

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
C. P. No. S –84 of 2022

| Date | Order with signature of Judge |
|--------------------|--|
| Petitioners: | Mumtaz Hussain and others Through Mr. Safdar Ali Bhatti, Advocate |
| Respondents: | Nemo. |
| Province of Sindh: | Through Mr. Mehboob Ali Wassan , Assistant Advocate General |
| Date of hearing: | 16.10.2023 |
| Date of Order: | 20.11.2023 |

ORDER

ARBAB ALI HAKRO, J: Through this petition, the Petitioners have impugned the Order dated 16.12.2019, passed by the learned 1st Rent Controller, Khairpur, in Rent Application No.02 of 2019, whereby application filed by the petitioners under Section 15 of SRPO, 1979 was dismissed. Being aggrieved with the said Order, present petitioners assailed the same before the learned 3rd Additional District Judge, Khairpur, in Rent Appeal No.01 of 2020, which was also dismissed and thereby maintained the Order passed by learned Rent Controller.

2. The relevant facts of the case are that the Petitioners filed Rent Case No.02 of 2019 against the Respondents No.1 to 4 ("**tenants**") in respect of plot with Katcha structure situated in Naich Mohallah Luqman, Khairpur ("**demised premises**") on the grounds of default in payment of rent and personal use. It is stated in the rent application that the father of the Petitioners filed Civil Suit No.48 of 1986 against the tenants for Declaration, Possession, Cancellation of Documents and Permanent Injunction. The said Suit was decreed vide Judgment dated 10.11.1993 and Decree dated 12.11.1993. The tenants assailed

it in Civil Appeal No.37 of 1993, but the same was dismissed vide Judgment dated 30.4.1997 and Decree dated 05.5.1997. After that, tenants preferred Civil Revision No.46 of 1997 before this Court, which was disposed of vide Order dated 07.12.2018, wherein it was observed that the Petitioners/landlords were required to file an ejectment application against the tenants. Hence, they filed the ejectment application.

3. In their written statement, the tenants denied all the averments and allegations made by the Petitioners/landlords. It was stated by the tenants that this Court passed the Order with the observation that the Petitioners/landlords intended to exercise their rights to evict the tenants, and provided opportunity to them. They also denied the ownership of the Petitioners in respect of demised premises and denied that they are their tenants.

4. In view of the divergent pleadings of the parties, the following points for determination were settled by the Rent Controller: -

- i) Whether there is any existence of relationship in between applicants and opponents as landlord and tenant or not?
- ii) Whether the opponents have committed default in terms of payment of rent or not?
- iii) Whether the applicants need the subject premises for their personal need?
- iv) What should the Order be?

5. Both parties led their evidence by filing their respective Affidavit-in-evidence, producing relevant documents supporting their contentions. After evaluating the evidence produced by them, it was held by the Rent Controller that the relationship of landlord and tenant did not exist between the parties and dismissed the Rent Application vide Order dated 16.12.2019. The Petitioners/landlords assailed the said Order by filing a First Rent Appeal bearing No.01 of 2020, which was also dismissed vide Judgment dated 23.4.2022, which aggrieved the Petitioners/landlords to file the instant petition.

6. Perusal of the record reveals that an instant petition was presented in the office on 13.05.2022 and was fixed before the Court on 16.05.2022 when notices were issued to the Respondents through all modes except publication. On 09.09.2022, Respondent No.2(iv)/ Muneer Ahmed and Respondent No.3(ii) appeared and sought time to engage Counsel; besides, notices were repeated against the remaining Respondents. Mr Safdar Ali Kanasro, advocate, has shown appearance and filed Vakalatnama on behalf of Respondent No.3(ii), which was taken on record, but none appeared on behalf of the remaining Respondents; hence, notices were again repeated against them. Subsequently, on 07.11.2022, Counsel representing Respondent No.3(ii) undertook to file Vakalatnama on behalf of the attorney of LRs of Respondents No.1 to 4. However, intimation notices were issued to Counsel representing the Respondents, but he failed to appear and argue the matter.

7. At the outset, learned Counsel for the Petitioners submits that impugned orders passed by both Courts below suffer from material irregularities and illegalities as both courts below failed to appreciate the factual as well as legal aspect of the case; that learned Rent Controller has observed that on denial of the relationship of landlord and tenant, the jurisdiction of Rent Controller is barred and the same is required to be decided by the Civil Court; however, learned Rent Controller failed to go through the contents of judgments and decrees passed by learned trial Court as well as Order passed by this Court in Civil Revision Application No.S-46 of 1997, therefore, petitioners were not required to prove relationship of landlord as the Respondents already admitted before this Court and that only points require determination was default in payment of rent and personal need of demised premises; that the impugned orders are based upon assumption and presumption and are not tenable in law.

