

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

C.P. No.S-958 of 2021

C.P. No.S-959 of 2021

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Dated: Order with signature of Judge(s)

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**C.P. No. S-958 of 2021**

1. For hearing of CMA No. 6351 of 2021

3. For hearing of Main Case

Date of Hearing : 2 June 2023

Petitioners : Khurram Aftab and others through Mr. Sami Ahsan, Advocate

Respondents No.1 : Nemo

Respondent No. 2 : Nemo

Respondent No. 3 : Imran Shafique through Mr. Abdul Wahab Baloch, Advocate

**C.P. No. S-959 of 2021**

1. For hearing of CMA No. 6319 of 2021

3. For hearing of Main Case

Date of Hearing : 2 June 2023

Petitioners : Khurram Aftab and others through Mr. Sami Ahsan, Advocate

Respondents No.1 : Nemo

Respondent No. 2 : Nemo

Respondent No. 3 : Imran Shafique through Mr. Abdul Wahab Baloch, Advocate

**ORDER**

**MOHAMMAD ABDUR RAHMAN,J** : By this common order I intend to dispose of both of these Petitions maintained by the Petitioners, each under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and which impugn a Common Judgement dated 20 October 2021 passed by the

District & Sessions Judge, Karachi (East) in FRA Nos. 98 of 2021 and FRA 104 of 2021 and by which Judgement the District & Sessions Judge, Karachi (East) was pleased to set aside an order dated 6 September 2021 passed by the Xth Rent Controller Karachi (East) in Rent Case No.7 of 2018 being an Application under Section 15 of the Sindh Rented Premises Ordinance, 1979 that had been maintained by the Respondent No. 3 as against the Petitioners and had allowed FRA No. 98 of 2021 that had been maintained by the Respondent No. 3 and dismissed FRA No. 104 of 2021 that had been maintained by the Petitioner.

2. Rent Case No. 7 of 2018 had been maintained by the Respondent No. 3 as against the Petitioner No. 1 before the Xth Rent Controller, Karachi (East) seeking to evict the Petitioner No. 1 from Plot No.1/4, Sheet No.16, Model Colony, Karachi (East), admeasuring 320 square yards (hereinafter referred to as the "Said Tenement"). The Respondent No.3 had in Rent Case No. 7 of 2018 contended that he had entered into a Tenancy Agreement with the Petitioner No. 1 on 28 June 2011 for the Said Tenement at a rent of Rs.70,000/- per month excluding utility and conservancy charges along with a security deposit of Rs.700,000/- (Rupees Seven Hundred Thousand). The Respondent No. 3 has contended that he had availed a financial facility from Standard Chartered Bank (Pakistan) Limited and the Said Tenement had been mortgaged by him with Standard Chartered Bank (Pakistan) Limited to secure that financial facility. He contended that after the execution of the Tenancy Agreement dated 28 June 2011, it was agreed as between the Petitioner No. 1 and the Respondent No. 3, that the rent due under the Tenancy Agreement dated 28 June 2011 would be deposited by the Petitioner No. 1 directly with Standard Chartered Bank (Pakistan) Limited towards settling that financial facility. The Respondent No.3 contends that the Petitioner No. 1 defaulted on its obligation to pay rent to the Respondent No. 3 from the month of May 2016 and as such was liable to be evicted from the Said Tenement under clause (ii) of Sub-Section (2)

of Section 15 of the Sindh Rented Premises Ordinance, 1979 and maintained Rent Case No. 7 of 2018 before the Xth Rent Controller Karachi (East) to evict the Petitioner No. 1 from the Said Tenement. The Respondent No. 3 also alleged that he required the Said Tenement for his own personal use in good faith to accommodate his family and as such also sought the eviction of the Petitioner No. 1 from the Said Tenement under clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 and maintained Rent Case No. 7 of 2018 on this ground as well.

3. The Petitioner No. 1 filed his Written Statement to Rent Case No. 7 of 2018 and denied that a relationship of a landlord and tenant existed as between the Petitioner No. 1 and the Respondent No. 3. He contended that:

- (i) the Tenancy Agreement dated 28 June 2011 was forged;
- (ii) that the Petitioner No. 1's father Mr. Aftab Ahmed Khan had entered into an Agreement of Sale dated 4 July 2011 to purchase the Said Tenement from the Respondent No. 3 for a consideration of Rs. 8,500,000 (Rupees Eight Million Five Hundred Thousand) out of which a sum of Rs. 5,200,000 (Rupees Five Million Two Hundred Thousand) had to be paid by Mr. Aftab Ahmed Khan directly to Standard Chartered Bank (Pakistan) Limited to clear the financial facility that had been obtained by Respondent No. 3 and which had been paid. The Petitioner No. 1 contends that Mr. Aftab Ahmed Khan had in this regard instituted Suit No. 252 of 2018 before this Court seeking specific performance on the Agreement of Sale dated 4 July 2011 and which matter was sub-judice; and
- (iii) that the Petitioner No. 1 was in possession of the Said Tenement on the basis of the Agreement of Sale dated 4 July

2011 and not on the basis of any Tenancy Agreement as incorrectly alleged by the Respondent No. 3.

