

IN THE HIGH COURT OF SINDH, KARACHI

C.P. No.S-853 of 2023

[Shamim Hassan Siddiqui & another vs. Khurram Ilyas Naqvi & others]

Petitioners	Through Mr. Zafar Ali Sipyo, Advocate.
Respondent-1	Through Mr. Afaque Yousuf, Advocate.
Official Respondent	Through Mr. Ziauddin Junejo, AAG.
Date of Hearing:	27.08.2025.
Date of Order:	27.08.2025.

ARSHAD HUSSAIN KHAN, J.- Through the present Constitutional Petition, the petitioner, Shamim Hassan Siddiqui, has challenged the judgment dated **31.07.2023** [*the impugned judgment*], passed by the learned District Judge, Karachi-East in First Rent Appeal No.59 of 2018, preferred by respondent No.1, Syed Khurram Ilyas Naqvi. By the impugned judgment, the appeal was allowed by setting aside the dismissal order dated **08.04.2021**, passed by the learned Rent Controller in Rent Case No.237 of 2018.

It may be observed that the said First Rent Appeal had earlier been allowed, vide judgment dated 23.11.2021, passed by the learned District Judge, Karachi-East. However, the said judgment was challenged in Constitutional Petition No.S-47 of 2022, which was allowed, and the matter was remanded back with directions to decide the appeal afresh after providing an opportunity of hearing to both parties, as the earlier judgment dated 23.11.2021 had been rendered in the absence of the petitioner.

2. Concisely, respondent No.1-Syed Khurram Ilyas Naqvi filed the rent case referred to hereinabove against the petitioner on the ground of default with the following prayers:

“It is, therefore, very humbly prayed on behalf of the applicant above named that this Honourable Court may be pleased to direct the opponent to vacate the shop premises Nos. 1 & 2, Mussarrat Arcade, Plot No.A-32, Block-13/A, Gulshan-e-Iqbal, Karachi and hand over its vacant possession to the applicant.

Any other or further order which this Honourable Court may be pleased to deem fit and proper under the circumstances of the case.”

Before the learned trial court, the petitioner, Shamim Hassan Siddiqui, filed his separate written statement wherein he denied the existence of a landlord–tenant relationship and contested the matter.

Both parties thereafter led their respective evidence, and upon conclusion of the proceedings, the learned trial court, vide judgment dated **08.04.2021**, dismissed the rent case. The said judgment was assailed by the respondent, Syed Khurram Ilyas Naqvi, through First Rent Appeal No.59 of 2021 before the learned District Judge, Karachi-East. The appeal was allowed through judgment dated **31.07.2023**, whereby the judgment of the trial court was set aside and the petitioner was directed to vacate Shops No.1 and 2, Mussarrat Arcade, Plot No.A-32, Block-13/A, Gulshan-e-Iqbal, Karachi, and to hand over their vacant and peaceful possession to the respondent within 30 days. The said judgment is impugned in the present constitutional petition.

3. Learned counsel for the petitioner has argued that, in reality, the father of petitioner No.1, namely Sharif Hassan Naqvi, had purchased Shop No.1 from the mother of respondent No.1, Mst. Mussarat Parveen wife of Syed Ilyas Ali Naqvi, through a sale agreement dated 13.08.1988, while Shop No.2 is owned by one Muhammad Siddique. It is thus contended that the petitioner is the lawful purchaser of the premises. Learned counsel submits that in the second round of litigation the learned appellate court failed to consider the arguments advanced on behalf of the petitioner and, instead, mechanically maintained its earlier order dated 23.11.2021. The impugned order is, therefore, legally defective as it was passed without due consideration of the factual and legal pleas raised by the petitioner. It is further argued that there exists no relationship of landlord and tenant between the parties, a crucial aspect which the learned appellate court failed to appreciate. Learned counsel submits that respondent No.1 has miserably failed to prove his case and, having approached the courts with unclean hands, has sought to blackmail the petitioners with ulterior motives. Per learned counsel, the order of the appellate court is not founded upon the applicable law or the material facts of the case, but instead based on conjectures and surmises. Lastly, it is argued that mere technicalities of law should not be permitted to defeat the cause of justice, and that, therefore, the impugned order is liable to be set aside.

4. On the other hand, learned counsel for respondent No.1 has argued that petitioner No.1 seeks judgments in his favour on the basis of a false, fictitious, fabricated and fake agreement to sell, allegedly

executed between his late father and Naqvi Construction Company as well as the father of respondent No.1. It is contended that Naqvi Construction Company has not even been impleaded as a party in the present proceedings, despite the petitioner's alleged claim being directed against it; hence, petitioner No.1 has no locus standi to maintain the instant petition. He further submits that, in fact, respondent No.4 (Umer Shahzad) is in occupation of two adjacent shops, namely Shop No.1 and Shop No.2. The petitioner only asserts that his deceased father had booked Shop No.1, while remains silent about Shop No.2. On the contrary, one Muhammad Siddique appeared before the learned trial court and claimed that he had booked Shop No.2, but even he said nothing regarding the status or possession of respondent No.4. It is further argued that petitioner No.2 has not come forward to raise any grievance against the impugned judgment, which reflects that the present petition is misconceived. Learned counsel has, therefore, prayed for dismissal of the petition, submitting that the appellate court has already examined every aspect of the matter in detail and rightly passed the impugned order, which does not call for any interference by this Court in its constitutional jurisdiction. In support of his submissions, reliance has been placed upon the case reported as *PLD 1992 SC 242*.