8. Learned AAG has supported the impugned orders passed by learned lower Courts on the ground that petitioners have failed to prove the relationship of landlord and tenant, hence do not require any interference by this Court and are liable to be maintained by dismissing the instant petition.

9. I have heard Counsel for the Petitioner as well as learned Assistant Advocate General and have perused the record with their assistance.

10. Before proceeding further, it needs to be reiterated that this Court normally does not operate as a Court of appeal in rent matters. Rather, this jurisdiction is limited to disturb those findings which, prima facie, appear to have resulted in some glaring illegalities resulting in miscarriage of justice. The finality in the rent hierarchy is attached to the appellate Court, and when there are concurrent findings of the fact recorded by the Rent Controller and Appellate Authority, the scope becomes rather tightened. In the case of Allies Book Corporation through L.Rs vs Sultan Ahmad and others (2006 SCMR 152), the Apex Court has held as under: -

“12. With regard to the contention that the High Court in exercise of constitutional jurisdiction would not be competent to set aside the concurrent findings of the forums below and substitute the same with its own findings, Mian Mushtaq Ahmad submitted that the contention advanced by Mr. Neel Keshav was without any substance as it was not supported by the pronouncements of this Court in large number of cases wherein this Court categorically held that where the finding suffered from illegality, infirmity, misreading and non-reading of evidence on recoil, misconstruing the evidence or based on extraneous material then the High Court would be justified in setting aside such concurrent findings of the forums below and to substitute the same by its own findings. From the above discussion it can safely be deduced firstly, that a special forum or Tribunal proceeding with a case under a special statute is legally bound to decide the case rightly and in accordance with law and it has no arbitrary or fanciful discretion to decide the case wrongly in view of the pronouncement of this Court in case of Utility Stores Corporation Pakistan Limited v. Punjab Labour Appellate Tribunal and others (supra); and secondly,

that the High Court is possessed of power in exercise of its constitutional jurisdiction to substitute the findings of the forums below with its own findings as per the pronouncements made by this Court in the cases of Muhammad Sadiq v. Punjab Labour Court No.1, Lahore and another; Haji Mohibullah & A Co. and others v. Khawaja Bahauddin and Messrs Olympia Spinning and Weaving Mills Ltd. and another v. State Life Insurance Corporation of Pakistan (supra). Mr. Neel Keshav failed to advance arguments or refer us to any authority of this Court in rebuttal of the settled principles so as to require us to deviate or take a different view relative to the pronouncements made in the above noted cases.”

11. It is a fact that this Constitutional Petition is filed against the concurrent findings of the fact recorded by the Courts below in a rent matter. I am aware that very limited scope is permitted in the Constitutional Jurisdiction to interfere in the rent matters. However, I am also cognizant of this Court's responsibility to protect property rights envisaged by Articles 23 and 24 of the Constitution of the Islamic Republic of Pakistan 1973 wherefrom former provides, *“Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest”* and whereas Article 24 (1) says *“No person shall be deprived of his property save in accordance with law”*. It appears that the Rent Controller dismissed the Rent Application because the petitioners failed to establish a relationship as a landlord and tenant. The law regulating the relationship between landlord and tenant, the Sindh Rented Premises Ordinance, 1979 (**“the SRPO, 1979”**) under Section 2(f) and (j) very clearly defines "landlord" and "tenant"; therefore, it would be conducive to reproduce relevant definition hereunder: -

“(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 include:-

(i) any person who continues to be in possession or 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 ; and.....”

12. Indisputably, the Petitioners filed a suit for Declaration, Possession, Cancellation of Documents and Permanent Injunction against the tenants, which was decreed and the appeal against it filed by the tenants was dismissed. Whereafter, tenants preferred Revision Application before this Court challenging both the above decisions of trial as well as appellate Court. In the Revisional proceedings, findings of trial Court and appellate Court were maintained to the extent of ownership of Petitioners and cancellation of documents. However, regarding relief of possession, this Court left the Petitioners to sue for ejectment of the tenants by filing a Rent Application before the Rent Controller. Now the question arises here why this Court declined the relief of possession to the Petitioners, to discuss further properly, it would be conducive to reproduce the relevant findings of this Court rendered in the Order dated 07.12.2018 is hereunder: -

“7. Be that as it may, on the basis of such findings and on the basis of the report of Survey Superintendent, the present Suit No.48 of 1986 (Old No.79 of 1983) was decreed and the documents sought to be cancelled, were accordingly, cancelled in terms of the Decree. One of the significant ground taken by the applicants is that since the respondents/plaintiffs were considering the applicants as tenants, the trial Court and the appellate Court should have dismissed the Suit to the extent of possession as the jurisdiction in between landlord and tenant, since it is pleaded in para 17 of the plaint, ought to have been exercised by the Rent Controller and not by the Civil Court.