4. It is admitted by the Petitioners and the Respondent No. 3 that there was some litigation that was ancillary to Rent Case No. 7 of 2018 and which is as follows:

- (i) Suit No. 164 of 2012 had been instituted by Standard Chartered Bank (Pakistan) Limited as against the Respondent No. 3 before the Banking Court No. V at Karachi seeking the recovery of a sum of Rs. 6,195,818 (Rupees Six Million One Hundred and Ninety Five Thousand Eight Hundred and Eighteen) from the Respondent No. 3 and which suit was decreed by that Court on 15 May 2012. After the passing of the Decree, Execution No. 120 of 2012 was maintained before the same court by Standard Chartered Bank (Pakistan) Limited and in which the Mr. Aftab Ahmed Khan maintained an application to intervene and prevent the redemption of the title documents of the Said Tenement in favour of the Respondent No. 3;
- (ii) Mr. Aftab Ahmed Khan had instituted Constitution Petition No. S-295 of 2014 before this Court seeking protection from harassment as from the police at the instigation of the Respondent No. 3 and which was disposed of on 29 May 2015 by this Court; and
- (iii) Criminal Case No. 2291 of 2017 based on FIR bearing No. 232 of 2017 was registered by the State as against the Respondent No. 3 on the complaint of the Petitioner No. 1 and Mr. Aftab Ahmed Khan.

5. Rent Case No. 7 of 2018 was heard by the Xth Rent Controller, Karachi (East) and who by an order dated 17 September 2019 was pleased to implead Mr. Aftab Ahmed Khan as an Opponent in Rent Case No. 7 of 2018. The Xth Rent Controller, Karachi (East) was also by an order dated 8 February 2020 pleased to grant an application for the appointment of a handwriting expert to verify the signature of the Petitioner No. 1 on the Tenancy Agreement dated 28 June 2011 and which report also indicated that the signature of the Petitioner No. 1 had been forged. The Xth Rent Controller, Karachi (East) after permitting the parties to adduce evidence held that:

- (i) there was a relationship of a landlord and tenant as between the Petitioner No. 1 and the Respondent No. 3;
- (ii) the Respondent No. 3 had failed to establish that the Petitioner No. 1 had defaulted on his obligation to pay rent to the Respondent No. 3; and
- (iii) the Respondent No. 3 had failed to establish that he required the Said Tenement for his personal use in good faith.

6. That being aggrieved and dissatisfied with the order dated 6 September 2021 passed by the Xth Rent Controller, Karachi (East) in Rent Case No. 7 of 2018:

- (i) the Respondent No. 3 maintained FRA No. 98 of 2021 impugning the finding that the Respondent No. 3 had failed to prove that the Petitioner No. 1 had defaulted on his obligation to pay rent to the Respondent No. 3 and that the Respondent No. 3 had failed to prove he required the Said Tenement for his own personal use in good faith; and

- (ii) the Petitioner No. 1 and Mr. Aftab Ahmed Khan maintained FRA No 104 of 2021 challenging the finding that a relationship of a landlord and tenant existed as between the Petitioner No. 1 and the Respondent No. 3.

7. FRA No. 98 of 2021 and FRA No. 104 of 2021 were heard by the District & Sessions Judge Karachi (East). It is apparent that while the Respondent No. 3 had in his pleadings pressed the issue of the Petitioner No. 1 having defaulted on his obligation to pay rent to the Respondent No. 3, it is apparent that this claim was in fact not pressed at the time of the hearing of FRA No. 98 of 2021 and only the issue of whether the Respondent No. 3 required the Said Tenement for his personal use was adjudicated on by the District Judge Karachi (East) and who by a Judgement dated 20 October 2021 was pleased to grant FRA No. 98 of 2021 and dismiss FRA No. 104 of 2021 holding that:

- (i) there was a relationship of a landlord and tenant as between the Petitioner No. 1 and the Respondent No. 3; and
- (ii) the Respondent No. 3 had failed to establish that he required the Said Tenement for his personal use in good faith.

