

**IN THE HIGH COURT OF SINDH AT  
KARACHI**

Const: Petition No. S-538 of 2024

|                                |   |                                             |
|--------------------------------|---|---------------------------------------------|
| Petitioner<br>Muhammad Saleem  | : | Through Mr. Hassan Khan Afridi,<br>Advocate |
| Respondent No.1<br>Ameer Hamza | : | Through Mr. Allah Bakhsh, Advocate          |
| Dates of Hearing               | : | 16.03.2026 & 10.08.2026                     |
| Date of Judgment               | : | 31.08.2026                                  |
| Date of announcement           | : | 04.09.2026.                                 |

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**JUDGMENT**

**Muhammad Saleem Jessar, J.-** By means of instant constitutional petition, the petitioner, Muhammad Saleem, has challenged the judgment dated 06.5.2024 passed by the IXth Additional District Judge, MCAC vide FRA No. 39 of 2024, whereby he allowed the appeal and set aside the order dated 22.02.2024 passed by Xth Rent Controller, Karachi East in Rent Case No. 298 of 2022, allowing the Ejectment Application and directing the respondent/tenant to deliver vacant and peaceful possession of the demised premises within a period of 30 days from the date of said order.

2. The brief facts of the case are; that the petitioner herein namely, Muhammad Saleem filed ejectment application stating therein, that he is the owner / landlord of **Shop No.48, Sector 51-B, Korangi No.6, Karachi**), which is registered in his name, while the opponent / respondent No. 1 is his tenant in the demised premises. It is the case of petitioner / applicant

that the opponent / respondent was inducted as tenant in the demised premises vide tenancy agreement dated 11.12.2019 at the monthly rent of Rs.12,000/-. It was further urged by the applicant that the opponent has consumed Rs.186,720/- in respect of construction of demised premises and it was agreed that an amount of Rs.6,000/- shall be deducted by the opponent from the monthly rent to be paid by him, which was adjusted by the applicant till June, 2022 and thereafter nothing left outstanding in respect of above said amount. The annual increase in the monthly rent was mutually agreed to be Rs.2000/-. It was further stated in the ejectment application that after deduction of aforesaid amount, the opponent / was required to pay rent with annual enhancement @ of Rs.16,000/- per month, but the opponent stopped the payment of rent w.e.f. July, 2022. It is further case of the applicant that a number of times he had asked the opponent to vacate the demised premises as the same was required by applicant for his personal bonafide need in good faith, but the opponent failed to do so. Not only this, but even the opponent failed to enhance the monthly rent till date as per the terms and condition of the tenancy agreement. The opponent / respondent also defaulted in payment of monthly rent w.e.f. July, 2022, therefore, he is liable to be evicted from the demised premises. Consequently, he prayed for eviction of the opponent and delivery of possession thereof to the applicant / petitioner. It was also prayed that the opponent may be directed to pay / clear all the arrears of monthly rent at the rate of 16,000/- per month for the period from July, 2022 to November, 2022 and to pay future monthly rent onwards.

3. Upon service of notice, the opponent filed his written reply, wherein he raised preliminary objection that there is no relationship between the applicant and opponent. However, in his parawise reply he admitted that he was the tenant of the applicant to whom he was regularly paying the rent; however, thereafter the applicant sold out the demised premises to one Fateh Muhammad on 24.02.2022. In the circumstances, the opponent started paying the rent to new owner vide tenancy agreement dated 01.03.2022 and is still he is paying the rent to him, as such the opponent is not liable to pay the rent to the applicant. He further urged that on 10.09.2022 the applicant forcibly entered into the demised premises and tried to dispossess the opponent from the demised premises, therefore the opponent filed application under Section 22-A and 22-B of Cr.P.C. against the applicant. It was further pleaded that on 15.11.2022 at about 07:00 p.m.

the applicant along with gunda element entered into the demised premises and tortured the opponent and took away Rs.15,00,000/-, hence the opponent moved the application to the SHO concerned and the matter proceeded by the consumer court and vide order dated 17.11.2022, possession of the demised premises was delivered to the opponent. He lastly prayed for dismissal of ejectment application.

4. After hearing the advocates for the parties, Rent Controller allowed aforesaid Application and directed the opponent / petitioner to vacate the premises in question and handover its vacant and peaceful possession to the applicant / petitioner within 30 days.

5. The opponent being aggrieved by said judgment passed by the Rent Controller, challenged the same by filing F.R.A. No. 39 of 2024 and vide Judgment dated 06.05.2024, said appeal was allowed and the finding of the Rent Controller on the issue / point of relationship of landlord and tenant between the parties was reversed and it was held that there is no relationship of landlord and tenant between the parties. Applicant / petitioner has impugned aforesaid Appellate Order by means of instant constitutional petition.

