

IN THE HIGH COURT OF SINDH KARACHI  
**CP No.S-75 of 2024**  
*(Muhammad Ayaz and another v. Abdul Aziz and others)*

**Date of hearing and order: 18.11.2025**

Petitioner

Mohammad Ayaz & another

Mr. Muhammad Shafqat, advocates

Respondents

Abdul Aziz & others

Mr. Raghieb Baqi, advocate

.....

**ORDER**

.....

**Nisar Ahmed Bhanbhro, J.** Through the instant petition, the petitioners have assailed the judgment dated 29.11.2023 passed by the Court of learned IXth Additional District Judge (MCAC) Karachi, East, (**Appellate Court**) in First Rent Appeal No.154 of 2023, whereby the order dated 09.08.2023, passed by the Learned II<sup>nd</sup> Rent Controller Karachi East (**Trial Court**) in Rent Case No.96 of 2017, was set aside and the Rent Application filed by the respondent No.1 was granted.

2. Learned counsel for the petitioners contended that demised premises were owned by one Abdul Rehman who was grandfather of the applicants/respondents No.1 to 4 and father of the petitioner No.2. He argued that learned trial Court after proper appraisal of the evidence dismissed the Rent Application as the respondents failed to prove relationship of landlord with the Petitioners. He further argued that the rent receipts or tenancy agreement were not brought on record and alleged marginal witnesses of tenancy agreement did not support the claim of respondents. He further argued that the respondents in collusion with KDA authorities got changed title of the property in their name though the petitioners being legal heirs of late Abdul Rehman were also entitled for their

due share in the property. He next contended that petitioners filed Suit before the Civil Court which is pending adjudication seeking cancellation of deed in favor of Respondent No 1. He argued that the judgment passed by the learned appellate Court was not in accordance with the law, thus liable to be set aside. He lastly prayed to allow this petition.

3. Learned counsel for the respondents contended that demised premises were owned by applicant/respondent No.1 and he was owner of the premises since 1981. He further contended that mere filling of the Suit for cancellation of title deed will not debar the Respondent No 1 to seek ejection of Petitioners who were tenants. He argued that the petitioners, being tenants, were bound under law to pay rent which they defaulted; therefore, order passed by the learned appellate Court was within the four corners of law. He relied upon the case of *Mst. Mussarrat Shaheen v. Mst. Verbeena Khan Afroz and others* (2024 SCMR 1796) and prayed to dismiss the petition.

4. Heard arguments of parties and perused material available on record.

5. From perusal of record it transpired that the demised premises were owned by late Abdul Rehman who was grandfather of the respondents and father of the petitioner No.2 Muhammad Rafique. It further transpired from the record that property was transferred in the name of Abdul Hameed, the father of Respondents in year 1981. Petitioner No 2 upon knowledge of the said transaction sought cancellation of title by instituting suit No 1081 of 2018 "Re Muhammad Rafiq Versus Abdul Rasheed and others" before the Court of Learned Senior Civil Judge II Karachi East. The Petitioner emphatically denied tenancy relationship and claimed that he was residing in the alleged tenements being the legal heir of original owner.

6. At trial to prove his case, Respondents examined Abdul Khalil and Ghulam Muhammad, the said witnesses were stated to be marginal witnesses in tenancy agreement. From re-appraisal of evidence, it transpired that said witnesses did not support the case of Respondents as Witness Ghulam Muhammad deposed that he was not witness in tenancy agreement. It is also matter of record that tenancy agreement was not brought on record during evidence before learned trial Court to establish the relationship of

landlord and tenant. On the contrary, when Petitioner No 2/ opponent No. 2 appeared in witness box, he was cross-examined by Respondent's Counsel. The Petitioner No.2 was put a suggestion in affirmative that when Petitioner No 1 left the demised premises in year 2011 he handed over the possession of the same to the Petitioner No 2. This piece of evidence confirms the stance of petitioner No 2 that he was residing in the demised premises since long and he was not tenant of the respondents/applicant.

7. It is well-settled proposition of law that the existence of material fact must be duly established by the party asserting the said fact before the Court through confidence inspiring evidence. The onus to prove the relationship of tenancy was upon the respondents but they failed to discharge such burden. On the contrary Petitioner No 2 established the fact to the own admission of Respondents that he was residing in the property since long which was owned by his father and he had made a challenge to the ownership of the Respondents before the Court of law.