8. Learned Counsel for the applicants has further relied upon the definition of Section 13 of the Sindh Rented Premises Ordinance as it was promulgated when the Suit was filed. The findings as far as the other issues are concerned that relate to the documents sought to be cancelled are concurrent, PT-I and other tax related documents cannot decide the title in favour of the applicants. It is only for the purpose of taxation that these alleged documents were obtained and issued which regulate possession and the tax payable thereon,

however, title is altogether different consideration. Hence, the applicants cannot succeed on the strength of these documents to claim title. Finding of two Courts below, as such, to the extent of cancellation require no interference.

9. *Be that as it may, learned Counsel for the respondents also at this point concedes without prejudice that since the eviction application should have been filed by them before the Rent Controller, however, findings to the extent of these documents have reached finality.*

10. *I am in the agreement with the contention of the learned Counsel for the respondents that insofar as these ancillary reliefs followed by declaration are concerned that relate to the documents, the Civil Court and the appellate Court have rightly exercised their jurisdiction, but insofar as the possession is concerned, on the basis of pleadings and in terms of para 17 of the plaint, it is regulated by the Rent Controller in terms of Section 13 of the Sindh Rented Premises Ordinance, 1979.*

11. *Hence, I do not approve the findings to the extent of possession since the question of title and ownership has already been decided earlier in Suit No.13 of 1957 and the relation was impliedly conceded by applicants. The documents were lawfully sought to be cancelled subsequently in Suit No.48 of 1986 (Old No.79 of 1983), however, in case the respondents intend to exercise their rights to evict the applicants as being their tenants, as conceded above, who have failed to pay rent, they may do so and the applicants may take any kind of defence as they deem fit and proper.*

13. On scanning the above findings, apparently, it was the contention of the tenants (who were applicants in the above Revision) that the Petitioners were considering them as tenants; therefore, they ought to have availed remedy before the Rent Controller. On such contentions of tenants, the relief of possession was declined to the Petitioners. Therefore, cause of action accrued to the Petitioners for filing ejectment application against the tenants. The Petitioners were declared owner of the demised premises up to the High Court, and the tenants have not challenged decision; thus, the same attained finality. Therefore, it is presumed that ownership of the Petitioners regarding demised premises is admitted.

14. Nonetheless, it needs to be threshed out that in what capacity the tenants are occupying the demised premises. Had they been having any documents and they would have produced during the first round of litigation but they failed. As far as the tenancy inter-se the parties is concerned, as per Petitioners, the same was oral. Whereas, Section 5, of the "SRPO" provides method in respect of execution of the tenancy agreements. The very purpose of enactment of section 5 of the Ordinance appears to provide a manner for making the agreement and care has been taken to avoid any doubt or ambiguity in execution of the same. Yet it does not mean that oral tenancy is prohibited under the said Ordinance. Had it been the intention of the Legislature, it would have provided such provision of law in the Ordinance to exclude the jurisdiction of a Rent Controller in respect of a dispute between the landlord and tenant based on oral tenancy. However, it is not prohibited under law. Needless to say, it is also well-recognized that as the tenancy creates a valuable right, therefore it is advisable and convenient that it should be in writing to avoid dispute regarding terms and existence of relationship of landlord and tenant between the parties. Therefore, Section 5 is in the nature of procedural provision which requires the agreement to be executed in a particular form, but it does not nullify the agreement not made in this form nor the landlord be knock out on this score alone. The Apex Court of Pakistan has already settled the issue of oral tenancy in a case of Ahmad Ali alias Ali Ahmad vs Nasar-ud-Din and another (PLD 2009 SC 453), wherein it has been held as under:-

"In the impugned Judgment the High Court has observed that the tenancy had not been created by the written instrument. This Court in case of Shajar Islam v. Muhammad Siddique and 2 others (PLD 2007 SC 45) has laid down that tenancy would not be necessarily created by written instrument in express terms, rather might also be oral and implied. In normal circumstances, in absence of any evidence to the contrary, owner of property by virtue of his title would be presumed to be landlord and person in possession of premises would be considered as tenant under the law."