8. Being aggrieved and dissatisfied by the Common Judgement dated 20 October 2021 passed by the District Judge Karachi (East) allowing FRA No. 98 of 2021 and dismissing FRA No. 104 of 2021, the Petitioner No. 1 and Mr. Aftab Ahmed Khan had maintained these Petitions impugning the Common Judgement dated 20 October 2021 passed by the District Judge Karachi (East) allowing FRA No. 98 of 2021 and dismissing FRA No. 104 of 2021. As Mr. Aftab Ahmed Khan had passed away during the pendency of these proceedings, his Legal Representatives, including the Petitioner

No. 1, were impleaded in his stead. Mr. Sami Ahsan appeared on behalf of the Petitioners and contended that:

(i) the Petitioner No. 1's father Mr. Aftab Ahmed Khan had entered into an Agreement of Sale dated 4 July 2011 to purchase the Said Tenement from the Respondent No. 3 for a consideration of Rs. 8,500,000 (Rupees Eight Million Five Hundred Thousand) out of which a sum of Rs. 5,200,000 (Rupees Five Million Two Hundred Thousand) had to be paid by Mr. Aftab Ahmed Khan directly to Standard Chartered Bank (Pakistan) Limited to clear the financial facility that had been obtained by Respondent No. 3. The Petitioner No. 1 in this regard, contended that:

(a) Mr. Aftab Ahmed Khan had in this regard instituted Suit No. 252 of 2018 before this Court seeking specific performance on the Agreement of Sale dated 4 July 2011 and which matter was sub-judice before this Court. Mr. Sami Ahsan however candidly conceded that it was settled law that the pendency of the suit would not in any manner disturb the relationship of landlord and tenant so as to oust the jurisdiction of the Xth Rent Controller Karachi (East) from adjudicating Rent Case No. 7 of 2018; and

(b) notwithstanding the above, the possession of the Petitioners of the Said Tenement was pursuant to the Agreement of Sale and not pursuant to any agreement of tenancy with the Respondent No. 3 and as such no relationship of a landlord and tenant existed as between the Petitioner No. 1 and the Respondent No.

3 to allow for the jurisdiction of the Rent Controller to be invoked;

(ii) the Tenancy Agreement dated 28 June 2011 as adduced in evidence by the Respondent No. 3 was a forged document. In this regard Mr. Sami Ahsan elaborated that there were two versions of this document that were produced, the first which admittedly did not disclose the signature of the Petitioner No. 1 and the second that did disclose a signature of the Petitioner No. 1, but which signature had been confirmed, by the handwriting expert before the Xth Rent Controller Karachi (East) in Rent Case No. 7 of 2018 to having been forged;

(iii) that there was sufficient proof on the record to show that Mr. Aftab Ahmed Khan had pursuant to the Agreement of Sale dated 4 July 2011 cleared the financial facility that had been availed by the Respondent No. 3 from Standard Chartered Bank Pakistan Limited and which conferred on him a right under Section 53-A of the Transfer of Property Act, 1882 **not to be dispossessed from the Said Tenement.** In this regard the Mr. Sami Ahsan relied on the decisions reported as **Fazla vs. Meher Din,**<sup>1</sup> **Shamim Akhtar vs. Muhammad Rashed,**<sup>2</sup> **Habibur Rehman and Another vs. Mst. Wahdania and others,**<sup>3</sup> **Abdul Razzak Howladar vs. Sh. Muhammad Shafi,**<sup>4</sup> and **Allah Rakha vs. Mukhrar Ahmad Baig (deceased) through Legal Heirs**<sup>5</sup>;

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<sup>1</sup> 1997 SCMR 837

<sup>2</sup> PLD 1989 SC 575

<sup>3</sup> PLD 1984 SC 424

<sup>4</sup> PLD 1962 SC 134

<sup>5</sup> 1996 SCMR 1501



- (iv) no Suit had been maintained by the Respondent No. 3 for the cancellation of the Agreement of Sale dated 4 July 2011 and which led to the conclusion that the Agreement of Sale dated 4 July 2011 should be considered as a valid document.

9. Mr. Abdul Wahab Baloch entered appearance on behalf of the Respondent No. 3 and contended that the Respondent No. 3 had introduced the Petitioner No. 1 into the Said Tenement as a tenant and who had thereafter been in possession of the Said Property and had resorted to various tactics to maintain possession of the Said Tenement. He contended that in the cross examination of the Petitioner No. 1 it had come on record that the Petitioner No. 1 had admitted that his possession of the Said Tenement was as a tenant. He stated that once such an admission had been made, the Xth Rent Controller Karachi (East) had the requisite jurisdiction to entertain Rent Case No. 7 of 2018. While denying the execution of the Agreement of Sale dated 4 July 2011, he contended that it was now settled law that the pendency of a civil suit for specific performance of an Agreement of Sale could not oust the jurisdiction of the Rent Controller and as such both the Xth Rent Controller Karachi (East) and the District & Sessions Judge Karachi (East) had correctly adjudicated that the Xth Rent Controller Karachi (East) had the requisite jurisdiction to entertain Rent Case No. 7 of 2018. He stated that while the Xth Rent Controller Karachi (East) had incorrectly dismissed Rent Case No. 7 of 2018, the findings of the District & Sessions Judge Karachi (East) that the Respondent No. 3 required the Said Tenement for his personal use in good faith could not be impugned and must be sustained. He relied on the decisions reported as **Kassim vs. S. Rahim Shah**,<sup>6</sup> **Abdul Rasheed vs. Maqbool Ahmed**,<sup>7</sup>

