

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-554 of 2025
Tausif Iqbal Vs. M. Shakir and another

Date	Order with signature of Judge
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Hearing of cases priority

- 1. For hearing of CMA No.4616/2025
- 2. For hearing of main case

Date of hearing and order: 19.11.2025

Mr. Asif Ibrahim advocate for the petitioner
Mr. Muhammad Mukhtiar Ahmed advocate for Respondent.

Nisar Ahmed Bhanbhro, J. Through the instant petition, the petitioner has challenged the judgment dated 31.05.2025 (impugned judgment) passed by the Court of learned IInd Additional District Judge, Karachi Central (Appellate Court) in First Rent Appeal No. 25 of 2023 (Re Malik Mitho Versus M. Shaikr and another), whereby the order dated 12.01.2023 passed by the Court of Learned 2nd Rent Controller Karachi Central (Trial Court) in Rent Case No. 80/2022 (Re Malik Mitho Versus M. Shaikr and another) was set aside, and the ejection application filed by Respondent No 2 was allowed.

2. Learned counsel for the petitioner contended that alleged demised premises House NO. R-17-4, Ground Floor Portion, New Rasheedabad, Sector 4-J, Khawaja Ajmair Nagri, Karachi was owned by the Respondent No 1. He argued that the Petitioner vide oral sale agreement purchased the alleged demised premises from respondent No.1. he argued that Learned Trial Court rightly rejected the Rent Case as Respondent No 2 failed to establish the relationship of tenancy with the Respondent No 1 and Petitioner. He argued that the appellate court failed to appreciate the evidence of parties and allowed the appeal without assigning any cogent reasons merely by relying upon photocopy of a document which was not confronted to the Petitioner in evidence. He argued that appellate court committed illegality and misread the evidence. He lastly argued that the impugned judgment was perverse, thus liable to be set aside.

3. Learned counsel for the respondent No 2 argued that learned appellate court considered the material available on record and passed the impugned judgment after proper appraisal of evidence, which did not require interference. He further argued that the respondent No.2 was the landlord of demised premises, which were purchased by him through agreement of sale from original owners namely Bakht Rawan and Ziauddin and payment was made to the original owner in full, but respondent No.2 has not yet got registered sale deed in his favour. He argued that there was no illegality in the impugned judgment. He prayed to dismiss the Petition.

4. Heard argument of both the parties through learned counsel and have perused the material available on record,

5. Perusal of the record revealed that the respondent No.2 filed rent case before learned Trial Court seeking ejectment of Respondent No 1 and Petitioner on the plea of default and infringement of conditions of rent agreement. Per Respondent No 2 since 09.06.2020 when premises were rented out to Muhammad Shakir/ Respondent No 1 he had failed to pay rent. When reminded for payment of rent he sublet the demised premises to the petitioner, which constituted a sufficient ground for eviction under section 15 of the Sindh Rented Premises Ordinance, 1979 (SRPO). He was Respondent No 2 who lodged claim of the ownership of demised premises by way of purchase, and letting out the premises on rent to Respondent No 1, thus was burdened to prove beyond reasonable doubt the tenancy relationship with Respondent No 1, which he failed to discharge. Besides any proof as to ownership, respondent No 2 failed to establish the factum of tenancy by producing marginal witnesses of tenancy agreement during evidence before Trial Court or even failed to submit any proof that he received rent against the demised premises. Learned Trial Court thus rightly held that the Respondent No 2 was not the landlord of demised premises, there existed no tenancy relationship between the parties thus rent court lacked jurisdiction to adjudicate the matter.

6. Appellate Court reversed the findings of Trial Court by relying upon the documents viz. challan of payment dated 10.08.1992 in favor of Sindh Katchi Abadi Authority (SKAA) by Bakhat Rawan, agreement to

sale dated February 2020 in between Bakhat Rawan and Ziauddin, an agreement to sale dated 05.02.2020 in between Malik Mitho and Muhammad Jan whereby the premises were purchased by Respondent No 2. It is a matter of record that none of these documents were produced in evidence before Trial Court. The photo copy of documents filed by Respondent No 2 through statement during appellate proceedings were not admissible in evidence and thus could not have been relied upon by the Court unless the notice of the same was given to the other side and authenticity of the documents was established by confronting the same in witness box, for the said reason Respondent No 2 even did not seek permission to record additional evidence. Respondent No 2 failed to demonstrate that what precluded him from producing the said documents when he led evidence before Trial Court.

7. Striking feature of the present case is that either of the sides was not having the title or ownership of demised premises. Both the parties have unequivocally stated that the alleged demised premises were owned by SKAA. It further transpired from the record that both the parties were claiming ownership on the basis of written and oral sale agreements. Petitioner placed on record cop of challan N0 2298 dated 11.01.2023 through which he paid an amount of Rs 74340 (Seventy-Four Thousand Three Hundred and Forty) in favor of SKAA. Respondent No 2 also placed on record copy of challan through which one Bakhat Rawan paid amount in favor of SKAA. None of the parties was in possession of allotment order issued by SKAA allowing to use the disputed premises for residential purpose, needless to observe that mere deposition of amount would not bring the parties within the purview and definition of landlord or owner. Under rent proceedings Rent Controller cannot decide the question of title which fell exclusively in the domain of competent civil court to adjudicate, as such Trial Court rightly refused to exercise the jurisdiction which was not vested in it.

8. In the wake of aforementioned discussion, the court has reached to an irresistible conclusion that the findings of Learned Appellate Court were perverse and not in line with the evidence available on record, there was serious misreading and nonreading of the evidence, requiring for interference by this Court. Consequently; this petition is allowed. The impugned judgment dated 31.05.2025 passed by the Court of learned IInd

Additional District Judge, Karachi Central in First Rent Appeal No. 25 of 2023 (Re Malik Mitho Versus M. Shaikr and another) is set aside, the order dated 12.01.2023 passed the Court of Learned by 2nd Rent Controller Karachi Central in Rent Case No. 80/2022 (Re Malik Mitho Versus M. Shaikr and another) rejecting the Rent Case is maintained.

The parties are at liberty to seek redressal of the grievance before the proper forum, if so advised.

Petition stands disposed of along with pending applications.

JUDGE

Approved for reporting