

**IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR**

**C.P.No.2406 of 2010.**

**FOR KATCHA PESHI.**

Petitioner: Muhammad Nisar through  
Mr.A.M.Mubeen Khan Advocate.

Respondents: Izhar Ahmed and others through  
Mr.SarfarazA.Akhund and Miss  
ShabanaNaheed Advocates.

Date of Hearing 25<sup>th</sup> February, 2013.

**ORDER.**

**SALAHUDDIN PANHWAR**, J-Petitioner Muhammad Nisar has assailed the order dated 20.09.2010 passed in Rent Appeal No.15/2009 Re.(Muhammad Nisar v Izhar and others), whereby learned 3rd Additional District Judge, Sukkur, while dismissing the rent appeal maintained order dated 23.06.2009 passed by learned 2nd Rent Controller, Sukkur.

2. Relevant facts are that the respondent/applicant purchased property in question bearing C.S.No.B-181-A admeasuring 176 Sq.yards from its owner namely Jamaluddin son of Muhammad Badal by virtue of registered sale deed dated 30.9.2005. After such transaction the name of respondent/applicant was entered into the property role of City Survey Office. The demised premises was under the tenancy of opponent therefore,

the respondent/applicant personally intimated him about the change of ownership with the direction to pay onwards rent of the demised premises at the rate of Rs.5000/- per month but the opponent avoided to pay rent; resultantly the respondent/applicant served him with a notice U/S 18 of SRPO 1979 on 15.2.2006 through Courier service the opponent refused to receive such notice; respondent/applicant filed eviction application before Rent Controller on the ground of default in payment of rent.

3. It is further revealed that the petitioner, in his written reply, contended that:-

“the father of the applicant has sold out the premises in question to the opponent on 27.11.2004 on a consideration of Rs.4, 50,000/ and in pursuance of the agreement of sale has received Rs.2, 35,000/- as per terms and condition of the agreement of sale through cheque No.624434 dated 5.12.2004 and cheque No.624436 dated 25.12.2004 of Muslim Commercial Bank Ltd Clock Tower Sukkur and the opponent was put in possession of the property in his own right as owner and not as tenant. The transaction between Jamaluddin Shaikh and the applicant is subsequent and collusive and not binding on the opponent. He is purchaser of the property in his own right and cannot be treated as tenant of the applicant. The entry in the property and card register is ex-parte to the opponent and does not affect his right in property. The opponent is willing and prepared to pay the balance amount as and when registered sale deed is executed by the father of the applicant in accordance with the agreement of sale. The property in question viz B-181 has been partly demolished and reconstructed at the cost of rupees 8, 00,000/ hence the notice was misdirected and went undelivered. Beside the opponent generally remain on tour in connection with his job in interior Sindh and Balouchistan viz Kashmore, Kandhkot, Jacobabad, Dehra Jamali, Dera Bughti, Quetta etc. The applicant has no cause of action to file the application and the same is liable to be demised”.

4. Learned counsel for the petitioner, inter alia, contended that the order passed by the Rent Controller in rent application is against the settled principle of law. The petitioner was owner of the subject matter, he has also filed a suit for Specific Performance of Contract Act and same is pending before Civil Court in spite of that eviction application has been allowed, and such exercise is unwarranted under the law. He has relied upon the case reported as Kaleemuddin Ansari v Director Excise & Taxation, Karachi (PLD 1971 SC 114).

5. Conversely, learned counsel for the respondent contended that respondent filed eviction application on the ground of default in payment, which is undisputed. The plea of petitioner is not sustainable under the law as after filing of eviction application, the petitioner has filed suit with the gap of one year, which is after thought and on this ground legitimate owner cannot be deprived of from his legal right and has relied upon case of Abdul Rasheed Vs. Maqbool Ahmed & others ( 2011 S C M R320).

6. Heard learned counsel for the parties and perused the record.

7. After careful consideration of the contentions raised by the counsel for the respective parties and scanning the available record, it is manifest that the petitioner has not disputed the default in payment of rent as he claims ownership on the basis of sale agreement and pendency of suit, thus, claims legal possession on the basis of sale agreement. The petitioner also claims that he is not liable to pay the rent as he is owner; therefore, admittedly, he has not paid the said rent. Since, the issue involved in this matter is only:-

*“Whether the petitioner can retain the possession of the subject matter property on the basis of pendency of suit for specific performance of contract?”*

In this regard it is settled principle of law as laid down by the Hon’ble Supreme Court that no one can claim possession on the basis of sale agreement. I am also fortified with such dictum as laid down in the case of Abdul Rasheed v Maqbool Ahmed and others, wherein it is held.

“It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement where after he would be given easy access to the premises in case he prevails”.

The same principle is also held in the case of Shameem Akhtar v. Muhammad Rashid) PLD 1989 SC 575), Mst. Azeeman Nisar Begum v. Mst. Rabia Bibi (PLD 1991 SC 242), Muhammad Rafique v. Messers Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bore Bibi v. Abdul Qadir (1996 SCMR 877).

Thus, it is a settled proposition of law that sale agreement does not create legal character, title or ownership and mere pendency of suit is not sufficient to hold that one has succeeded to establish his legal right; therefore the petitioner is at liberty to adduce evidence and prove his ownership in a suit pending before the Civil Court. Needless to add here that *if at the end of the day the petitioner succeeds in establishing his title he will have all rights and claims not only for possession but all other permissible reliefs but under a plea of mere pendency of civil litigation*

*is not sufficient to delay a legitimate and lawful right of an owner to have his property which he seeks through available legal remedy. Moreover, if such plea is allowed to hold the field it will not only frustrate the very objective of enactment of Rent Law but will also open new window for all the litigants, who are in dispute with landlords, to keep a lawful owner away from his legitimate and lawful right either to have his property or to have the rent whereof.* These are the objectives which has compelled the court (s) to answer the above proposition in **negation** because the Court (s) are bound to protect the rights and not to be used as a tool to keep legal rights hanging in name (s) of litigations which, will bear their own fruits and consequences.

As regards to the case of Kaleemuddin Ansari (supra) it is suffice to say that dictum laid down in the said case, relates to the recovery of taxes and is not helpful to the petitioner. Moreover, admittedly, the petitioner has committed default in payment of rent; therefore on this ground also this petition is devoid of merits, hence is not maintainable and liable to be dismissed.

9. Above are the reasons of a short order dated 25.2.2013 whereby this petition was dismissed.

JUDGE

Akber.