

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Muhammad Jaffer Raza

Constitution Petition No. S – 2602 of 2018

Dr. Muhammad Bashir Qasim through
his legal heirs Petitioners.

Versus

Gulzar Mehmood & others..... Respondents.

Raja Qasit Nawaz, Advocate for the Petitioners.

Mr. Muhammad Mansoor Mir, Advocate for Respondent No.1.

Dates of hearing : 08.04.2025, 28.04.2025 & 13.05.2025.

Date of announcement : 28.07.2025.

J U D G M E N T

MUHAMMAD JAFFER RAZA – J: The instant petition has been filed impugning the judgment dated 14.11.2018 passed in First Rent Appeal No.85/2018. The said First Rent Appeal emanated from the order dated 29.01.2018 passed by the learned Rent Controller in Rent Case No.153/2003 whereby the application filed by Respondent No.1 under Section 16(2) of the Sindh Rented Premises Ordinance, 1979 (“**SRPO**”) was allowed and the defence of the Petitioner was struck off. Consequently, the Petitioner was directed to vacate the tenement in question. Thereafter, the said order was impugned as noted above, in the First Rent Appeal and the same was dismissed vide impugned judgment. The learned counsel has therefore impugned the concurrent findings of the learned Courts below.

2. Prior to recording the contentions of the respective counsels, it will be necessary to highlight a timeline simplifying of the dispute between the parties as the same is convoluted in its nature and has been pending since a significant period of time.

3. It is reflected from the record that the tenement was purchased by Respondent No.1 from one Mst. Farida Bano in the year 1987. Succinctly, the said arrangement culminated into execution and registration of sale deed in favour of Respondent No.1 on 21.07.2001. It is also evident that earlier the Petitioner filed a suit for specific performance against Mst. Farida Bano and Muhammad Aslam (attorney of Mst. Farida Bano) bearing Suit No. 702/1989 (re-numbered as 1579/1996). The said suit is still pending adjudication and seeks the specific performance of the sale agreement executed between the Petitioner and said Mst. Farida Bano. The above suit was dismissed for non-prosecution vide order dated 19.04.2001 and whilst the suit was dismissed the above noted sale deed was executed in favour of Respondent No.1. Thereafter, the said suit was restored in the year 2006 in a Civil Revision Application No.57/2003 preferred by the Petitioner. Thereafter, the Petitioner filed another suit bearing No.208/2002 seeking cancellation of the above noted sale deed in favour of Respondent No.1.

4. Succinctly stated, the Respondent No.1 is in possession of a registered sale deed in his favour whereas the Petitioner is seeking specific performance of a sale agreement pertaining to the same subject property i.e. tenement in question. It is also important to delineate that Rent Case No.153/2003 as noted above was preferred by Respondent No.1 against the Petitioner. Thereafter, order was passed on an application under Section 16(1) SRPO dated 08.03.2008. Subsequently, the Petitioner preferred Constitutional Petition No.144/2008 before this Court challenging the order passed on application under Section 16(1) SRPO and vide order dated 19.11.2017 the said Constitutional Petition was dismissed and thereafter order dated 29.01.2018 was passed under Section 16(2) SRPO directing the Petitioner to vacate the tenement in question. As noted above, the said order was impugned in the above noted First Rent Appeal and the concurrent findings have been impugned by the Petitioner before this Court in the instant petition.

5. It is contended by the learned counsel for the Petitioner that there is no relationship of landlord and tenant between the parties as the Petitioner was earlier a tenant of Mst. Farida Bano and subsequently purchased the tenement from the

said individual vide sale agreement which was executed in the year 1987. Learned counsel thereafter argued that entire sale consideration was paid to the said individual and during pendency of the suit, as noted above, the sale deed could not have been executed. He has further averred that he has challenged and sought cancellation of the sale deed in favour of Respondent No.1 and in that respect and till the pendency of the above noted suit, the Rent Case filed by Respondent No.1 merits no consideration. He has further averred that the concurrent findings of the learned Courts below are erroneous and are liable to be set aside by this Court, at least till the fate of his suits is decided. He has relied upon the cases of *Hikmat Khan versus Shamsur Rehman*¹, *Rashid Ahmad versus Friends Match Works*² and *Syed Hakeem Shah versus Muhammad Idrees*³.

6. Conversely, learned counsel for Respondent No.1 has argued that there are concurrent findings of the learned Courts which require no interference of this Court. He has further averred that the dispute between the parties has been pending since decades and the Petitioner has unnecessarily complicated the said dispute. It is further argued that he is the owner of the tenement in question as a registered sale deed has already been executed in his favour and his title in that respect, is undisputed. It is contended that he cannot be denied the possession of the property only because the above noted suits filed by the Petitioner are pending adjudication. He has further contended that the order impugned by the Petitioner has been passed under Section 16(2) SRPO and the same is due to the default of the Petitioner in complying with the orders passed earlier on an application under Section 16(1) SRPO. It is further contended that it is beyond the jurisdiction of the learned Rent Controller to determine the dispute relating to the ownership of the property and both the learned Courts below have correctly refrained themselves from deliberating on the same. He lastly prayed for dismissal of the instant petition.