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<sup>6</sup> 1990 SCMR 647

<sup>7</sup> 2011 SCMR 320

**Messrs Shell Pakistan Ltd. vs. IVth Additional Distirct Judge and 2 others**<sup>8</sup> and **Muhammad Anwar vs. Mir.Rafique Ahmed Talpur**<sup>9</sup>. to state that the execution of an Agreement of Sale does not oust the jurisdiction of the Rent Controller under the provisions of the Sindh Rented Premises Ordinance, 1979. He next relied on the decision reported as **Mst. Saadat Sultan vs. Muhammad Zahur Khan**<sup>10</sup> that the testimony of an expert witness cannot be taken to be true and which must be considered in light of the facts and circumstances of each case and finally relied on the decision reported as **Muhammad Ali vs. Qurban Ali**<sup>11</sup> to state that where an admission was made, as in this case by the Petitioner No. 1 during evidence, then the admission must be taken into account and relied on.

10. I have heard the Counsel for the Petitioners and the Respondent No. 3 and have perused the record. The Petitioners have maintained two separate grounds for stating that a relationship of a landlord and tenant did not exist as between the Petitioner No. 1 and the Respondent No. 3 and which are as follows:

- (i) that the Petitioner No. 1 occupation of the Said Tenement was on the basis of the Agreement of Sale dated 4 July 2011 entered into by Mr. Aftab Ahmed Khan and not pursuant to any tenancy agreement entered into as between the Petitioner No. 1 and the Respondent No.3;
- (ii) that even if it is to be accepted that there existed a relationship of a landlord and tenant as between the Petitioner No. 1 and the Respondent No. 3 the fact that Mr. Aftab Ahmed Khan had paid monies pursuant to an Agreement of Sale, created rights

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<sup>8</sup> 2015 YLR 647

<sup>9</sup> 2014 MLD 23

<sup>10</sup> 2006 SCMR 193

<sup>11</sup> 2006 YLR 2421

under Section 53 A of the Transfer or Property Act, 1882 and which right would permit him to remain in possession of the Said Tenement.

(i) **Agreement Of Sale**

11. In **Kassim vs. S. Rahim Shah**<sup>12</sup> while considering a matter where a tenant claimed to have entered into an Agreement of Sale with the original owner of a tenement, prior to the original owner of a tenement having conveyed the tenement to the landlord by way of a registered instrument, the Supreme Court of Pakistan has held that:<sup>13</sup>

“ ... All this evidence, prima facie, supports the plea of the respondent that he had acquired the right of the ownership in the property through sale-deed. Until the sale-deed is cancelled and is out of the field, the respondent can claim to have stepped into the shoes of the previous owner, entitled to recover rent from the tenants of the building which was the subject-matter of the sale. There is another aspect of the case which cannot be ignored. Even if the agreement of sale was executed by the previous owner on a prior date before the registered sale-deed, by virtue of section 50 the registered sale-deed, nonetheless has precedence over the prior unregistered deed of agreement. This position would remain till such time the Civil Court passes a decree against the respondent in any of the suits pending in respect of the property. However, for the purpose of the Rent Controller, the position as it stands today was sufficient to satisfy the requirements of law that the respondent was landlord entitled to recover rent.”

Similarly, in **Haji Jumma Khan vs. Haji Zarim Khan**<sup>14</sup> where a tenant contented that he had acquired title by way of an Agreement of Sale, the Supreme Court of Pakistan has held that:<sup>15</sup>

“ ... 6. We have carefully perused entire record in the light of above submissions. It, is an admitted feature of the case that petitioner was occupying the shop in dispute as tenant. This fact is also incorporated in the sale-agreement dated 20-1-1989. The question about genuineness or otherwise of said sale agreement is obviously dependent upon final determination by Civil Court of competent jurisdiction. At this stage the validity of sale agreement relied upon by the petitioner/tenant is vigorously challenged by respondent/landlord Therefore, till the time that petitioner is able to establish his claim for specific performance on the basis of alleged sale-agreement, respondent-landlord would continue

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<sup>12</sup> 1990 SCMR 647

<sup>13</sup> *Ibid* at pg. 650

<sup>14</sup> PLD 1999 SC 1101

<sup>15</sup> *Ibid* at pgs. 1104-1105

to enjoy the status of being owner and landlord of the premises. Relationship between the parties till such time would be regulated by the terms of tenancy. This Court in similar circumstances while examining dispute between the landlord and tenant where the ejectment proceedings were contested on the ground of sale- agreement in case of *Mst. Azeemun Nisa Begum v. Ali Muhammad* PLD 1990 SC 382 has opined that ejectment proceedings could not be resisted by taking shelter under section 53A of the Transfer of Property Act Relevant observations read as under:-

