

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No. S-437 of 2025

'Mst. Samreen vs. Muhammad Imran Khan and another'

Petitioner	:	Through Syed Hussain Haider, Advocate
Respondent No.1	:	Through Mr. Azizullah, Advocate
Date of Hearing	:	25.05.2026
Date of Announcement	:	18.07.2026

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- In this petition, the conflicting Order dated 06.11.2024 passed by the learned Vth Additional District & Sessions Judge, Karachi (West) in First Rent Appeal No. 41 of 2023 has been assailed [**impugned Order**] whereby the learned Appellate Court set aside the Order dated 24.02.2023 passed by the learned XVIIth Rent Controller, Karachi (West) in Rent Case No.161 of 2022, and directed the Petitioner to vacate the subject premises within two months.

2. Succinct facts of the case are that Respondent No.1 filed Rent Case No.161 of 2022 before the learned Rent Controller under Section 15 of the Sindh Rented Premises Ordinance, 1979 [**SRPO**], claiming that he is the lawful owner of Plot No. 702, Old No. 1735/12, Lasi Anjam Colony, Baldia Town, Karachi [**demised premises**] and further claiming that Petitioner had been his tenant in the subject premises since 2004 against monthly rent of Rs.5,000/-, who has defaulted in payment of rent and utility charges for the last eighteen years, and that he required the subject premises for his personal *bona fide* need as he is the father of nine children whose daughters have grown up. The Petitioner in her written statement, categorically denied the existence of landlord-tenant relationship between the parties but claimed that she has been residing there since her birth, that her parents had also resided there for the preceding forty years, and that no rent agreement had ever been executed between the parties. She further stated that the parties are related to each other and based thereon she was also a co-sharer in the property and entitled to her share, which was also offered to her verbally, but subsequently not paid by Respondent.

3. The learned Rent Controller recorded the evidence of both parties. Respondent No. 1 examined himself and produced an indenture of lease issued by the Karachi Metropolitan Corporation, certain utility bills, and photocopies of B-Form in support of his case. The Petitioner likewise examined herself and produced her affidavit in evidence. After recording the cross-examination of both sides, the learned Rent Controller framed following five points for determination:

- 1) Whether the rent application is maintainable?
- 2) Whether there is any relationship of landlord and tenant between the applicant and opponent?
- 3) Whether the opponent/tenant has committed default in payment of rent?
- 4) Whether the subject premises is required for the personal bonafide need of the applicant?
- 5) What should the order be?

4. Vide Order dated 24.02.2023, the learned Rent Controller answered Points No. 1 & 2 in the negative, treated Points No. 3 & 4 as redundant in consequence, and dismissed the rent application with no order as to cost. The learned Rent Controller, after a careful examination of the pleadings and evidence of both parties, found that the applicant had not produced any rent agreement, written or otherwise, to establish a tenancy. He noted that the applicant himself admitted in cross-examination that he had not been residing in the subject premises for the preceding twenty-five years, that the Petitioner had never paid him any rent, and that, in his own words, she was permitted to live in the subject premises on humanitarian grounds because she was poor. The learned Rent Controller further noted that the applicant failed to state, either in his application or in his evidence, whether the alleged tenancy was verbal or in writing, that he failed to produce any witness to corroborate a verbal tenancy, and that the applicant admitted in cross-examination that the electricity bill of the subject premises is still issued in the name of his grandfather, Abdullah Khan. The learned Rent Controller placed reliance on the judgment of this Court reported as *PLD 2003 Karachi 444*, wherein it was held that although a verbal tenancy can exist, it requires evidence of a very high standard to establish it on the principle of preponderance of probabilities, and concluded that the applicant had entirely failed to discharge his initial burden of proving any relationship of landlord and tenant between the parties.

5. Against such Order, Respondent No.1 preferred First Rent Appeal No. 41 of 2023 before the learned Vth Additional District & Sessions, Karachi (West). The Petitioner appeared and filed written objections to the maintainability and merits of the appeal. By the impugned order dated 06.11.2024, the learned Appellate Court allowed the appeal, set aside the order of the learned Rent Controller, and directed the Petitioner to vacate the subject premises within two months. The learned Appellate Court reasoned that since the Petitioner had denied tenancy, the burden of proving co-ownership lay upon her, that she had failed to produce any document regarding co-ownership, that it was not possible for the applicant to produce a tenancy agreement executed eighteen years earlier, and that the applicant had produced a lease deed whereas the Petitioner had no title document.

6. I have heard the learned counsel for the Petitioner and Respondent No.1 and have gone through the entire record with their able assistance.

7. The jurisdiction of the Rent Controller under the Sindh Rented Premises Ordinance, 1979 is a special and limited jurisdiction, which can only be exercised upon existence of landlord and tenant relationship between the parties as a necessary pre-

condition. Where the existence of that relationship is disputed and is ultimately not established, the Rent Controller has no jurisdiction to entertain or decide the application. This is a principle well settled in law and permits no departure from it.

8. The learned Rent Controller correctly identified this position and found, after carefully recording and evaluating the evidence of both parties, that the applicant had failed to establish any relationship of landlord and tenant. His findings were well grounded in the evidence on record and were reached through a careful assessment of the pleadings and the testimony before him. The learned Rent Controller had the advantage of recording the evidence of both parties himself. His findings on questions of fact, being based on a correct and careful appreciation of the material before him, were entitled to due weight and could only be reversed by the Appellate Court upon sound and cogent reasoning. No such reasoning appears in the impugned order.

