

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA
Const. Petition No. S- 379 of 2024
(*Ajeeb-u-Rehman @ Imran v. Suhail Ahmed & Ors*)

DATE	ORDER WITH SIGNATURE OF JUDGE
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Date of hearing & Order: 10.03.2025

Mr. Raz Muhammad Hakro, Advocate for the petitioner.
Mr. Abdul Rehman A. Bhutto, Advocate for Respondent No.1.
Mr. Abdul Waris K. Bhutto, Assistant A.G for the State.

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ORDER

Adnan-ul-Karim Memon, J; The petitioner, Ajeeb-U-Rahman (also known as Imran), challenges the judgment dated September 7, 2024, rendered by the Learned Second Additional District Judge, Shikarpur. This judgment upheld the eviction order dated January 26, 2024, issued by the Learned First Rent Controller/First Senior Civil Judge, Shikarpur, in Rent Application No. 12 of 2019 (*Suhail Ahmed v. Ajeeb-U-Rahman*). The petitioner is escalating the dispute to this court, submitting that the lower courts got it fundamentally wrong by misinterpreting the legal relationship between the parties and disregarding his claim of lawful ownership.

2. The precise case of the parties is that respondent Suhail Ahmed filed an eviction application against petitioner Ajeeb-u-Rehman under the Sindh Rented Premises Ordinance 1979. He claimed ownership of the property, stating petitioner was a tenant who stopped paying rent. The petitioner denied the tenancy, claiming he purchased the property from the respondent through an oral agreement. The trial court allowed the respondent's eviction application despite the petitioner's objections and submissions. Petitioner's appeals and applications were dismissed on the premise. The petitioner submitted that the respondent failed to prove a landlord-tenant relationship and that the trial court lacked jurisdiction. However, the appellate court upheld the eviction order. Which is against the law.

3. Learned counsel for the petitioner argued that the judgment of the Learned Second Additional District Judge, Shikarpur, dated September 7, 2024, is illegal and warrants being set aside. The Judge failed to properly exercise the jurisdiction vested under Section 21 of the Sindh Rented Premises Ordinance 1979. The judgment is arbitrary, capricious, and reflects a lack of judicial reasoning, rendering it void. The Judge failed to utilize the supervisory powers granted by the Sindh Rented Premises Ordinance 1979 to rectify errors made by the subordinate court. The Judge did not address the grounds raised by the Petitioner in the First Rent Appeal, including written arguments and case laws, leading to a miscarriage of justice. The First Rent Controller/Senior Civil Judge's order dated January

26, 2024, failed to address the Petitioner's legal pleas and introduced irrelevant issues. The Second Additional District Judge also failed to address these pleas in his judgment dated 07/09/2024. The Judge failed to properly discuss and distinguish the case laws presented by the Petitioner, violating Articles 189 and 201 of the Constitution. The Judgment incorrectly states that the respondent presented those case laws. The judgment misapplied case law in paragraph 15. The rent application is incompetent and not maintainable. There is no valid, enforceable agreement, and the application falls outside the scope of the Sindh Rented Premises Ordinance 1979. The Respondent's rent application contains conflicting statements, demonstrating mala fide intentions. The trial court wrongly decided the matter without lawful justification, as there is no established landlord-tenant relationship, a mandatory requirement of the Sindh Rented Premises Ordinance 1979. The First Rent Controller/Senior Civil Judge's order dated January 26, 2024, is arbitrary and lacks judicial application. The Respondent failed to establish a valid rent agreement under the Sindh Rented Premises Ordinance 1979 and the Contract Act. The Respondent relied on a registered sale deed from 2012, which contradicts his earlier claims of ownership. The Respondent has presented conflicting information regarding the time he obtained possession of the property. Learned counsel argued that the lower courts erred in establishing a landlord-tenant relationship with the respondent (Suhail Ahmed). He asserted that the petitioner purchased the property outright, took possession and that the alleged construction by the respondent in 2008 is fabricated. He asserts that the learned courts relied on a utility bill, which was/is insufficient to prove a landlord-tenant relationship, and ignored crucial evidence and procedural irregularities, as such both the decisions are unwarranted by law and are liable to be set aside. He emphasized that when a party in a rent case denies the existence of a landlord-tenant relationship, the landlord cannot simply prove ownership of the property to establish the relationship. The landlord must also demonstrate that a tenancy agreement exists, either oral or written. This can be supported by evidence of rent payments, such as rent receipts or other relevant proof. If the landlord fails to establish a landlord-tenant relationship, the Rent Controller loses jurisdiction under the Sindh Rented Premises Ordinance, 1979. In such cases, the civil courts would then have the authority to handle the dispute. In support of his contentions, he relied upon the cases of *Muhammad Abid and brothers v. VIIIth Additional District Judge, South at Karachi and 2 others* (2013 CLC-1770), *Beejal Mal v. Punaji* (1987 CLC-1134), *Syed Mehboob Hussain v. Raza Shah and 2 others* (2006 CLC-629), *Altaf Ahmed Khan and another v. Muhammad Hayat and 2 others* (2003 SCMR-1662), *Farzand Ali and another v. Khuda Bakhsh and others* (PLD 2015 Supreme Court-187), *Shaukat Javed v. Sh. Abdul Khaliq and 2 others* (1991 SCMR-215), *Rao Abdul Rehman (deceased) through legal heirs v. Muhammad Afzal (deceased through legal heirs and others* (2023 SCMR-815), *Hafeezuddin and 2 others v. Badaruddin and 2 others* (PLD 2003 Karachi-444), *Syed Aijaz Hussain v. Azimullah* (1984 CLC-2908), *Ghulam Hussain v. Noor Shah Ali* (1994 MLD-36), *Quadratullah Raisani and another v. Abdullah* (2023 MLD-121) and