"For the foregoing reasons I am unable to subscribe to the conclusion arrived at by the learned Single Judge and hold that the respondent was not entitled to protect his possession and resist ejectment, under the provisions of section 53-A of the Transfer of Property Act and the relationship of landlord and tenant continued to exist between the parties even after the execution of the agreement of sale. As admittedly the respondent had failed to tender rent to the appellant the eviction order passed against him by the Rent Controller was fully justified I would, therefore, allow this appeal, set aside the judgment of the learned Single Judge of the High Court and restore the order passed by the Rent Controller. There will be no order as to costs. "

The above view has been reiterated in case *Iqbal v. Mst. Rabia Bibi* PLD 1991 SC 242. Relevant observations read, thus:

"Be that as it may, in some recent judgments this Court has taken the view that in cases like the present one, where the sale agreement or any other transaction relied upon by a tenant is seriously and bona fide disputed by the landlord, the appellant/tenant cannot be allowed to retain the possession during the litigation; where he continues to deny the ownership of the landlord 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--even for decades. In this case it is more than a decade that the appellants have been able to keep the possession on a claim which the landlord asserts is false. Accordingly, as held in those cases in fairness to both sides, while 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 landlord/owner. It should be at the cost of himself and he must vacate--though of course he would be entitled to an easy and free entry as soon as he finally succeeds in establishing his title against his own landlord. See *Makhan Bano v. Haji Abdul Ghani* PLD 1984 SC 17, *Allah Yar and others v. Additional District Judge and others* f 984 SCMR 741 and *Province of Punjab v. Mufti Abdul Ghani* PLD 1985 SC 1."

Similarly following view has been taken in case *Mst. Bor Bibi and others v. Abdul Qadir and others* 1996 SCMR 877:-

"However, the Judge in Chambers of the High Court has taken pain and elaborately discussed the issues and assessed the value of the agreement deed and other documents. He has referred to various authorities in that respect and has come to the conclusion that a tenant cannot be allowed to retain his possession on such agreement till decision of their title by a Civil Court of competent jurisdiction. We do not find any defect with his observations and conclusion. The factum of default of the payment of the rent and the requirement of the landlord has been proved. We have neither been persuaded nor satisfied that any defect lies with the judgment of the Judge in Chambers of

*the High Court which may call for interference of this Court in its appellate jurisdiction. The appeal fails which is dismissed accordingly with costs."*

7. On the basis of dictum laid in aforequoted reports we unhesitatingly hold that petitioner cannot legitimately resist maintainability of ejectment proceedings pending against him on the ground of sale-agreement. Suffice it to observe that genuineness or otherwise of such agreement and its consequential effect will be independently determined by the Civil Court

Similarly in **Abdul Rasheed vs. Maqbool Ahmed**<sup>16</sup> the Supreme Court of Pakistan has also again clarified that:<sup>17</sup>

" ... 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. In this regard reference can be made to *Shameem Akhtar v. Muhammad Rashid* (PLD 1989 SC 575), *Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi* (PLD 1991 SC 242), *Muhammad Rafique v. Messrs Habib Bank Ltd.* (1994 SCMR 1012) and *Mst. Bor Bibi v. Abdul Qadir* (1996 SCMR 877). In so far as determination of the relationship of landlord and tenant is concerned, such enquiry by the Rent Controller is of a summary nature. Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former he later on purchased the same which was denied by the latter. 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

Finally, In **Mst. Seema Begum. Vs. Muhsammad Ishaq**<sup>18</sup> the Supreme Court of Pakistan has held that:<sup>19</sup>

" ... Even otherwise, mere pendency of civil suit in Court cannot defeat, prima facie, established title for purpose of rent cases under the Rent Restriction Ordinance. The genuineness or otherwise of alleged agreement and its consequential effect would be independently determined by the civil Court. It is settled law that till the time tenant was able to establish his claim for "specific performance" on the basis of alleged sale agreement, the landlord would continue to enjoy the status of being owner or landlord of the premises and the relationship between the parties till such time would be regulated by the terms of tenancy and the tenant cannot legitimately resist the maintainability of ejectment proceedings pending against him on the ground of sale agreement. This argument is strengthened by the dictum laid down in the cases of *Haji Jumma Khan v. Haji Zarin Khan* (PLD 1999 SC 1101), *Iqbal and 6 others v. Mst. Rabia Bibi and another* (PLD 1991 SC 242), *Waheed Ullah v. Rehana Nasim* (2004 SCMR 1568) and *Muhammad Nazir v.*

<sup>16</sup> 2011 SCMR 320

<sup>17</sup> *Ibid* at pgs. 322-333

<sup>18</sup> PLD 2009 SC 45

<sup>19</sup> *Ibid* at pg. 48

*Saeed Subhani (2002 SCMR 1540). So in the circumstances of the case, we find that claim of respondent is baseless."*

