

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
C.P. No.S-1506 of 2019

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Date: Order with signature of Judge

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For hearing of Main Case.

Date of hearing: 25 May, 2023

Petitioner: Syed Khurram Ilyas Naqvi through Mr. Afaq Yousuf, Advocate

Respondents No.1&2: Atif Saleem through Mr. Tariq Mehmood A. Khan, Advocate

**J U D G E M E N T**

**MOHAMMAD ABDUR RAHMAN,J:** The Petitioner maintain this Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 as against the Judgement and Decree dated 2 December 2019 passed by the IXth Additional District & Sessions Judge, Karachi (East) in FRA No.141 of 2019 upholding an order dated 2 September 2019 passed by the IIIrd Rent Controller, Karachi (East) dismissing Rent Case No.113 of 2017 that had been maintained by the Petitioner.

2. The Petitioner had maintained an application under clause (ii) of Sub-Section (2) of Section 15 of the of the Sindh Rented Premises, Ordinance, 1979 bearing Rent Case No.113 of 2017 before the IIIrd Rent Controller Karachi (East) against the Respondent No. 3 alleging that the Respondent No. 3 had defaulted in his obligation to pay rent to the Petitioner. The Petitioner averred in Rent Case No. 113 of 2017 that in his capacity as the owner of shop No.6, Mussarat Arcade, Block 13-A, Gulshan-e-Iqbal, Karachi (hereinafter referred to as the "Said Property") he had sent a notice under Section 18 of the of the Sindh Rented Premises, Ordinance, 1979 to the Respondent No. 3 clarifying that he was the owner of the Said Property

and that rent should thereafter be paid to him. That as the Respondent No. 3 did not acceded to this request, he had therefore defaulted in the payment of the rent of Rs.720,000/- from March 2012 to February 2017 and was liable to being evicted from the Said Property.

3. The Respondent No. 3 conversely contended that the predecessor in interest of the Petitioner i.e. Mst. Mussarat Parveen had entered into an Agreement of Sale on 17 November 2001 with one Ms. Masroor Fatima and whereafter a transfer letter had been issued on 18 November 2011 by Naqvi Construction Co., Contractor & Builders in favour of Mst. Masroor Fatima allotting the Said Property to her. It seems that no sub-lease was ever executed by Mst. Mussarat Parveen in favour of the Mst. Masroor Fatima. It seems that thereafter the husband of Mst. Mussarat Parveen on the basis of a Power of Attorney that had been executed by her in his favour executed a Deed of Sub-Lease in favour of his son i.e. the Petitioner in breach of the terms of the Agreement of Sale dated 17 November 2001. Upon getting the requisite knowledge of the Deed of Sub-Lease, Mst. Masroor Fatima maintained Civil Suit No.970 of 2017 before the IInd Senior Civil Judge Karachi (East) praying for the cancellation of the Deed of Sub Lease and the execution of a Sub-Lease in her favour. Civil Suit No. 970 of 2017 was dismissed on 2 September 2019 as being barred under Article 113 of the First Schedule read with Section 3 of the Limitation Act, 1908 and against which an appeal is apparently pending.

4. Rent Case No.113 of 2017 was heard by the IIIrd Rent Controller, Karachi (East) who vide his order dated 2 September, 2019 dismissed Rent Case No.113 of 2017 holding that the relationship of a landlord and tenant could not be established between the Petitioner and the Respondent No.3.

5. The Petitioner thereafter maintained an appeal under Section 21 of the of the Sindh Rented Premises, Ordinance, 1979 bearing FRA No.141 of 2019 before the IXth Additional District & Sessions Judge, Karachi (East) and which appeal was also dismissed on 2 December, 2019 on the ground

that the Petitioner had failed to establish that a relationship of landlord and tenant existed as between himself and the Respondent No.3.

6. Being aggrieved and dissatisfied with the Judgement and Decree dated 2 December 2019 passed by the IXth Additional District & Sessions Judge, Karachi (East) in FRA No.141 of 2019 and the order dated 2 September 2019 passed by the Illrd Rent Controller, Karachi (East) dismissing Rent Case no.113 of 2017, the Petitioner now maintains this Petition.

7. Mr. Afaq Yousuf entered appearance on behalf of the Petitioner and contended that the Petitioner had a registered Sub-Lease in his favour and therefore there was ample evidence to show that he was the owner of the Said Property. In this regard he relied on a decision of this Court reported as *Afzal Ali vs. Azhar Iqbal*<sup>1</sup> which states that the reliance on an Agreement to Sell cannot be the basis for claiming to be an owner of a property. He stated that he had sent a notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 to the occupant of the Said Property and keeping in mind that he held a valid sub-lease to the Said Property, as opposed to a Sale Agreement of Mst. Masroor Fatima he was entitled to be considered as the landlord of the Said Property.