Ismail v. Rent Controller, Shahdadpur and another (PLD 1976 Pesh.66). He prayed for allowing the petition.

4. Learned counsel for the respondent has supported the judgments rendered by the two courts and argued that the learned Rent Controller, being a fact-finding forum, after recording evidence of the parties has held that the relationship of the landlord and tenant exists between the parties; thus impugned orders, being well-reasoned, requires no interference by this court. In support of his contentions, he relied upon the case of Ulfat Ali v. Abdul Shakoor (NLR 1992 AC-320). Learned AAG is of the same view.

5. I have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. Can a landlord-tenant relationship be established or maintained solely based on the ongoing legal pursuit of property ownership through F.C.Suit No.278 of 2019 for Specific Performance of Contract and Permanent Injunction? And, what are the limits of this court's power to overturn consistent rulings from lower courts in a constitutional petition?

7. It is the claim of the parties that Suhail Ahmed (Respondent No. 1/Applicant) filed an eviction application under Section 15 of the Sindh Rented Premises Ordinance 1979, seeking to evict Ajeeb-u-Rehman (the Opponent). The property in question, located at Wagno Gate, Shikarpur, comprises a room, veranda (shaped like a room), kitchen, bathroom, store, and a small courtyard, totaling approximately 97 square yards, within a larger 361 square yard plot (C.S. No. 65/24). Suhail Ahmed has asserted ownership of the 361 square-yard plot since 2012, with prior possession and enjoyment dating back to 1992/1993. In 2008, he constructed the 97 square yard premises for the accommodation of his cattle shed laborers, including Ajeeb-u-Rehman, who had been employed since 1995. In late December 2016, Ajeeb-u-Rehman requested to rent the premises due to personal issues, agreeing to pay Rs. 3,000 per month from January 2017 to May 2018. Due to their long-standing relationship, Suhail Ahmed agreed to an oral tenancy agreement without a written contract. Notably, a gas connection for the property, applied for by Suhail Ahmed through Ajeeb-u-Rehman, was allotted in Ajeeb-u-Rehman's name in May 2006. Ajeeb-u-Rehman occupied the premises from January 2017 and paid rent until May 2018. Upon the agreed tenancy expiry, Suhail Ahmed requested Ajeeb-u-Rehman to vacate the premises for personal use. However, Ajeeb-u-Rehman refused, ceased paying rent, and stopped working at the cattle shed. As of November 2019, Ajeeb-u-Rehman owed Rs. 54,000 in unpaid rent (18 months at Rs. 3,000 per month). Despite repeated requests, Ajeeb-u-Rehman failed to pay or vacate the premises. Subsequently, on November 14, 2019, Suhail Ahmed was served with a notice of a lawsuit filed by Ajeeb-u-Rehman (FC Suit No. 278 of 2019), seeking specific performance of a contract and a permanent injunction, which Suhail Ahmed alleges is based on fabricated claims. Suhail Ahmed asserts that the Rent