12. As is evident from the extensive case law that has been developed on this issue it is now settled law that neither the execution of an Agreement of Sale of the tenement nor the pendency of a Civil Suit for Specific Performance for the enforcement of such an Agreement of Sale can oust the jurisdiction of a Rent Controller under the provisions of the Sindh Rented Premises Ordinance, 1979, on account of there not being a relationship of a landlord and a tenant, from adjudicating on an application under Section 15 of the Sindh Rented Premises Ordinance, 1979. The tenant, if he is claiming to have purchased the tenement, will never get proper title to an immovable property until the immovable property is either transferred into his name by way of a registered instrument or decreed in his favour by a Civil Court of competent jurisdiction and which decree would be subject to appeal and execution. Until that time, the landlord will continue to enjoy his status as a landlord and exercise all his rights in such a capacity including, but not limited to, the right to maintain an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 seeking the eviction of the tenant on the grounds mentioned therein.

**(ii) Possession on the Basis of a Sale Agreement**

13. Mr. Sami Ahsan had correctly conceded to the contention that the pendency of a suit for Specific Performance would not oust the jurisdiction of a rent controller to adjudicate on an issue under Section 15 of the Sindh Rented Premises Ordinance, 1979 He however raised an additional argument that as he has entered into possession of the Said Tenement on the basis of an Agreement of Sale dated 4 July 2011 and not on the basis of any tenancy agreement the relationship of a landlord and tenant was not

established thereby preventing the Respondent No. 3 from maintaining an application under Section 15 of the Sindh Rented Premises Ordinance, 1979 before the Xth Rent Controller Karachi (East).

14. I have considered the evidence that has been adduced by the Petitioner No. 1 and note that in his cross examination the following admissions have been made by the Petitioner No. 1:

“ ... *It is correct to suggest that in said statement I have deposed in chief that I have obtained demised premises from applicant. **It is correct to suggest that it is mention in my deposition in said case during tenancy I have entered into sale agreement with applicant...***”

(Emphasis is added)

It is apparent that Criminal Case No. 2291 of 2017 based on FIR bearing No. 232 of 2017 was instituted by the Petitioner No 1 and in which the Petitioner No. 1 had deposed **that he had been admitted into the Said Tenement by the Respondent No. 3 and during the term of which tenancy** Mr. Aftab Ahmed Khan had purportedly entered into an Agreement of Sale and which is subject to a suit for Specific Performance that is pending before this Court. This statement in the cross examination is directly contradictory to the averments made by the Petitioner No. 1 in the Written Statement that was filed by the Petitioner No.1 in Rent Case No. 7 of 2018. I am clear that while the testimony in a criminal case cannot be used by a court to be the basis of a courts decision in a criminal case I can see no reason why the Petitioner No. 1 cannot be confronted with the testimony made by him in Criminal Case No. 2291 of 2017 based on FIR bearing No. 232 of 2017 so as to show that there are clearly contradictory positions that are being taken by the Petitioner No. 1 in two separate proceedings so as to cast doubt on the Petitioner No.1's contentions in Rent Case No. 7 of 2018. To my mind the Petitioner No. 1 taking contradictory

positions regarding the manner in which he entered into possession of the Said Tenement clearly casts doubt on the Petitioner No. 1's contention that he entered into possession of the Said Tenement on the basis of Mr. Aftab Ahmed Khan having executed an Agreement of Sale. Such a fact being admitted by the Petitioner No. 1 without an explanation being given for such an inconsistency is to my mind sufficient for the Xth Rent Controller Karachi (East) to have come to a conclusion that the Respondent No. 3's contention that the Petitioner No. 1 entered into possession of the Said Tenement pursuant to a tenancy agreement was correct. I am therefore of the opinion that both the Xth Rent Controller Karachi (East) and the District & Session Judge Karachi (East) had correctly come to the conclusion that a relationship of a landlord and tenant existed as between the Petitioner No. 1 and the Respondent No. 3 on this basis.

**(iii) Section 53 A of the Transfer of Property Act, 1882**

15. Mr. Sami Ahsan has relied on the following decisions to state that where payment has been made pursuant to an Agreement of Sale and occupation of a property was maintained on the basis of such part payment, his possession of the Said Tenement could not be disturbed by the Rent Controller on account of the provisions of Section 53 A of the Transfer of Property Act, 1882 and which reads as under:

“ ... **53-A. Part performance.** *Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty;*

*And the transferee has, in part performance of the contract, taken possession of the property or any part thereof or the transferee, being already in possession continues in possession in part performance of the contract and has done some act in furtherance of the contract, and the transferee has performed or is willing to perform his part of the contract,*

*Then notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in*



*respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by me terms of the contract:*

*Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."*

16. The section partially codifies the doctrine of part performance as existed under the laws of England. Such rights when they interface with the rights of a landlord and tenant as existing under the Sindh Rented Premises Ordinance, 1979 has been discussed by the Supreme Court of Pakistan in the decision reported as **Shamim Akhtar vs Muhammad Rashed**<sup>20</sup> wherein it was held that:

