tenant of premises for years 2019. It is incorrect to say that I was paying Rs.15,000/= per month rent to Nadeem Masih from 2019 to July, 2021. It is correct to say that I used to pay Electricity and SSGC bills. It is correct to say that my sister in law namely Mst.Lubna lodged FIR No. 329 of 2021 at P.S Bin Qasim against brother of Nadeem Masih namely Pervaiz Masih. Nadeem Masih filed rent case against me but there is no relationship as landlord and tenant between Nadeem Masih and me. It is correct to say that I have not produced any documents showing that Yaseen purchased rent premises from Parvaiz Masih. It is correct to say that I have not challenged sale agreement executed between Manzoor Masih and Nadeem Masih before any forum. It is incorrect to say that sale agreement as Exh-0-1/B is forged and fabricated. It is incorrect to say that I am tenant of applicant and want to occupy the rent premises. It is correct to say that my borther Zaheer lodged FIR No. 355/2021 at P.S Bin Qasim against applicant Nadeem Masih. It is correct to say that relative of Nadeem Masih lodged FIR against me. It is incorrect to say that I am deposing falsely”

14. The evidence as adduced by the Petitioner and the Respondent No.1 lays bare the various issues that will arise as between persons purporting to rent property in respect of land in their possession in Katchi Abadies. While there is nothing on record to confirm as to whether or not

the Said Property is a **declared** Katchi Abadi or not, what is apparent is that neither the Petitioner nor the Respondent No.1 have a registered document to confirm their ownership of the Said Property. In the absence of a registered title deed, each of them have produced an agreement of sale on the basis of which they claim title. Each of them have also called the person from whom they have purportedly purchased the property to depose on their behalf. To complete the comparison the only variation that exists in the depositions is the admission on the part of the Respondent No.2 that various utility bills are in the name of the Petitioner and his relatives, which importantly would show that at some time the Petitioner was in possession of the Said Property.

15. The status of a person who is in possession of land in an **undeclared** Katchi Abadi has been considered in **Abdul Ghafoor vs. Allah Buksh**<sup>17</sup> wherein it was held:<sup>18</sup>

“ ... It is pertinent to note that the plot in dispute together with the constructions thereon is situated in a Katchi Abadi. According to his own admission the respondent No.1/ Plaintiff had purchased the property in dispute from one Mst. Saira for a sum of Rs. 8,000. There is nothing on record as to what title, interest or right Mst. Saira had in respect of the property in dispute. Obviously she was also an encroacher or a usurper of the plot in dispute and whatever construction had been raised by her was also illegal and without and lawful authority. **The alleged sale made by her in favour of respondent No. 1/ plaintiff could not confer on him title right or interest in the demised property better than she herself had, which was that of an encroacher or a usurper. Unauthorised occupation or any encroachment over a property or any other property does not provide a right to the encroacher or a trespasser either for the transfer of the said property or for claiming himself to be the owner/title-holder of the said property.**”

(Emphasis is added)

16. The Petitioner having failed to produce any registered title document and relying solely on the Agreement of Sale to establish his title

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<sup>17</sup> 2001 CLC 370

<sup>18</sup> *Ibid* at pg. 374-375

therefore cannot consider himself as the owner of the land. The status of the Respondent No.1, who is also claiming title to the said property on the basis of an Agreement of Sale, is no better. It would therefore seem that, two persons both of whose status are *prima facie* that of a trespasser are claiming ownership of the Said Property are claiming title as against the other! The only other document that the Petitioner has produced are utility bills which documents cannot be considered to be title documents. In this regard, I am in complete agreement with the decision of Naeem Azhar Siddiqui, J. in **Syed Mazhar Imam Rizvi vs. Mst. Yasmin Bano**<sup>19</sup> wherein he held that:<sup>20</sup>

“ ... Strangely enough, the Petitioner has not filed any title document in respect of the said property before the learned Rent Controller and has thought it prudent to rely on an electricity bill only which, admittedly is not a title document.”

As has been correctly held by the District Judge Malir, Karachi in F.R.A No. 08 of 2023, the Rent Controller does not have the jurisdiction under the provisions of the Sindh Rented Premises Ordinance, 1979 to determine the title of either the Petitioner or of the Respondent No. 2 and where evidence produced by the Petitioner cannot *prima facie* establish the title of the Petitioner to the Said Property the IV-Senior Civil Judge & Rent Controller Malir, was left with no choice but to dismiss Rent Case No. 109 of 2021 as not being maintainable.

17. While noting that Petitioner has failed to establish his title to the Said Property, it is also apparent that the Petitioner while claiming to be the landlord has failed to produce either an agreement of tenancy, or a rent receipt or any other proof that he has received rent from the Respondent No.1. Even the witness that deposed on his behalf has

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<sup>19</sup> 2009 MLD 935

<sup>20</sup> *Ibid* at pg. 939

stated that he had no knowledge of whether or not the Said Property had been rented out by the Petitioner to the Respondent. As no proof whatsoever has been adduced by the Petitioner to establish the relationship of landlord and tenant, I am of the opinion that learned District Judge, Malir, Karachi in First Rent Appeal No. 08 of 2023 and the learned IV<sup>th</sup> Rent Controller, Malir, Karachi, in Rent Case No. 109 of 2021 had correctly held that the relationship of landlord and tenant had not been established and had correctly dismissed rent Case No. 109 of 2021 and Rent Appeal No. 08 of 2023.

18. The relationship of landlord and tennant having not been established the jurisdiction of the rent controller to give any finding on the remaining two issues of default and the requirement of using the Said Property by the Petitioner in good faith falls by the side and which issues were also correctly not decided by the IV<sup>th</sup> Senior Civil Judge and Rent Controller Malir, Karachi in Rent Case No. 109 of 2021 and by the District Judge Malir, Karachi in First Rent Appeal No. 08 of 2023.

19. I am therefore of the opinion that the Judgment dated 15 April 2023 passed by the learned District Judge, Malir, Karachi in First Rent Appeal No. 08 of 2023 upholding the Order dated 23 February 2023 passed by the learned IV<sup>th</sup> Rent Controller, Malir, Karachi, in Rent Case No. 109 of 2021 were correctly adjudicated on by each of those courts. There being no illegality or infirmity I am inclined to uphold the Judgment dated 15 April 2023 passed by the learned District Judge, Malir, Karachi in First Rent Appeal No. 08 of 2023 and the Order dated 23 February 2023 passed by the learned IV<sup>th</sup> Rent Controller, Malir, Karachi, in Rent Case No. 109 of 2021 and which had led me to believe that is Petition was misconceived and not maintainable and on account of which I had

dismissed this Petition on 25 May 2023 and the foregoing are the reasons for that order.

Dated: 7 July 2023.

JUDGE