¹1993 SCMR 428

² PLD 1989 SC 503

³ 2017 SCMR 316

7. I have heard both the learned counsels and perused the record. The timeline has already been discussed in paragraph No.3 above, the same need not be reiterated. It is evident that the registered sale deed of the subject property i.e. tenement in question is in favour of Respondent No.1 and the Petitioner is in its possession on the basis of a sale agreement which is the subject matter of the litigation between the parties as mentioned above. Further, it does not help the case of the Petitioner that his suit filed earlier was dismissed for non-prosecution and it was during the said dismissal, the sale deed was executed and registered in favour of the Respondent No.1. The Petitioner could have saved himself from the consequences impugned herein only by complying with the order dated 08.03.2008 passed under Section 16(1) SRPO which itself is tentative in nature, but default in compliance of the said order rendered the Petitioner liable to be evicted from the tenement in question. At this juncture it will be relevant to mention that the order dated 08.03.2008 stipulates that the Respondent No.1 shall not withdraw the deposited rent till the pendency of the ejectment application, thereby safeguarding the interest of the Petitioner.

8. I have deliberately not adjudicated upon the pendency of the suits and the respective title documents of the contesting parties for the reason that the matter is already sub-judice before the Courts of competent jurisdiction. The instant adjudication will only be confined to the orders impugned herein.

9. Dilating within the parameters set out in the aforementioned paragraph, it is held that in the instances where the tenant asserts ownership of a tenement, the legally mandated procedure requires the tenant to vacate the premises, pursue the civil suit, and, upon a favorable judgment by a competent court, regain possession of the property. Reference in this regard can be placed on the judgment in the case of **Muhammad Nisar versus Izhar Ahmed Shaikh and others**⁴, wherein it has been held as under:-

“Per settled law in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies (which has been done) and vacate the premises and

⁴PLD 2014 SC 347

thereafter if he succeeds he would be entitled to take possession of the premises again” (Emphasis added)

10. The above noted judgment was cited with approval by the Hon’ble Supreme Court recently, in the case of **Nasir Khan v. Nadia Ali Butt and others**⁵. The Hon’ble Court in the said judgment, delving on a similar proposition held as under:-

“Similarly, in the case reported as Rehmatullah v. Ali Muhammad and another (1983 SCMR 1064) it has been held that:-

“. . . It is settled principle of law that if a tenant denies the propriety rights of the landlord then he is bound to first of all deliver the possession of the premises in question and then to contest his propriety rights in the property and if ultimately he succeeds in getting relief from the court and decree is passed in his favour then he can enforce the same according to law with all its consequences . . .”

By applying the above said principles in the instant case, the inescapable conclusion is that a tenant remains a tenant; he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind are that the tenant has no status to justify his possession and if he denies the relationship of landlord and tenant he will be known to be an illegal occupant.

13. It is trite law that a person cannot remain in occupation of rented premises simply because he asserts to be the owner of the rented premises and has instituted a suit for declaration in this regard.”(Emphasis added)

11. Earlier, the Hon’ble Supreme Court in the case of **Mst. Bor Bibi and others versus Abdul Qadir and others**⁶ was faced with a similar situation where the dispute between the respective parties was pending since decades.

The Hon’ble Court in the circumstances held as under:-

“This view was almost confirmed in PLD 1991 SC 242 wherein it was observed that sale agreement or any other transaction relied upon by tenants was seriously and bona fide disputed by landlord, tenants could not be allowed to retain possession during the litigation, where they continued to deny the ownership of landlord who had inducted them as tenants without any condition or reservation. Tenants in such case, although had a right to adduce evidence and take a short time for that purpose to remain in occupation despite having set up hostile title which was denied by landlord, but on the bar of estoppel in this behalf they could not be permitted to remain in occupation and fight the litigation for long time even for decades. Tenants for more than a decade having been able to keep possession on a claim which had been denied by landlord,

⁵2024 SCMR 452

⁶1996 SCMR 877

would be at liberty to prosecute the litigation wherein they could try to establish their claim but same should not be at the cost of landlord owner. Tenants could prosecute their claim at the cost of themselves by vacating the premises, though they would be entitled to an easy and free entry as soon as they finally succeeded in establishing their title against the landlord.”(Emphasis added)

12. Further, the Hon’ble Supreme Court in the case of **Abdul Rasheed v. Maqbool Ahmed and others**⁷ expounded the principle pertaining to the question of relationship between landlord and tenant and the jurisdiction of the rent controller in the following words:-