8. Mr. Tariq Mehmood A. Khan entered appearance on behalf of the Respondent No. 3 and contended that there did not exist a relationship of a landlord and tenant as between the Petitioner and the Respondent No. 3 and as such Rent Case No.113 of 2017 that had been filed by the Petitioner was not maintainable. He maintained that clearly the relationship of landlord and tenant required, at the very least, for a rent receipt to be issued or for payment of rent to be shown to have been paid to the predecessor in interest of the Petitioner and which having not been done clearly meant that Rent Case No.113 of 2017 was not maintainable. He said that the execution

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<sup>1</sup> 1997 MLD 2262

of the Sub-Lease in favour of Petitioner was a fraud as that same had been executed by Syed Illyas Ali Naqvi acting on the basis of a Power of Attorney issued to him by Mst. Mussarat Parveen and which the sub lease was executed rendered as invalid on account of the demise of Mst. Mussarat Parveen. He contended that on this basis Rent Case No.113 of 2017 was liable to be dismissed. He did not rely on any case law in support of his contentions.

9. I have heard the Counsel for the Petitioner and the Counsel for the Respondent and have perused the record. The jurisdiction of a Rent Controller under the provisions of Section 15 of the Sindh Rented Premises Ordinance, 1979 is a special jurisdiction and is in Rent Case No. 113 of 2017 being invoked within the perimeters of Sub-Section (1) and Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 and which prescribes that:

“ ... 15. (1) Where a **landlord** seeks to evict the **tenant** otherwise than in accordance with section 14, he shall make such application to the Controller.

(2) The Controller shall, make as an order directing the **tenant** to put the **landlord** in possession of the premises within such period as may be specified in the order...

The expressions “landlord” and “tenant” have been defined in Sub-Sections (f) and (j) of Section 2 of the Sindh Rented Premises Ordinance, 1979 respectively to meant:

“ ... (f) “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;

(j) “tenant” means any person who undertakes or is bound to pay rent as consideration for the possession or occupation of any premises by him or by any other person on his behalf and includes:

(i) any person who continues to be in possession of occupation of the premises after the termination of his tenancy;

(ii) heirs of the tenant in possession or occupation of the premises after the death of the tenant”

To better understand the scope of how one can establish a relationship of landlord and tenant, it is necessary to examine the various types of relationships that can exist on an immovable property. A person's legal character to an Immovable property can in Pakistan in essence be classified in four separate categories:

- (i) A person can be classified as the owner of a property whereby he possesses all the right, title and interest in and to an immovable property.
- (ii) In the event that a person is not the owner of a property, his status as an occupier may be that of a "lessee" and whose obligations with a "lessor" would ordinarily be regulated under the provisions of the Transfer of Property Act, 1882 and whereby he would under Section 105 of the Transfer of Property Act be granted by the owner of the Said Property "a right to enjoy such property" for a defined period of time. With the promulgation of what have come to be known as "Rent Laws", the "right to enjoy such property" were restated and which are generally in the Province of Sindh at present defined by the Sindh Rented Premises Ordinance, 1979, while in respect of properties located in the jurisdiction of a Cantonment with the Province of Sindh, such rights are restated in the Cantonment Rent Restriction Act, 1963. The interface of the obligations as between a "landlord" and a "tenant" under the Transfer of Property Act, 1882 and the Sindh Rented Premises Ordinance, 1979 were commented on by the Supreme Court of Pakistan in the decision reported as **Mrs. Zehra Begum v Messrs Pakistan Burmah Shell Limited<sup>2</sup>** wherein it was held that:

" ... *The historical background of Rent Laws in Sind and Karachi is that provisions of Contract Act and Transfer of Property Act apply with full force. The earlier rent laws like the Sind Rent Restriction Act, 1947 (Act X of 1947) or of 1952 (Act XIX of 1952) and Karachi Rent Restriction Act, 1953 (Act VIII of 1953) regulated the "supply of accommodation whether residential or non-residential,, furnished or unfurnished" and were designed "in particular to provide for controlling the rents chargeable for such supply of accommodation and for preventing in certain cases eviction from the accommodation*