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Controller has jurisdiction over the matter and seeks an order for Ajeeb-u-Rehman's eviction and the recovery of unpaid rent. Ajeeb-u-Rehman, the opponent, denies Suhail Ahmed's eviction claim, asserting the Rent Controller lacks jurisdiction as the application is legally unsustainable under the Sindh Rented Premises Ordinance. There's no valid rent agreement, no landlord-tenant relationship, and no rent was ever paid. Suhail Ahmed's claim of ownership since 1992/93 is false; he purchased the property in 2012, making the 2008 construction claim impossible. In 2014, Ajeeb-u-Rehman purchased the property from Suhail Ahmed via an oral agreement, paying the full Rs. 174,600. Suhail Ahmed promised a formal sale deed but granted immediate possession, allowing Ajeeb-u-Rehman to build a house. Ajeeb-u-Rehman has been in continuous possession, built the house, obtained the gas connection, and exercised ownership rights. He asserted that Suhail Ahmed's eviction claim was false and retaliatory after a failed attempt to forcibly dispossess Ajeeb-u-Rehman. He added that the eviction application is frivolous and is liable to be dismissed with costs. It appears that Suhail Ahmed (Respondent No. 1/Applicant) initiated eviction proceedings against Ajeeb-u-Rehman (Petitioner/Opponent). Suhail Ahmed and his witnesses filed affidavits in evidence. Ajeeb-u-Rehman's counsel raised legal objections to the affidavits and attached documents. Suhail Ahmed then applied to Order 13 Rule 2 read with Section 151 of the Civil Procedure Code (CPC) to address these objections. Ajeeb-u-Rehman filed objections, and the trial court disposed of the application with directions for Suhail Ahmed to ensure the attendance of witnesses and provide documentary evidence. Ajeeb-u-Rehman alleges that Suhail Ahmed failed to comply with these directions. Ajeeb-u-Rehman subsequently filed applications under Section 5 of the Sindh Rented Premises Ordinance 1979, Order 47 Rule 1 read with Sections 114 and 151 CPC, and Section 151 CPC, which were all dismissed by the trial court. A Civil Revision (No. 3 of 2024) filed by Ajeeb-u-Rehman was also dismissed as infructuous after the main application was decided. However, during cross-examination, Ajeeb-u-Rehman's counsel submitted that Suhail Ahmed and his witnesses failed to establish a landlord-tenant relationship and did not prove a valid rent agreement as required by the Sindh Rented Premises Ordinance 1979 and the Contract Act. Suhail Ahmed closed his evidence. Ajeeb-u-Rehman filed his affidavit in evidence, which he emphasized, was unshaken during cross-examination. He then closed his evidence. It is claimed that the First Rent Controller/Senior Civil Judge, despite Ajeeb-u-Rehman's submission of case laws and the Civil Revision case diary, allowed Suhail Ahmed's rent application. Ajeeb-u-Rehman was ordered to vacate the premises and pay outstanding rent and costs, and a show-cause notice was issued. Ajeeb-u-Rehman appealed this decision (First Rent Appeal No. 01 of 2024) to the District Judge, which was assigned to the Second Additional District Judge. Ajeeb-u-Rehman submitted written arguments and case laws. The Second Additional District Judge dismissed the appeal, upholding the eviction order and the imposed costs.

8. Under Article 199, the High Court's review is restricted. It can only intervene if a lower authority ignored or misinterpreted evidence, or decided without any evidence, leading to a serious injustice. The High Court cannot simply re-examine the facts or act as if it were an appeals court. On the aforesaid proposition, I am guided by the decision of the Supreme Court in the cases of Shajar Islam vs. Muhammad Siddique **PLD 2007 SC 45**, Allies Book Corporation vs. Sultan Ahmed **2006 SCMR 152**, Muhammad Hussain Munir vs. Sikandar and others **PLD 1974 SC 142**.

9. Section 5 mandates that all rental agreements in Sindh must be in writing. If the agreement doesn't legally require registration, it must be attested by the Rent Controller, a Civil Judge, or a First Class Magistrate. To prove a landlord-tenant relationship, a registered deed (if applicable) or the attested original agreement must be presented. This section does not apply to agreements already in place before this Ordinance took effect.