9. The impugned order of the learned Appellate Court proceeds, with respect, on a fundamentally incorrect legal premise. The learned Appellate Court reasoned that since the Petitioner denied tenancy, the burden of proof shifted to her to establish co-ownership, and that her failure to produce a title document was fatal to her position. Such a reasoning appears to be unjustified and untenable in law for the reason that the initial and primary burden of establishing a relationship of landlord and tenant lay entirely upon the landlord because he claimed such relationship. He had to prove, to the required legal standard, that he was the landlord and that the Petitioner was his tenant in the subject premises. It is only once the landlord discharges such primary burden, that the burden could shift to the other side. The mere denial by the Petitioner of the existence of any tenancy did not relieve the landlord of his primary burden, nor did it transfer that burden upon the Petitioner. The learned Appellate Court, in effect, inverted the burden of proof and decided the case on a wrong legal basis. This error, being fundamental in nature, renders the impugned order unsustainable.

10. The evidence on record, when examined carefully, fully supports the conclusions reached by the learned Rent Controller. The admissions made by Respondent No.1 in his own cross-examination are of critical and decisive importance. He **admitted** that he has not been residing in the subject premises for the last twenty-five years. He **admitted** that the electricity bill of the subject premises is still issued in the name of his grandfather, Abdullah Khan. He **admitted** that the Petitioner is his first cousin, being the daughter of Sami Ullah, and **admitted** that questions of distribution of shares in the property arising from family succession were matters left unresolved. He **admitted** that the Petitioner has never paid him any rent and himself claimed that she was permitted to live in the subject premises on humanitarian grounds because she was poor. These admissions, taken together, are wholly inconsistent with the existence of any relationship of landlord and tenant. An applicant who claims that a tenant has been occupying his property since the year 2004 and has committed default in payment of rent for eighteen years, would not, in the ordinary course of things, remain completely silent for all those years without initiating any legal proceeding to recover rent or to evict the occupant. The learned Rent Controller rightly drew this inference, and it is an inference that flows naturally from

common sense and the ordinary course of human conduct. The learned Appellate Court completely overlooked these admissions and offered no reasoning for departing from the findings of the learned Rent Controller.

11. There is yet another strong material and compelling circumstance that the learned Appellate Court ignored entirely. During the pendency of First Rent Appeal No. 41 of 2023 before the learned Appellate Court, **Respondent No.1 himself instituted Civil Suit No. 2043/2024** before the learned IVth Senior Civil Judge, Karachi (West) for declaration, possession, and permanent injunction. In the memo of plaint filed in that suit, Respondent No. 1 made an **express admission** **that the institution of the rent proceedings was a mistake on his part and that the matter actually involves questions of title and inheritance. This is a solemn and deliberate admission made by Respondent No. 1 himself in his own plaint filed before a Civil Court, which not only creates estoppel against the Respondent in the present proceedings, but it also entirely demolishes the very foundation on which the present rent proceedings have been initiated.** The learned counsel for the Petitioner brought this development to the notice of the learned Appellate Court by filing a formal statement along with a copy of the summons in Civil Suit No. 2043/2024, yet the learned Appellate Court completely ignored such a clear and important admission and proceeded to pass the impugned Order without assigning any reason. Such an omission constitutes another grave and fundamental error that renders the impugned order wholly unsustainable.

12. The dispute between the parties, as the entire record now reveals with unmistakable clarity, is not one of landlord and tenant but is a dispute rooted in joint family ownership of ancestral property, which is also admitted by the Respondent himself in his above suit. The Petitioner claims to be a co-sharer by virtue of inheritance from the common ancestor, who is the grandfather of both the parties. Whether she is indeed a co-sharer, what her rightful share may be, and whether any title deed executed in favour of Respondent No. 1 is valid or was obtained by fraud, are all questions of title and inheritance which lie entirely within the domain of the civil courts. Such questions cannot be resolved in rent proceedings, and the learned Appellate Court acted in excess of its jurisdiction by entertaining and allowing the appeal as if a straightforward relationship of landlord and tenant had been established on record. Here, it is important to note that although section 2 SRPO includes owner in the definition of landlord, however the existence of relationship of landlord and tenant, once under challenge, is something which is required to be established based upon facts and evidence in each case independently. The production of a lease deed may establish his title on record at present, however, it does not automatically by itself establish the relationship of landlord and tenant between the parties, and which is to be seen from the facts pleaded and the evidence led by the parties. The crucial question remained whether the subject premises were in fact let to the Petitioner in the capacity of a tenant, and the evidence on record, particularly the admissions of Respondent No. 1 himself in his own suit, negatives any such letting.

13. The impugned appellate Order, being the result of misreading and non-reading of

material evidence and record, including the self-damaging admissions of Respondent No.1, and in total disregard of the solemn judicial admission by Respondent No.1 in Civil Suit No.2043/2024, is therefore not sustainable in law. The learned Appellate Court reversed the well-reasoned findings of the learned Rent Controller without assigning any valid reason and without properly evaluating the evidence on record, making it a fit case for interference of writ jurisdiction under Article 199 of the Constitution of Pakistan 1973.

14. For all the foregoing reasons, this Constitutional petition is allowed, the impugned Order dated 06.11.2024 passed by learned Vth Additional District & Sessions Judge, Karachi (West) in First Rent Appeal No. 41 of 2023 is set aside, and the Order dated 24.02.2023 passed by learned XVIIth Rent Controller, Karachi (West) in Rent Case No. 161 of 2022, dismissing the rent application, is upheld. Consequently, the Rent Execution Application No.01/2025 pending before the learned Rent Controller/Trial Court shall stand disposed of in consequence of this Order.

The petition is allowed in the above terms with no order as to costs.

The valuable legal assistance rendered by Mr. Syed Hussain Haider, Advocate for the petitioner and Mr. Azizullah Advocate for the Respondent, is appreciated.

J U D G E