

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P.No.S-183 of 2023**

Muhammad Habib thorough L.Rs Petitioner
Vs.
Mst. Rafiqan Begum through her L.Rs. & others.....Respondents

Ms. Shumaila, advocate for Petitioners.
Mr. Hasnain Raza, advocate for Respondent No.1.

21.08.2024.

O R D E R

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MUHAMMAD IQBAL KALHORO J: Respondent No.1 filed a rent case for ejectment against petitioners, legal heirs of her brother deceased Abdul Hameed in respect of property viz. house situated on Plot No.15, Sheet No.3, sector 10, Hanifabad, Orangi Town, Karachi on the ground of default and personal bonafide need. The opponent contested the matter pleading that they were owner of the property in their own capacity and not the tenant of respondent No.1. In fact they have never paid any rent to her. The relationship of landlord and tenant never existed between them.

2. The rent application was allowed vide order dated 11.12.2019. The petitioner filed appeal against that order but the same was dismissed by order dated 13.07.2021. Such order was never challenged by the petitioner by filing a constitution petition in this Court. Thereafter respondent No.1 filed execution application before Rent Controller. Instead of contesting the same, the petitioner filed an application u/s 12(2) CPC on the ground that order by the respondent was obtained on the ground of misrepresentation and concealment of facts. This application was dismissed vide order dated 30.07.2022. This order was challenged by the petitioners in a Civil Revision No.63/2022. The revisional court viz. V-Additional District Judge, Karachi West, after hearing the parties has dismissed the revision application vide impugned order dated 12.12.2022, hence this petition.

3. I have heard learned counsel for the parties and perused the record. During arguments it has been pointed out that the petitioners had filed a civil suit for declaration, cancellation and permanent injunction in respect of subject property, which was dismissed u/s 17(3) CPC in the year 2021 and thereafter against such dismissal no further remedy has been availed by them. The facts of the case show that petitioners had migrated from India in the year 1980 and were accommodated by respondent No.1, sister of Muhammad Habib, to live in the demised premises in which subsequently the father of petitioner was treated as a tenant against rent of Rs.1000/- which he started paying.

4. In affidavit in evidence filed by respondent No.1 and her witnesses, she has established relationship between the parties as tenant and landlord. The Rent Controller and appellate court both examined the petitioner's plea that they were owner of the property and had applied for lease in respect of subject premises in their favour, but did not agree and decided the case against them. Against such order, no further remedy was availed by the petitioners and the orders passed by both the courts below attained finality.

5. In the execution proceedings, instead of contesting the same on merits, the petitioner preferred to file an application u/s 12(2) CPC taking the ground that order was obtained by the respondent No.1 by misrepresentation and concealment of facts. This application after hearing was dismissed by Rent Controller citing the reason that the petitioner had contested the rent matter and had already taken the same grounds which have been examined in rent case and dismissed. The challenge to that order in shape of civil revision application also met with same fate. The civil suit filed by the petitioner seeking declaration as owner of the subject property has already been dismissed.

6. Nothing is, therefore, left in this case to be decided between the parties so far a relationship between them as landlord and tenant is concerned and the order to eject them from the demised premises. The plea of the petitioners to be owner of the demised premises instead of tenant has been considered four times by the forums below but for want of tangible evidence has been rejected. No new matter or ground has been taken here to take exception to the impugned orders. I find no illegality in them. The application of petitioner u/s 12(2) CPC has been dismissed on the valid and cogent grounds. No case for interference in constitutional jurisdiction is made out, hence this petition is dismissed alongwith pending application.

The petition is accordingly disposed of.

Judge

A.K.