8. Section 5 of the Sindh Rented Premises Ordinance 1979 (SRPO) provides a manner for making the agreement and care has been taken to avoid any doubt or ambiguity in execution of the tenancy agreement. It is well-settled that any person can enter into agreement of tenancy orally as well. It is not prohibited under law, as non-compliance of provisions of section 5 did not entail any penal consequences. However; it is also well-recognized that the tenancy creates a valuable right, 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 as has been in the present case. Section 5 of the SRPO safeguards the interests of parties, if made in writing in a particular form which shall if produced in Court will be accepted without any further proof. Respondents lodged claim of ownership of the demised premises and sought eviction of the Petitioners on the ground that he was Sublette and defaulter in payment of rent, but Respondents could not substantiate such claim. Even the rent agreement in between Respondents and Petitioners could not be established. Therefore, it cannot be safely held that Petitioners were tenant or Sublette of demised premises.

9. Learned appellate Court allowed rent appeal on the ground that Petitioners failed to justify occupation over the demised premises. For the sake of convenience, the operative part of the judgment dated 29.11.2023 is reproduced below.

*"The appellants/applicants have reaffirmed their claim of being landlord of the demised premises and that respondent/opponent No. 1 was tenant in their demised premises who had defaulted in payment of rent since September 2016. In this situation, respondent/opponent No.1 was required to justify his occupation over demised premises. During his cross-examination appellant/applicant No.2 who is also attorney of his brothers has admitted that opponent No.1 was in possession of demised premises since year, 2011. He has further admitted that opponent No.1 had given the demised premises to opponent No.2 around 10 to 12 years back. The counsel for appellants/applicants has referred to case of Ahmad Ali Ali Ahmad v. Nasar-ud-Din and another (PLD 2009 SC 453) wherein Honourable Apex Court has held that tenancy would not be necessarily created by written instrument in express terms rather might also be oral and implied. In absence of any evidence to the contrary, in normal circumstances, 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."*

10. From perusal of the impugned judgment, it is clear that the learned appellate court was misled in holding that the Petitioners failed to justify his possession of the demised premises. Learned appellate Court failed to comprehend that this was not an ordinary rent case, wherein the tenancy agreement was not reduced in writing, but it was a case between legal heirs of original owner Abdul Rehman and Petitioner was disputing the sole entitlement of Respondents as owners of the property. The parties were under litigation over the right of inheritance. The Respondents did not deny that Petitioner No 2 was son of original owner. In such circumstances, the better course available to the parties was to adjudicate their claim before the Civil Court.

11. Honorable Supreme Court of Pakistan in the case of Rehmatullah v. Muhammad Ali reported as 1983 SCMR 1983, has held that:

*"It has already been held that when the decision of the issue regarding relationship of landlord and tenant depends solely and not only incidentally on question of the ownership and title to the property and it will not be possible for the Controller to decide the case without deciding the basic question involved regarding title, then in such like case it would not be appropriate to evaluate the situation by observing that the decision on question of title was only tentative. It has also been observed that the requirement of the relevant law contained in the Rent Restriction Ordinance is that the Rent Controller cannot decide the question of relationship of landlord and tenant against the tenant when the landlord has not been able to establish his position as landlord beyond reasonable doubt. In that situation the proper course for the Rent Controller would be to decide the issue against the landlord and advise him to first get his title established before seeking ejectment. The decision of main issue depends directly on the decision regarding title in the present case."*

12. This Court is saddled with the solemn balancing task of ensuring dispensation of justice between the parties. This court is conferred with corrective and supervisory powers under Article 199 of the Constitution of Islamic Republic of Pakistan of 1973 and exercises such powers unhesitatingly where it surfaced on record that the Courts below, failed to exercise its jurisdiction vested in it or exercised its jurisdiction not vested in it or there was an error apparent on record or there was a misreading or non-reading of the evidence. From the assessment of the material on record it can be safely held that Learned appellate Court failed to appreciate legal and factual aspects of the case in its true perspective and erred in law by disturbing the well-reasoned findings of learned trial court.

13. With utmost respect and in my humble view the case law relied upon by learned counsel for the respondent is on different footings thus distinguishable from the facts and circumstances of the present case.

14. In the wake of above discussion, a case for indulgence of this Court is made out. Consequently; this petition is allowed. The judgment dated 29.11.2023 passed by the Court of learned IXth Additional District Judge (MCAC) Karachi, East, in First Rent Appeal No.154 of 2023 (Re Abdul Azizi and others Vs. Ayaz Ahmed and another) is set aside and the order dated 09.08.2023, passed by the Learned IInd Rent Controller Karachi East in Rent Case No.96 of 2017 (Re - Abdul Aziz and others Vs. Ayaz Ahmed and another) is maintained with no order as to costs. Parties are at liberty to settle the dispute of ownership before the appropriate forum if so advised.

JUDGE

Nadir\*

Karachi

Dated: 18.11.2025

Approved for reporting