5. Heard learned counsel for the parties, perused the record and the relevant law.

From perusal of the record and the submissions of the learned counsel for the parties, it is evident that the controversy primarily revolves around the existence or otherwise of a landlord & tenant relationship between the parties.

The petitioner has denied such relationship asserting that the father of petitioner No.1 namely; Sharif Hassan Naqvi had purchased Shop No.1 from the mother of respondent No.1 namely; Mst. Mussarat Parveen, vide the sale agreement dated 13.08.1988. And he, being aggrieved with the registration of sub-lease deed in respect of Shop No.1, filed a civil suit No.1706 of 2022 for Declaration, Specific Performance, Cancellation and Permanent Injunction, which is pending adjudication.

6. From perusal of the record, it appears that the learned appellate court while allowing the aforesaid appeal recorded its findings as follows :

The appellant produced registered sale deeds (Exh.A/1 and A/2), proving his ownership of the shops. While it is a settled legal principle that a landlord need not necessarily be the owner, in the absence of contrary evidence, the person holding valid title documents is presumed to be the landlord, and the person in possession is considered a tenant. As for the existence of a landlord-tenant relationship between the appellant and respondent No.1, it is on record that respondent No.1 admitted his tenancy but claimed to have acquired possession from respondent No.2. However, respondent No.2 holds no title documents only an unregistered sale agreement, which has no legal value as ownership proof. Since respondent No.1 is occupying property that legally belongs to the appellant, who holds valid title, the law deems such an occupant to be the tenant of the titleholder by legal presumption.

7. The appellate court relied upon the registered title documents [Exh.A/1 and A/2] produced by respondent No.1 and did not accept the unregistered sale agreement relied upon by the petitioner as conclusive proof of ownership. Furthermore, a civil suit [No.1706/2022] filed by the petitioner for declaration, specific performance, and cancellation of sub-lease in respect of Shop No.1 is pending adjudication. It is an admitted position that the petitioner is in possession of both the shops but failed to present any registered ownership documents in his or Muhammad Siddique's name before the Rent Controller.

In this factual context, the appellate court, in my view, has rightly allowed the First Rent Appeal, having correctly presumed the existence of a landlord-tenant relationship in favour of the respondent based on his title documents. The view taken is consistent with established principles of rent laws that ownership is not essential to prove landlordship, but the possession of valid title documents raises a legal presumption in the absence of a competing title.

8. Besides, it is also a well settled principle of law that where the tenant asserts ownership of the property, the legally mandated procedure requires the tenant to vacate the premises, pursue the civil remedy, and upon a favorable judgment by the competent court, regain

possession of the property¹. In the instant case, the petitioner No.1, who is in occupation of the premises, neither vacated the premises before filing the civil suit nor as yet succeeded in the said civil suit.

9. It is also settled principle of law that a person who is in possession or occupation of a premises owned by someone else although he may not undertake to pay rent to the owner is normally bound to pay rent to him as consideration for being in possession or in occupation of that premises. Such a person shall be treated to be a tenant for the purpose of the Ordinance². It is also settled law that a person who is not the owner of the premises but occupies any portion thereon and has set up no title, which is adverse to the owner of the premises, then such person by fiction of law becomes a tenant of the premises³.

10. Insofar as the petitioner's arguments challenging the validity of the ownership rights are concerned, the same are beyond the ambit of rent proceedings, which focus on possession and tenancy rather than title disputes. It may be observed that the status of the 'tenant' does not give him any right other than to retain possession of the premises during the subsistence of the tenancy hence the tenant, in absence of any other direct or indirect legal character, cannot question the title of the landlord particularly in rent proceedings.

11. It is a settled proposition of law that in case of conflicting judgments, the view expressed by the appellate court should ordinarily be preferred, unless it is contrary to the evidence on record or violates settled principles of justice.

12. Upon careful examination of the record, pleadings, and relevant law, it is evident that the learned appellate court duly scrutinized the evidence and legal contentions advanced by the parties. Its conclusion affirming the existence of a landlord-tenant relationship is well founded and borne out from the record. Although the learned Rent Controller had reached a contrary finding, the appellate court's

¹ *Rehmatullah v. Ali Muhammad and another* [1983 SCMR 1064], *Muhammad Nisar v. Izhar Ahmed Shaikh and others* [PLD 2014 SC 347] *Nasir Khan v. Nadia Ali Butt and others*, [2024 SCMR 452].

² *Muhammad Shabbir v. Hamed Begum* [1992 MLD 323]

³ *Saifullah and another v. Chaudhry Ghulam Ghous* [2000 CLC 1841]

reappraisal of the evidence squarely fell within its jurisdiction. Furthermore, the petitioner has failed to demonstrate any jurisdictional defect, procedural irregularity, or manifest illegality in the impugned judgment that would warrant interference by this Court in its constitutional jurisdiction. There is nothing on record to suggest any miscarriage of justice or violation of settled legal principles justifying the setting aside of the appellate court's well-reasoned order.

13. In view of the foregoing discussion, no case for interference is made out. The instant constitutional petition, being devoid of merit, is hereby **dismissed**. Consequently, the impugned judgment dated 31.07.2023, passed by the appellate court in First Rent Appeal No. 59/2018, is maintained.

Before parting with this judgment, it is clarified that the observations made herein are confined solely to the adjudication of the present matter. Nothing contained in this judgment shall prejudice or influence the proceedings pending before the competent civil court in respect of the subject matter, which shall be decided strictly on its own merits.

JUDGE

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