Further in a case of Shajar Islam vs Muhammad Siddique and 2 others” (PLD 2007 SC 45) it has been held as under:-

“The determination of the pivotal question related to the legal status of the parties vis-à-vis the premises and the nature of their relationship inter se, would certainly be a mixed question of law and fact to be decided in the light of the evidence. The title of the petitioner is not as such disputed and in absence of any evidence in rebuttal, there would be a strong presumption of existence of tenancy between the parties. This is settled proposition of law that a landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties. However, in the normal circumstances in absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered as tenant under the law or the tenancy may not be necessarily created by a written instrument in express terms rather may also be oral and implied.”

15. In view of the above, it is established that the owner of the property shall be presumed and taken as **landlord** and the occupier of the same who is not owner of the premises as tenant, and this general principle can only be rebutted if a contesting claimant appears with a declaration of competent Court of law declaring him to be owner of the property, which he admittedly failed. It is a settled proposition of law that a landlord may not be an owner of the property, and ownership may not always be a determining factor in establishing the relationship of landlord and tenant between the parties. However, in normal circumstances, in case of absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered a tenant under the law. Once the relationship of tenancy is proved, Article 115 of Qanun-e-Shahadat Order, 1984 will come into play as held in (PLD 2006 Supreme Court 549). The principle underlying Article 115 of the Order was considered at great length in the Privy Council case “Kumar Krishna Prosad Lal Singha Deo vs Barabari Coal Concern Limited and others (1937 AIR (PC) 251) and

Muhammad Anwar through his legal heirs representative vs Abdul Shakoor (1982 SCMR 1120).

16. Counsel for the Petitioners have specifically argued that quantum of rent, payment and period of default specifically and particularly mentioned in rent application and petitioners have also stated such fact in their evidence in shape of documentary and oral evidence. I have also perused the available record and proceedings and gone through the Judgment passed in F.C Suit No.48/86 (Old No.79/83). It appears that relief of possession was declined in terms of Section 13 of Sindh Rented Premises Ordinance, 1979 (SRPO), which explicitly defined the scheme of the Ordinance that no tenant shall be evicted from the premises in his possession except by the provisions of the Ordinance. In the above provision, petitioners would have a cause of action to initiate rent proceedings against the tenants as they have been declared owner under the issue of ownership decided by the competent Court of law that too attained finality. Insofar the relationship between landlord and tenant is concerned, both the learned courts have not properly pondered the definition of **tenant**, which includes *“a person who is bound to pay rent as a consideration for the possession or occupation of any premises by him or by any other person on his behalf”*. More so, factor of change of ownership involved when the title of petitioners had been decided in revisional proceedings, and said Order attained finality.

17. On the other hand, the tenants raised objections over the relief of possession that petitioners claimed in their pleadings that they are tenants, and on such grounds, findings of issue regarding possession were reversed. In such eventualities, tenants could not deny the relationship between landlord and tenant once they conceded such a statement in revisional proceedings, even otherwise sufficient material is available on record to decide the relationship between landlord and tenant. However, both Courts below failed to exercise

jurisdiction and committed irregularity while deciding the issue in accordance with the law. In such a situation, this Court opted to exercise the constitutional jurisdiction vested with to interfere in the matter as the jurisdictional error and illegality committed by the courts below to ensure fundamental right.

18. Admittedly, learned Rent Controller and Appellate court dismissed the eviction application on the ground that there is no proper description identification and particular address brought by the petitioners in rent proceedings. It is further observed that petitioners have neither produced any rent agreement or payment of receipts nor mentioned clearly from which date premises was rented out to tenants on rent and what rent was fixed between them; even the memo of application of petitioners does not mention that from which date or month, the tenants stopped paying rent to the petitioners. Such observation of both the courts is based on misreading and non-reading of evidence and judgments passed in F.C Suit No. 48/86 (Old No.79/83).

19. In view of above exposition of the law, there exists the relationship of landlord and tenant between the parties, learned Rent Controller, as well as the Appellate authority, committed glaring irregularities while misreading and non-reading of evidence available on record and decided the issue of the relationship of landlord and tenant in a negative manner by dismissing the rent application solely on such ground without giving the findings on default and personal bonafide use. Therefore, I allow the petition consequently impugned order and judgment of both the courts below are hereby set aside. The case is remanded to the Rent Controller for decision afresh after hearing both the parties within one month.

JUDGE