

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No. S- 126 of 2024
[Khalid Ahmed v. Saleem and others]

Petitioner : Khalid Ahmed through Mr. Imran Ali Lund
advocate

Respondent : Saleem and others through
Nemo

Date of hearing
& Order : 30.04.2024

ORDER

YOUSUF ALI SAYEED, J. - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Judgment rendered by the District Judge – Model Civil Appellate Court Badin on 27.02.2024, dismissing Rent Appeal No. 07 of 2023 filed against the Order dated 05.10.2023 made by the Rent Controller Golarchi at Badin, allowing Rent Applications No. 12 of 2021 filed by the Respondent No.1 under Section 15 of the Sindh Rented Premises Ordinance (the “SRPO”) so as to direct the Petitioner to vacate the premises that were the subject of the proceedings as well as to pay a rent of Rs. 1800 per month till then.

2. The backdrop to the matter is that the underlying proceeding was opposed by the Petitioner primarily on the basis that a sale agreement was said to have been executed in respect of the premises, with the relevant excerpt from his objections reading as follows :-

“3. That para No.3 of application has not been written correctly hence denied. it is submitted that the shop in question was the property of applicant which he rented out the same to the opponent on 22.06.2010 through agreement bearing No.505 at monthly rent of Rs.1400/- per month the rent period was fixed for 11 months and was started from 01.06.2010 upto 30.04.2011, the advance of Rs.10,000/- was paid by the opponent to the applicant at the time of execution of rent agreement but time and again the applicant was needy for money and he approached to the opponent to purchase the demise shop, the opponent accepted such offer and purchased the demise shop in total consideration of Rs.8,00,000/- out of which the opponent paid Rs.6,00,000/- to the applicant in advance before the witness in part performance of contract, the applicant executed such sale agreement bearing No.397 dated 14.03.2013 while the remaining amount of Rs.2,00,000/- was to be paid at the time of execution of registered sale deed, the opponent was the tenant of applicant and after execution of sale agreement the opponent was put into possession of shop as purchaser, now the question of ownership as mentioned in this para is vague plea a of the applicant, besides this the opponent further paid Rs. 1,00,000/- on marginal acknowledgment on same agreement.”

3. The learned Rent Controller framed four issues for determination, being as follows:-

1. Whether there exists relationship of landlord and tenant in between the Applicant and the opponent ?
2. Whether applicant require the premises / shop for his personal bona fide use ?
3. Whether the above named opponent has committed willful default in payment of monthly rent ?
4. What should the order be ?

4. The finding on Issues Nos. 1 to 3 came to be rendered in the affirmative, with the Rent Application thus being allowed in the aforementioned terms. That Order was then assailed through the Rent Appeal, canvassing the point of the sale agreement, which culminated in dismissal.

5. Proceeding with his submissions in the matter, learned Counsel again sought emphasize that in view of the sale agreement there remained no relationship of landlord and tenant between the petitioner and Respondent No.1 so as to admit to adjudication under the SRPO.

6. However, the plea is misconceived in view of the principle laid down by the Supreme Court in the case reported as Abdul Rasheed v. Maqbool Ahmed and others 2011 SCMR 320, where it was held as follows:

“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. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.”

7. Accordingly, while granting the application for urgency, the Petition is found to be devoid of merit and stands dismissed *in limine*, along with the pending miscellaneous applications.

JUDGE