

**JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P.No.S-1242 of 2013**

Muhammad Moosa ..... Petitioner  
Vs.  
Mst. Waheedan & others ..... Respondents

Mr. Shahnawaz Ali Nasir, advocate for Petitioner.  
Mr. Shafqat Zaman, advocate for Respondents.

**03.09.2024.**

**O R D E R**

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**MUHAMMAD IQBAL KALHORO J:** Respondents No.1 & 2 filed a rent case for ejectment against petitioner from premises viz. No.G-1, Plot No.IV-A, 470, Survey No.RC-12/119, Ranchore Quarters, Karachi on the ground of default and personal bonafide need. The same was contested by the petitioner on the ground that he after purchasing share in the said property had become co-owner and thus cannot be treated as a tenant. The rent case, however, was decided against him. He filed Appeal No.336/2001. The appellate court however, remanded the case to the Rent Controller by directing it to decide the issue of existence of relationship of landlord and tenant between the parties first.

2. After remand of the case, additional evidence was recorded, the stance taken by petitioner that he was co-sharer in the property and not tenant was also considered, yet the rent case was decided against him on the ground of personal bonafide need as the ground of default, the respondents could not prove. This order was challenged by the petitioner in FRA No.217/2007, the same has been decided through impugned judgment upholding findings of Rent Controller and dismissing the appeal. The petitioner has challenged the same by means of this petition.

3. During arguments, learned counsel for petitioner has relied upon a case law reported as 2010 SCMR 189 to impress his case. The ratio of this judgment is that purchaser of the share out of a joint property having become a co-owner, his status as a tenant ceases and his possession will become that of a co-owner, therefore, he is entitled to retain possession of a joint property and cannot be ejected.

4. While from the side, learned counsel for respondents has relied upon a judgment reported as 1989 SCMR 913. The ratio of this judgment is that if a person enters into premises as a tenant at a specific monthly rent and also admitted execution of rent deed, such clear and categorical admission by tenant, notwithstanding purchase by him of a certain share of disputed property, would not entitle him to challenge status of landlord qua property nor existence of

relationship of landlord and tenant between the parties. It is further held in the same judgment that sale transaction of a certain share in the property having taken place during pendency of ejectment proceedings, the Rent Controller who was exercising limited jurisdiction under Rent Restriction Ordinance, would not adjudicate upon ownership of the parties. The tenant, however, would be at liberty to seek his remedy in civil court.

5. The issue between the parties is exactly of same nature as discussed in aforesaid judgment. Both the case laws were quoted before the appellate court by the parties in support of their cases respectively. The relevant discussion by the appellate court is in para No.6 & 7 which is reproduced as under:-

6. In view of discussed state of affairs, I'm of the humble opinion that the same point discussed in both the aforesaid case law, relied upon by the learned counsel for the parties, however, the case law reported in 2010 SCMR 189, relied upon by the learned counsel for appellant, recorded by the three Judges of the Hon'ble apex Court, whereas, the case law reported in 1989 SCMR 913, relied upon by the learned counsel for the respondents, was passed by the five Judges of the Hon'ble Supreme Court of Pakistan, therefore, the case law relied upon by the learned counsel for the respondents will be prevailed upon. While saying so, I'm guided by the case law reported in 2006 SCMR 1637. Nonetheless, it is an admitted position on the record that the appellant in his written statement not only admitted that he is tenant of the demised premises, but also admitted to have entered into the demised premises being tenant. At this juncture, I would also rely upon the case law reported in 2013 MLD 978 [Supreme Court (AJ&K)], wherein the Hon'ble apex Court has been pleased to held that once a tenant always be a tenant.

7. In view of above discussion, it is explicit on the record that the appellant entered into the demised premises being tenant, which fact too admitted by him, thereafter, though he has purchased the share of one of the co-owner of the deceased landlord, but he would remain tenant, until deliver up the demised premises to the respondents. As such, in view of above case law relied upon by the learned counsel for the respondents, the tenancy still exists and is not ceased. However, the appellant would be at liberty to seek remedy from the Civil Court of Law on the basis of registered Sale Deed (Ex.O/11).

6. Learned counsel for petitioner has failed to point out any illegality in the said findings of the appellate court. The judgment reported as 1989 SCMR 930 has been rendered by a bench of five honourable judges; whereas the judgment reported as 2010 SCMR 189 was given by a bench of three members. The former being the larger bench, the ratio set out there would prevail is settled proposition of law and so has been rightly observed by the appellate court. I see no reason to interfere in the said findings in absence of any other material showing mis-appreciation of facts or law. It is not disputed between the parties that petitioner had entered into property as a tenant and it was only at subsequent stage, he claimed to have purchased some share from a co-owner of the property. Therefore,

instead of retaining the entire property in that capacity, he was required to file a civil suit seeking adjudication of his rights if any. This being the position, I do not find any merits in the instant petition and dismiss it accordingly.

The petition is accordingly disposed of.

Judge

A.K.