" ... Section 53-A of -the Transfer of Property Act partially imports the English equitable doctrine of part performance. Apart from this section except as provided therein, the doctrine of part performance is not applicable in Pakistan. The section does not give any right which the formal agreement does not give. **Under this section the transferee must have taken possession or if he was already in possession he must have continued in possession and must have further done some act in furtherance of the contract. It is then that the part performance under this section gives rise to a statutory right of defence.**

*In Ewaz Ali v. Firdous Jehan, (A I R 1944 Oudh 212), it was held that the part performance under this section confers upon the transferee the privilege of invoking the doctrine embodied therein only as a shield against any invasion of his rights by the transferor or person claiming under him, and in a case where the terms of a contract do not contain any stipulation about delivery of possession or continuance of possession in part performance of the agreement to sell, the status does not change and it cannot be said that such possession was in pursuance of the agreement.*

**It is, therefore, of paramount importance that under this section as between the parties part performance must result in the change of their relative positions as to the subject-matter of the contract as a result of the stipulation fulfilling the requirements of this section in order to give right to defend possession.**

*In the context of the above statement of law there has not been any change in the relative positions of the parties as regards the subject-matter of the contract in the absence of any stipulation that the continuance of his possession was in part performance of the agreement to sell. **In Ammer Hussain v. Muhammad Shabbiruddin Khan, 1987 C L C 1149, it was held that the possession of the tenant in the absence of any stipulation in the agreement to sell could not be said to be in part performance of the contract so as to give protection against ejectment. The same view was expressed in Khurso Alam Hydri v. Mst. Iqbal Begum, 1981 C L C 347 and Chhappar Khan v. Land Commissioner. West Pakistan, Karsehi (P L 1) 1976 Kar. 747.***

*In Allah Yar v. Additional District Judge, (1984 SCMR 741), the tenants claimed to have purchased land on the basis of a receipt and had*

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<sup>20</sup> PLD 1989 SC 575

*filed a suit for specific performance of the agreement. This Court held while denying to them the benefit of section 53-A*

*"Reliance of the learned counsel on section 53-A of the Transfer of Property Act in the circumstances of this case is of no help to the petitioners. According to him they have filed a suit for specific performance so as to establish the genuineness, validity and effect of the so-called receipt. Till they are able to obtain a decree from the Civil Court, they could not have lawfully denied the relationship of landlord and tenant."*

*This was so because the continuance of the possession by the tenants was in no other capacity but that of a tenant, and, therefore, there was no change of relative positions of the parties as to the subject matter of the contract."*

(Emphasis is added)

As per the decision of the Supreme Court of Pakistan, it would seem that where a tenant has been entered into a tenement and subsequently enters into an Agreement of Sale with the landlord to purchase the tenement, unless it can be shown that the terms of the Agreement of Sale indicate that the landlord and the tenant through the Agreement of Sale had agreed to terminate the tenancy **and** have under the Agreement of Sale indicated that the possession of the person who was formerly a tenant has been secured under the part performance of the Agreement of Sale, the status of the tenant will subsist. The principle stated in this decision has been consistently followed by the Supreme Court of Pakistan and this Court.<sup>21</sup> Having already come to the conclusion that the findings of the Xth Rent Controller Karachi (East) and the District & Sessions Judge Karachi (East) that the Petitioner No. 1 had been introduced into the Said Tenement by the Respondent No. 3 as a tenant is correct, it would only remain to be seen as to whether there is any provisions of the Agreement of Sale which would declare that the status of the Petitioner No. 1 as a tenant has ended and his status in possession of the Said Tenement was not on the basis of the part performance of the Agreement of Sale through Mr. Aftab Ahmed Khan.

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<sup>21</sup> See *Azeemun Nissa Begum vs. Ali Muhammad* PLD 1990 SC 382; *Nabi Bux vs. Naseem* 2000 SCMR 1604; *Waseem Khan vs. Asim Hussain* 2020 YLR 1886; *Shahid Ali Khan vs. Hamid Siddiqui* 2014 YLR 1754; *Muhammad Asad vs. Muhammad Tariq* 2010 MLD 1354; *Suleman Mala vs. Khawaja Muhammad Ramzan* 2003 YLR 226; and *Holomal vs. Ghulam Ali* PLD 1997 KHI 509;