10. The interpretation of this Section was subject to much debate in this Court and before the Supreme Court of Pakistan. In Hakim Ali vs Muhammad Salim **1992 SCMR 46** it was held in simpler terms, the law strongly favors written rental agreements to avoid confusion and disputes. While older agreements are respected, proving agreement to their terms is crucial. Section 5 of the Sindh Rented Premises Ordinance was designed to make proving a landlord-tenant relationship straightforward. However, courts have interpreted its requirements flexibly. If both parties agree they have a landlord-tenant relationship, that's sufficient. If they disagree, the landlord must provide evidence to prove the relationship, even if the written agreement isn't perfect. If one party denies the relationship, then the other party has to prove it exists. It is well settled that if tenancy is denied, ownership alone isn't proof. The landlord must show a rental agreement and rent payments. Without that, the Rent Controller loses jurisdiction, and the case goes to civil court. However, in the present case, the Petitioner, lacking registered title and relying only on an oral sale agreement, cannot claim ownership to retain possession. Respondent No. 1 proved the landlord-tenant relationship with title documents and the Petitioner's claim of ownership since, in the Constitution Petition, is disregarded. Therefore, the Rent Controller's jurisdiction is upheld, and the Petitioner's objection is dismissed.

11. Regarding the petitioner's pending specific performance suit, it's established law that a tenant cannot stay in rented premises solely based on filing a suit for declaration. If a tenant claims ownership, he/she must vacate, pursue his/her civil suit, and regain possession if successful. The Supreme Court in Rehmatullah v. Ali Muhammad (**1983 SCMR 1064**) supports this principle. Similarly, in the case of Muhammad Nisar versus Izzat Ahmed Shaikh and others (PLD 2014 SC 347).

12. In Nasir Khan v. Nadia Ali Butt (**2024 SCMR 452**), the Supreme Court clarified that a tenant remains a tenant. Claiming to be a subsequent purchaser does not allow them

to stay unless a court rules otherwise. Without a valid tenancy, they become an illegal occupant. Simply claiming ownership and filing a lawsuit does not justify staying in rented premises. A recent Supreme Court decision, in Mst. Mussarrat Shaheen vs Mst. Verbena Khan Afroz (2024 SCMR-1796) supports this consistent legal viewpoint.

13. The Rent Controller determined a landlord-tenant relationship existed. Respondent No. 1's claim of the 2014 property purchase was disproven by a 2006 gas connection in his name. His inconsistent statements, coupled with the respondent's (landlord) testimony of a 2017 rental agreement, led the Controller to reject Respondent No. 1's ownership claim and uphold the tenancy. The Controller's detailed and logical explanation is reproduced below.

The purpose behind the production of a scan copy of the afore-referred exhibit is only to unearth the relation as landlord and tenant, as well as the earlier relation as Master and Servant between applicant and opponent. In this regard, firstly, I take relevant evidence of the opponent. Opponent stated in cross-examination, "Neither I was not a servant nor a tenant with the applicant, that's why leaving my job as a servant and escaping from tenancy is out of understanding". Again, he stated in cross-examination, "It is correct that Sui Gas Line is available at rented premises but it was got installed by me after construction thereof. I do not remember the year of installation of the Gas connection in my building, but it was obtained by me.

As the opponent himself admitted that neither he was a servant nor tenant of the applicant, but he got a gas line installed at the rented premises. If the installation of Gas Line is taken up for consideration, then, a question is obviously raised in mind that in what capacity the opponent got installed Gas Line at rented premises, in this regard, the opponent deposed in Para-7 of affidavit in evidence which is given as under:

"7. I say that the applicant Suhail Ahmed entered in to oral agreement of sale dated 16.1.2014 being owner with me whereby the applicant agreed to sell and I agreed to purchase the plot in presence of witnesses however as per measurement and agreement, the sale consideration of Rs.174,600/- (one lac seventy four thousand six hundred rupees only) was settled in presence of witnesses and agreed by parties and I had paid total sale consideration to the applicant before witnesses at his otaque and I asked for such agreement reducing in writing but applicant Suhail Ahmed told that he will make sale deed directly before Sub Registrar Shikarpur after getting sub division of plot and obtaining sale certificate from Mukhtiarakar (Revenue) and City Survey Officer Shikarpur in 15 days and put me in possession of the same and told me that you may start your construction work as you want. However, due to faith and fast relations of friendship I started the work on plot by putting earth and making its level because the such portion of plot was in shape of Khad and raised construction and built the house since after agreement I was exercising all rights of ownership by getting work leveling of plot without hindrance or any objection by any body. I used to reside with family members and used to do a job and earn, and the whole family depends upon me".

