

IN THE HIGH COURT OF SINDH AT HYDERABAD

CP S-105 of 2005 : Hakeem Syed Abdul Majeed
For the Petitioner/s : Mr. Aqeel Ahmed Siddqui, Advocate.
For the Respondent/s : Mr. Shamsuddin Rajper, D.A.G.
Date/s of hearing : 24.10.2023.
Date of announcement : 24.10.2023.

ORDER

Agha Faisal, J. This is a writ petition challenging concurrent findings of the statutory forums in a rent matter. The trial court held that the petitioner could not establish title to the property; hence, the matter could not fall within the landlord tenant relationship. Upon consideration, the findings were maintained by the appellate Court, hence, this petition.

2. Rent Application 115 of 1979 was filed before the 3rd Senior Civil Judge / Rent Controller, Hyderabad and the same was dismissed vide order dated 24.03.2000. The operative observations are reproduced herein below:

“In view of the above discussion I am of the considered opinion that the applicant claims himself to be owner of the demised premises but since the opponent No.2 is receiving the rent from opponent No.1 since 1964 and the opponent No.2 do not admit the claim of applicant that the demised premises was purchased by the applicant and the applicant is owner of the same, therefore, unless and until the applicant do not establish his title from a competent Civil Court the relationship of land lord and tenant between the applicant and opponent No.1 could not conveniently be determined by the Rent Controller. Accordingly, the point No.01 is answered in negative.”

3. FRA 246 of 2001 was filed against aforementioned judgment and the same was dismissed vide judgment dated 28.05.2005. The learned appellate Court observed that after consideration of the evidence no infirmity could be identified in the order impugned, hence, the same was maintained and upheld.

4. Aggrieved by the aforementioned orders, the petitioner filed the present writ petition in the year 2005 and the same has remained pending for over eighteen years ever since.

5. Per petitioner's counsel the respective forums failed to appreciate the evidence in its proper prospective and disregarded the judicial pronouncement in favour of the petitioner with respect to the property. Learned counsel further averred that in the presence of a demonstrable tenancy relationship the issue of title ought not to take any precedence.

6. Learned counsel for the respondent supported the impugned judgments and submitted that no interference is merited therewith in the writ jurisdiction of this Court.

7. It is observed that appeal is a creation of statute and in the absence of any such remedy being provided none can be presumed¹. Once the statutory remedial process has been exhausted, recourse to writ jurisdiction cannot be taken as a matter of right; *inter alia* as the same *prima facie* impinges upon the finality granted by statute to the judgment of the last appellate forum. Since, the appellate hierarchy has already been exhausted the only issue that could be looked in by this Court in the exercise of its writ jurisdiction is whether there is any patent illegality apparent from the orders impugned.

8. The learned trial Court concluded that the petitioner remained unable to establish title to the property hence could not befall himself in the definition of landlord. The learned counsel referred to a judgment in Suit No.75 of 1988, however, it is noted that the same finds no mention in the rent application (memorandum of appeal) filed by the petitioner himself. Even otherwise, the ambit of the said proceedings was circumscribed by the prayer clause which is reproduced herein below:

- (a) It may be declared that the construction raised by the defendant over the property bearing City Survey No.G/226 Rishi-ghat, Hyderabad and passage thereof, is illegal, un-authorized and without any lawful authority.
- (b) Restrain the defendant by permanent Injunction arrecting any construction over the property No:G/2206, Rishi-ghat, Hyderabad or part, thereof by the defendant himself, his relatives, employees, agents or through any person claiming under him.
- (c) To pull down and demolition of the construction raised over the said property No:G/226, and passage thereof.
- (d) Any other relief which this Hon'ble Court deems fit and proper.

9. Whilst the aforementioned judgment was not in respect of any title of the petitioner himself, it is admitted that the same was neither cited nor relied upon by the petitioner in his case before the forums below and it is the considered opinion of this Court the same cannot be made the basis to set the entire litigation, spanning a generation, at naught. It is settled

¹ Per *Ijaz ul Ahsan J* in *Gul Taiz Khan Marwat vs. Registrar Peshawar High Court* reported as *PLD 2021 Supreme Court 391*.

law that the burden is upon a claimant / plaintiff to discharge in order for his claim to be successful. Any evidential afterthought, notwithstanding its admissibility or weightage, could not be permitted to ordinarily defeat the entire legal process; admittedly having attained finality per the statutory hierarchy, in a writ petition.

10. Petitioner's learned counsel remained unable to demonstrate whether the petitioner had the capacity to file the rent application, within the meaning of Section 2(f) of the Sindh Rented Premises Ordinance, 1979². Learned counsel remained unable to demonstrate any authorization or entitlement from the record. The relationship of landlord and tenant is defined in the Sindh Rented Premises Ordinance 1979 and unless the precepts thereof are qualified the Rent Controller may not entertain proceedings in such regard. While the petitioner remained at liberty to agitate any proprietary and / or possessory rights with respect to the relevant property before the Court of competent jurisdiction, however, this Court concurs with the learned appellate court that no case was ever made it to agitate the *lis* before the learned Rent Controller.

11. It is apparent that the concurrent findings have been rendered in appreciation of the evidence and no infirmity could be identified in the orders impugned, nor could it be demonstrated that the conclusion drawn could not have been rested upon the rationale relied upon. A recent judgment of the High Court in the case of *Ali Tasleem*³ has also deprecated the tendency to utilize the writ jurisdiction of this Court as a subsequent unsanctioned appellate forum in rent matters *inter alia* in the following terms:

“It is settled law that the ambit of a writ petition is not that of a forum of appeal, nor does it automatically become such a forum in instances where no further appeal is provided, and is restricted *inter alia* to appreciate whether any manifest illegality is apparent from the order impugned... Insofar as the plea for *de novo* appreciation of evidence is concerned, it would suffice to observe that writ jurisdiction is not an amenable forum in such regard . In cases wherein the legislature has provided only one Appeal as a remedy, like family and rent cases, it has been the consistent view of the Apex Court, that invoking of Constitutional jurisdiction in such matters as a matter of right or further appeal is not a correct approach.”

² “landlord” means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises;

³ Per *Muhammad Junaid Ghaffar J* in *Ali Tasleem vs. Court of IXth ADJ Karachi East (CP S 985 of 2023)*.

12. In view of the foregoing, this petition is found to be devoid of merit, hence, hereby dismissed.

Judge

Ahmed/Pa,