However, as is apparent from the Petitioners contentions no such terms are indicated in the Agreement of Sale dated 4 July 2011 as the Petitioner all together deny that they were ever introduced into the Said Tenement as tenants and as such no clause of the Agreement of Sale dated 4 July 2011 redefines the status of the Petitioner No. 1 in this regard. In the circumstances, it is apparent that the Petitioner No. 1 having been introduced into the Said Tenement as a tenant must continue to be held to retain possession of the Said Tenement as a tenant and not pursuant to any right conferred on Mr. Aftab Ahmed Khan under the Agreement of Sale dated 4 July 2011 and which will have to be proved independently in Suit No. 252 of 2018. Clearly, the Petitioner No. 1 status as a tenant having not been altered the relationship as between him and the Respondent No. 3 remained that of a landlord and tenant and which would continue to be subject to the jurisdiction of the Rent Controller under the provisions of the Sindh Rented Premises Ordinance, 1979 and would not be fettered in any manner by the provisions of any rights claimed by the Mr. Aftab Ahmed Khan under Section 53 A of the Transfer of Property Act, 1882 when this issue is pressed in Suit No. 252 of 2018 before this Court. I therefore find that there is no infirmity or illegality in either the Common Judgement dated 20 October 2021 passed by the District & Sessions Judge, Karachi (East) in FRA Nos. 98 of 2021 and FRA 104 of 2021 or in the order dated 6 September 2021 passed by the Xth Rent Controller Karachi (East) in Rent Case No.7 of 2018 as to the finding that a relationship of a landlord and tenant did exist as between the Petitioner No. 1 and the Respondent No. 3.

**(iv) Personal Use In Good Faith**

17. The burden of proving the requirement of using the Said Tenement for the personal use of the landlord or the persons identified in clause (vii) of Sub-Section (2) of Section 15 of the Sindh Rented Premises Ordinance, 1979 has been considered by the Supreme Court of Pakistan in the decision

reported as **Jehangir Rustom Kakalia vs. State Bank of Pakistan**<sup>22</sup>

wherein it was held that:<sup>23</sup>

“ ... *In the impugned judgement (page 14 of paper book). While discussing evidence on the question of bona fide requirement reliance is placed on the case of Hassan Khan v. Mrs. Munawar Begum reported in PLD 1976 Karachi 832, which view was subsequently confirmed in case of Mst. Toheed Khanam v. Muhammad Shamshad reported in 1980. SCMR 593. Rule laid down in the cases mentioned above is that on the issue of personal need, assertion or claim on oath by landlord if consistent with his averments in his application and not shaken in cross-examination, or disproved in rebuttal is sufficient to prove that need is bona fide.*”

Regarding the burden of proving the requirement of using a tenement for personal use in good faith, the Supreme Court of Pakistan in **S.M.**

**Nooruddin vs. Saga Printer**<sup>24</sup> has held that:<sup>25</sup>

“ ... once the landlord had duly acquitted himself by stating on oath that his requirement is in good faith as understood in law, he should normally be deemed to have discharged his burden, which thereupon shifts to the tenant to who it remains initially to cross examine the landlord and, that being done lead his own evidence in rebuttal.”

18. I have examined both the contents of Rent Case No. 7 of 2018 as well as the Affidavit in Evidence that had been filed by the Respondent No. 3 therein and wherein the Respondent No. 3 has consistently stated that he required the Said Tenement for his personal use to house his family. I have carefully perused the deposition of the Petitioners as well as the cross examination of the Respondent No. 3 and note that no evidence was adduced by the Petitioners to contradict the averment of the Respondent No. 3 to show that the Said Tenement could not be put to the use as prayed for by the Respondent No. 3 in Rent Case No. 7 of 2018 or that there was any mala fide on the part of the Respondent No. 3 to claim such a right over the Said Tenement. Similarly, the Respondent No. 3 was not subjected to

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<sup>22</sup> 1992 SCMR 1296

<sup>23</sup> *Ibid* at pg. 1297

<sup>24</sup> 1998 SCMR 2119

<sup>25</sup> *Ibid* at pg. 2123

any cross examination, during his deposition, that would have contradicted the contentions raised by the Respondent No. 3. That being the case the contentions of the Respondent No 3 stand proved and I am therefore of the opinion that the District & Sessions Judge Karachi (East) had by allowing FRA No. 98 of 2021 correctly overturned the finding of the Xth Rent Controller Karachi (East) and had found that the Respondent No. 3 had proved that he required the Said Tenement in good faith.

19. For the foregoing reasons I am of the opinion that there is no illegality or infirmity in the Common Judgement dated 20 October 2021 passed by the District & Sessions Judge, Karachi (East) in FRA Nos. 98 of 2021 and FRA 104 of 2021 and by which Judgement the District & Sessions Judge, Karachi (East) was pleased to set aside an order dated 6 September 2021 passed by the Xth Rent Controller Karachi (East) in Rent Case No.7 of 2018 and had allowed FRA No. 98 of 2021 that had been maintained by the Respondent No. 3 and dismissed FRA No. 104 of 2021 that had been maintained by the Petitioners. This Petition is therefore misconceived and is therefore dismissed along with all applications with no order as to costs.

JUDGE

Karachi dated 2 September 2023.

Nasir P.S.