*Opponent claimed that he purchased rented premises from applicant through an oral sale agreement dated 16-01-2014, and thereafter he got construction of his house thereon. **Shocking curve:** If Para-7, of affidavit in evidence of opponent is presumed to be true and correct, then, for a single movement, I again revert to the afore-scanned copy of exhibit in order to ascertain as to whether the opponent is speaking truth or otherwise. In the column for customer information (in scanned copy), the name of the customer is shown as Ajeeb-ur-Rehman @ Imran (opponent), account ID No.5424781000 and set up date is shown as 25-05-2006. Opponent annexed the Gas Bill with his objections/written reply, the particulars of account information are the same as given in the scanned copy. Obviously, it is apparent through documentary evidence that Gas Line had been installed at rented premises vide dated 25-05-2006, whereas, the opponent allegedly purchased the rented*

premises through oral sale agreement vide dated 16-01-2014, shocking aspect is this that Gas Meter/Line was installed in the name of the opponent vide dated 25-05-2006. At this juncture, I take up Art. 129 of QSO, 1984, which is speaking as under:

"The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case".

The plea which was taken by opponent in order to suppress his relation previously as servant and presently as tenant with applicant becomes failed in the light that Gas Line was got installed in the name of opponent before alleged purchase of rented premises in year 2014.

Applicant deposed in Paras No.3, 5 and 6, of affidavit in evidence as under:

"3. That, I say that in the year 2008, I have constructed Otaq (premises in application) on 97-0 Sq.yards out of 361-0 Sq.yards of CS.No.65/24 for the purpose of myself and for the purpose of residence of servants who were laboring at my cattle shed/pond including opponent Ajeeb-ur-Rehman.

5. That, I say that the opponent Ajeeb-ur-Rehman was my one of the servant who was working at cattle shed/pond as laborer since 1995 and he used to reside at premises along with other servants in the above Otaq.

6. That, I say that in the last week of the month of December 2016 opponent Ajeeb-ur-Rehman asked me that he has some problems with his relatives and he has required Otaq (premises in question) on rent basis as he want to reside in the Otaq along with his family for few months up to May, 2018 and opponent agreed to make payment of rent of the above Otaq "premises in question" from January, 2017 at the rate of Rs.3000/- per month. The opponent was my old servant, hence due to such relation and good faith upon him, I considered the request and problem of the opponent and gave him the premises on rent at the rate of Rs.3000/- per month and no agreement of rent was reduced in writing, but it was oral and was performed orally in presence of witnesses namely Mohammad Umar Qureshi and Agha Asadullah Khan Pathan".

14. In an eviction case based on personal need and unpaid rent, a tenant cannot avoid eviction simply by disputing the landlord's ownership. The court must focus on whether the landlord has proven his/her genuine need for the property and the tenant's failure to pay rent. In this case, the landlord successfully demonstrated both, and the tenant failed to provide any counter-evidence of purchasing the property via a sale agreement or other instrument.

15. The issue about the respondent/applicant presented his case through an affidavit and supporting documents but did not conduct an oral examination-in-chief in court. Despite this, the trial court directed the respondent/applicant to bring all witnesses and any further documentary evidence. Traditionally, examination-in-chief involves direct questioning of a witness in open court by the party who called them, aimed at establishing his/her case. While an affidavit can sometimes serve as a substitute for this initial questioning, the opposing party retains the right to cross-examine the witness. However, in this case, the petitioner cross-examined the witness, thus raising the issue at this stage, after the closing of the case is of no consequence.

16. I have examined the impugned order and find that the reasoning advanced by the learned trial Court is justified and apt. The learned appellate court has elaborately considered all the material aspects of the case, legal as well as factual, and rightly dismissed the appeal. However, the cost imposed upon the petitioner was waived. The petitioner has failed to point out any illegality or infirmity in the impugned order to warrant any interference. The case law cited by the learned counsel for the petitioner is of no help to him, in terms of view of the dicta laid down by the Supreme Court in the cases, discussed in the preceding paragraphs.

17. Consequently, this petition, being devoid of merit, is dismissed with cost, along with the pending application(s). The petitioner shall vacate the possession of the subject premises and hand over to the respondent No.1/landlord within two weeks, in case of failure, the police aid shall be provided for compliance of the order.