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<sup>2</sup> 1984 SC 38

*supplied." In 1959 with the West Pakistan Urban Rent Restriction Ordinance the object slightly underwent a change, inasmuch as supply of accommodation no longer remained the object of law. Its purpose was of restricting in public interest "the increase of rent of certain premises within the limits of the urban areas and the eviction of tenants therefrom." Unlike its predecessors, the Ordinance has as its object "making of effective provisions for regulation of relations between landlords and tenants" and "to protect their interests in respect of rented premises within urban areas", Section 5 enjoins the tenancy agreements to be in writing, and to be authenticated either by registration of the deed or by its attestation by the signature and seal of the designated authorities. The validity of tenancy agreements has been recognized by section 6 and its expiry or its ceasing to be valid, made a ground independently of every other ground, sufficient to obtain eviction of the tenant. Section 7 authorizes the landlord to charge the mutually agreed rent till such time a fair rent is not got fixed from the Controller on an application by either party. The provisions of the Ordinance permit freedom of contract based on equality of bargaining power in both parties. It formalizes the contract.*

*It does not profess to protect any one class against the other. In this view of the matter if at the time of entering into lease agreement in 1965 the landlord knew that he was bartering away his personal need under the law then in force for a period of thirty years, he cannot under the statutory provision made in the Ordinance turn back to repudiate the term of the agreement. In the first place the Ordinance keeps alive the contract, lends it continued validity and force and professes to protect as much the right of the tenant as that of the landlord, referable always to a valid subsisting contract. In the second place even if there was such a right available under the law, (for arguments sake but not as a fact) it stood waived because it is not a part of public policy, but of a personal privilege which the landlord could forego for a valuable consideration."*

The decision of the Supreme Court of Pakistan clarifies that the provisions of the Sindh Rented Premises Ordinance, 1979 in fact "formalise" and do not "override" the obligations as exist between the "landlord" and the "tenant" under the Transfer of Property Act, 1882 and the rights conferred under the Sindh Rented Premises Ordinance, 1979 therefore have to be read in such terms. In respect of a right of a "tenant" to remain in a tenement after the expiry of the term of the lease, the "tenant" would, under the provisions of the Transfer of Property Act, 1882 be as a "tenant at will" and whose occupation can generally be determined by the landlord giving reasonable notice. By contrast, where such a person continues in possession without obtaining the consent of the

owner of the property his character is referred to as a “tenant at sufferance”.

In the event the relationship comes to be regulated by the provisions of the Sindh Rented Premises Ordinance, 1979 the tenant's status is, however, protected by Section 13 of the Sindh Rented Premises Ordinance, 1979 which states that:

“ ... 13. No tenant shall be evicted from the premises in his possession except in accordance with the provisions of this Ordinance.”

There being no right conferred on a “landlord”, under the provisions of the Sindh Rented Premises Ordinance, 1979, to evict a tenant on the determination of the term of a lease or tenancy, the occupation of a tenant in a tenement is secured under Section 13 of the Sindh Rented Premises Ordinance, 1979 and his character in respect of the tenement is colloquially referred to as a “statutory tenant” and who retains the right to remain in the tenement and can only be ejected therefore in accordance with the provisions of Section 14, Clauses (i) to (vii) of Sub-Section (2) of Section 15 and Sub-Section (2) of Section 16 of the Sindh Rented Premises Ordinance, 1979.

- (iii) Where the relationship of a “landlord” and a “tenant” does not exist, the legal character of a person in possession of an immovable property who has been introduced into a property at the behest of the owner must be classified as “licensee”. The distinction between license and a lease and the rights that exist thereon has been considered by the Supreme Court of Pakistan in the decision reported as **Abdullah Bhai vs.**

**Ahmad Din**<sup>3</sup> where while identifying the difference between a “license” and a “lease” the following threshold was said to have to been considered to make such a distinction:

“ ... *The line of demarcation between a lease and a license will sometimes be very thin though there is no doubt as to the principle applicable. A lease as will appear from Section 105 of the Transfer of Property Act is a transfer of an interest in immovable property. Ownership of physical property consists of a number of rights and the owner of such property when he creates a lease, transfers to the lessee a part of the rights of ownership, i.e., the right of enjoyment of the property, for a period, for consideration. During the continuance of the lease the right of enjoyment of the property belongs to the tenant and not to the landlord. The right of ownership as well as the rights of which it is composed are rights in rem and not in personam and by the lease a right in rem is transferred to the lessee. On the other hand a “license” as will appear from its definition in Section 52 of the Easements Act is merely a competence to do something which except for this permission would be unlawful. It does not confer any rights in physical property. There is in the case of a license only a person agreement between the licensor and the licensee whereby the licensor agrees not to interfere with the doing a particular acts on property which is in his possession. No right in rem passed to the licensee.”*