“We have heard both the learned Advocates Supreme Court. It is settled law that where in a case filed of 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. In this regard reference can be made to Shameem Akhtar v. Muhammad Rashid (PLD 1989 SC 575), Mst. Azeemun Nisar Begum V. Mst. Rabia Bibi (PLD 1991 SC 242), Muhammad Rafique V. Messrs Habib Bank Ltd (1994 SCMR 1012) and Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 877). In so far as determination of the relationship of landlord and tenant is concerned, such enquiry by the Rent Controller is of a summary nature. Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former he later on purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller.” (Emphasis added)

13. A similar question came up for adjudication before a learned single judge of this court in the case of **Bilal and others versus Babar Ali and others**⁸ wherein the proposition expounded above was codified as follows:-

“10. On the stance of the petitioners about pendency of suit proceedings, it is well settled that mere pendency of suit for declaration, cancellation, partition, mandatory injunction, and permanent injunction by itself is no ground to hold that there is no relationship between landlord and tenant. Even in circumstances Page 6 of 7 of possession by the tenant was no other capacity but as a tenant. In this regard, reliance is placed on the case of Allah Yar and others v. Additional District Judge and others (1984 SCMR 741). Even pendency of suit for declaration, cancellation, partition, mandatory injunction, and permanent injunction is held to be no ground to avoid eviction of tenant by the Rent Controller. The tenant could not be allowed to retain his possession till decision of their title by the Civil

⁷ 2011 SCMR 320

⁸ CP No. S- 55 of 2021. Hyderabad.

Court of competent jurisdiction. In the present case, the petitioner/tenants denied the relationship of landlord and tenant on the purported pleas that a civil suit wherein disputed title of landlord is pending, in such circumstances it is a settled principle of law that the tenant is bound to, first of all, deliver possession of premises in question then to contest his proprietary right in the suit property. In this regard, reliance is placed on the case of Abdul Rasheed v. Maqbool Ahmed 2011 SCMR 320. It is settled law that in a case filed for eviction of 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 sale agreement whereafter he would be given easy access to the premises in case he prevails.” (Emphasis added)

14. The limited scope of writ petition against the concurrent findings has already been expounded in the case of **Allies Book Corporation Versus Sultan Ahmad and others**⁹ wherein it was held by the Honourable Supreme

Court as under:-

“The concurrent findings of the two Courts below having been arrived upon justly, fairly and legally were not liable to be interfered with as the same were neither wrong or incorrect nor were based on arbitrary or fanciful discretion so as to be interfered with as per the pronouncements made by this Court.”

15. The case of **Shajar Islam Versus Muhammad Siddique and 2 others**¹⁰ was along similar lines, wherein it was held as under: -

“The learned counsel for the respondent has not been able to point out any legal or factual infirmity in the concurrent finding on the above question of fact to justify the interference of the High Court in the writ jurisdiction and this is settled law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts based on evidence even if such finding is erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of misreading or non-reading of evidence or if the finding is based on no evidence which may cause miscarriage of justice but it is not proper for the High Court to disturb the finding of fact through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as a substitute of revision or appeal.

5. In sequel to above discussion, we are of the considered view that the interference of the High Court in the concurrent finding of the two Courts regarding the existence of relationship of landlord and tenant between the parties was beyond the scope of its jurisdiction under Article 199 of the Constitution and consequently, we convert this petition

⁹2006 S C M R 152

¹⁰ PLD 2007 SC 45

into an appeal, set aside the judgment of the High Court and allow the appeal with no order as to costs.” (Emphasis added)

16. I agree with the contention of the learned counsel for the Petitioner in reference to the jurisdiction of this court to set aside concurrent findings and his reliance on the judgements in the cases of *Umar Hayat Khan versus Inayatullah Butt and others*¹¹, *Shaukat Javed versus Abdul Khaliq*¹² and *Habib Carpets (Pvt.) Limited Vs Karachi Properties Investment Company (Pvt.) Limited (KPICPL)*¹³. However, in the peculiar facts of the present petition no compelling grounds have been raised by the learned counsel to warrant such interference, for reasons which have already been elucidated above.

17. At this juncture I shall examine the case law cited by the learned counsel for the Petitioner and adjudicate the applicability of the same vis-a-vis the instant petition.

- The reliance of the learned counsel on the cases of **Hikmat Khan** (supra), **Rashid Ahmad** (supra) and **Syed Hakeem Shah** (supra) is of no assistance to the said counsel. The said cases revolved around the applicability of Section 53-A Transfer of Property Act 1882 and a suit for possession preferred by the respective Plaintiffs. It is evident that the present petition is not analogous to the judgments cited above.

18. There appears to be no illegality and infirmity in the impugned judgment, which could warrant interference by this Court. In the circumstances, the present constitutional petition being devoid of merits is dismissed with no order as to cost.

J U D G E

Nadeem Qureshi “PA”

¹¹ 1994 SCMR 572

¹² 1991 SCMR 215

¹³ 2022 MLD 1754