The relationship of an owner of an immovable property who introduces a person onto his immovable property pursuant to a license is regulated by Section 52 of the Easements Act, 1882 and the relationship of the “licensor and the “licensee” being distinct from the relationship of a “landlord” and “tenant” cannot be regulated by the Sindh Rented Premises Ordinance, 1979 and would be, to my mind, justiciable under Section 9 of the Code of Civil Procedure, 1908. As such in the event that a person is introduced onto an immovable property by the owner other than as a tenant that person’s status on the property would be that of a licensee and such a person could thereafter be removed from the property in accordance with his rights and obligation under the license through a suit filed under Section 9 of the Code of Civil

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<sup>3</sup> PLD 1964 SC 106



Procedure, 1908 and not under the provisions of the Sindh Rented Premises Ordinance, 1979;

- (iv) Where a person enters onto a property without the consent of the owner, his status is neither that of a “tenant” nor that of a “licensee” and can only be classified as that of a trespasser. The status of a trespasser clearly being distinct from a “tenant” would also not be regulated by the Sindh Rented Premises Ordinance, 1979 and would also only be justiciable under the provisions of Section 9 of the Code of Civil Procedure, 1908.

Finally, it should be mentioned that prior to the decision reported as **Maqbool Ahmad vs. Hakoomat-e-Pakistan**<sup>4</sup> a person could be the owner of an immovable property through adverse possession however as per that decision such right having been declared to be as against the injunction of islam such a claim no longer be maintained in Pakistan.

10. It is now left to determine as on the basis of the evidence led in Rent Case No.113 of 2017 before the Illrd Rent Controller, Karachi (East) as to whether there existed a relationship of a landlord and tenant as between the Petitioner and the Respondent No. 3. It is apparent that the Petitioner has disclosed a sub-lease executed in his favour to show his title to the Said property. In a decision of this Court reported as **Shahzadi Begum vs.Suleman Khan**<sup>5</sup> it was held that:

“ ... *This only fact that the appellant is the owner of the disputed house will not ipso facto prove that Mst. Aqueela Begum was her tenant. She could be a licensee, a trespasser or the owner of a house by way of adverse possession*”

This is surely a correct position of the law. The disclosure of title cannot by itself establish a relationship of a “landlord” and “tenant.” It may well be that

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<sup>4</sup> 1991 SCMR 2063

<sup>5</sup> 1993 CLC 1753

the person in occupation is either a licensee or for that matter a trespasser and as such the jurisdiction of the Rent Controller cannot be invoked for their removal from the property. In the circumstances of Rent Case No. 113 of 2017 The Petitioner having neither produced a Tenancy Agreement or for that matter a rent receipt to show that in fact that either he or his predecessor in interest i.e. Mussarat Parveen were receiving rent from the Respondent No. 3, to my mind, would lead to the conclusion that the contention of the Respondent No. 3, that he was in fact introduced into the said property by Mst. Masroor Fatima is correct. While Mst. Masroor Fatima has maintained Civil Suit No. 970 of 2017 before the II<sup>nd</sup> Senior Civil Judge Karachi (East) to determine her title to the Said Tenement, the pendency of that *lis* or any appeal thereon will, as correctly stated by Mr. Afaq Yousuf, not prevent the Petitioner from maintaining Rent Case No.113 of 2017. However, where the Respondent No. 3's occupation in the Said Property is derived through Mst. Masroor Fatima and who herself at present does not have proper title to the Said Tenement, to my mind can only lead to one conclusion that the possession of the Respondent No.3 of the Said Tenement is not that of a tenant within the meaning given to that expression under clause (j) of Section 2 of the Sindh Rented Premises Ordinance, 1979 but rather that of a trespasser and for which the jurisdiction of the Rent Controller under the provisions of the Sindh Rented Premises Ordinance, 1979 cannot be invoked. The Petitioner would therefore have to invoke the civil jurisdiction under Section 9 of the Code of Civil Procedure, 1908 to seek the removal of the Respondent No. 3 from the Said Property and both the Judgement and Decree dated 2 December 2019 passed by the IX<sup>th</sup> Additional District Judge Karachi (East) in FRA No.141 of 2019 and the order dated 2 September 2019 passed by the III<sup>rd</sup> Rent Controller Karachi (East) dismissing Rent Case No.113 of 2017 holding that the Petitioner could not maintain Rent Case No.113 of 2017 as no relationship of a "landlord" and "tenant" had been established by the Petitioner are to my mind correct. The Petition must therefore fail.

11. For the foregoing reasons, I see no infirmity or illegality in either the Judgement and Decree dated 2 December 2019 passed by the IXth Additional District Judge Karachi (East) in FRA No.141 of 2019 or in the order dated 2 September 2019 passed by the IIIrd Rent Controller Karachi (East) dismissing Rent Case No.113 of 2017. The Petition therefore is misconceived and is dismissed with no order as to costs.

JUDGE

Karachi dated 24 August 2023.