6. I have heard learned counsel for the parties and also perused the material made available before me on the record.

7. Learned counsel for the petitioner submitted that the appellate court while deciding FRA traveled beyond the fantasy and erroneously set aside the order passed by the Rent Controller on the ground that the demised premises was sold out by the applicant to one Fateh Muhammad; however, while doing so, the Appellate Court ignored the principles settled by the Superior Courts on this point. It was further submitted that the respondent / tenant failed to produce any document before the Rent Controller or the Appellate Court in respect of ownership / title in favour of said Fateh Muhammad, therefore, under the law no question arose for paying rent to the alleged new owner. He, therefore, prayed for allowing instant petition and setting aside the impugned judgment passed by the Appellate Court and maintaining the order passed by the Rent Controller, and also putting the petitioner into safe and vacant possession of the demised premises.

8. Conversely, Advocate for respondent No.1 / tenant submitted that the petitioner / landlord had sold out the demised premises to one Fatah Muhammad through sale agreement and after execution of sale agreement the physical possession was also handed over to him, hence respondent No.1 / tenant has been paying rent to the new owner / Fatah Muhammad. He further submitted that as the petitioner had failed to establish relationship of landlord and tenant with the respondent, as such the Appellate Court rightly reversed the finding of the Rent Controller on said point and ultimately allowed the appeal. According to him, as the order passed by the Appellate Court is in consonance with the factual as well as legal position, therefore, the same does not warrant any interference by this Court in exercise of its constitutional jurisdiction.

9. In rebuttal, learned counsel for the petitioner argued that the demised premises belongs to KDA, who allotted the same in favour of petitioner's father namely, Abdul Sattar, and as the father of the petitioner is a person of advanced age of about 86 years, hence the petitioner was looking after the affairs of the demised premises; however, he was not competent to sell it out. He further submitted that the appellate Court has not appreciated the law as well as evidence adduced before the Rent Controller and has wrongly allowed the appeal filed by the respondent, which requires interference by this Court. He drew attention of the Court towards the affidavit-in-evidence of the petitioner/landlord, available at page 125 of the court file and submitted that that it has come in evidence that the demised premises is still mutated in the name of father of the petitioner namely, Abdul Sattar, which is available at page 143 of the court file. He, therefore, submitted that if the plea of respondent No.1 is presumed to be true that he is the tenant of said Fatah Muhammad to whom the petitioner had allegedly sold out the demised premises, the same carries no weight as the petitioner was not competent to sell it out and more particularly when his father is still alive. He further submitted that the petitioner has six brothers and three sisters and in case of death of their father, the petitioner was not competent to sell out the demised premises without their all legal heirs consent.

10. Although the Rent Controller had framed three issues regarding relationship of landlord and tenant between the parties, default in payment of monthly rent by the opponent and personal *bonafide* need of the

applicant, and decided all three issues in favour of the applicant / landlord; however, the Appellate Court confined its judgment only to the issue / point of relationship of landlord and tenant between the parties and ultimately while deciding said issue in favour of the opponent / tenant, allowed the appeal and set aside the Eviction Order. It was observed by the Appellate Court, "The crucial point for determination as framed by Rent Controller is regarding existence of relationship of landlord and tenant between the parties and remaining two points were dependent on decision of first point." In the circumstances, I do not think it necessary to touch the other two issues / points, as the opponent / respondent has not challenged the judgment passed by the Appellate Court on the ground that the other two issues relating to personal bonafide need and default in payment of rent have not been dealt with by the Appellate Court.

11. It seems that the opponent / respondent claims that previously he was paying the rent to the petitioner Muhammad Saleem; however, subsequently the petitioner sold out the premises in question to one Fateh Mohammad, as such the opponent / respondent started paying rent to the new owner, Fateh Mohammad, and is still paying the same to him. In such circumstances, the moot point, rather the bone of contention, in instant case is; as to whether under the law the tenant / respondent is under obligation to pay monthly rent to the petitioner who had initially inducted him as tenant in the subject premises, or to the alleged new owner, Fateh Mohammad, who, according to him, is the new owner having allegedly purchased the premises in question from the petitioner?

12. In order to prove relationship of landlord and tenant between the parties, the applicant in his evidence deposed that he is the owner / landlord of *Shop No.48, Sector 51-B, Korangi No.6, Karachi, which is registered in his name*, while the opponent is his tenant in the demised premises. He further deposed that the opponent was inducted as tenant in the demised premises vide tenancy agreement dated 11.12.2019 at monthly rent of Rs.12,000/-. He then reiterated the averments made by him in his Rent Application. In support of his version he produced original Allotment Order dated 17.06.1997, original Bill of KE for the month of September, 2022, original tenancy agreement dated 11.12.2019, Agreement dated 26.06.2020. During his cross-examination, he denied to have *sold out the demised premises to Fateh Muhammad*. He also denied that *since he had sold out*

*the demised premises, therefore, he has not produced the renewed tenancy agreement. According to him, the opponent had paid him monthly rent till July, 2022 but discontinued the same from August, 2022. He also denied that after selling the demised premises to Fateh Muhammad, he had filed instant rent case. He; however, admitted his signature on the sale agreement 24.02.2022, but denied to have executed said sale agreement. He also denied to have any concern with the tenancy agreement dated 01.03.2022 which was executed between the opponent and said Fateh Muhammad.*

13. The evidence of Mst. Yasmeen Begum, who is wife of the petitioner, is on the same line as that of the applicant. In her cross-examination she stated that she has *produced the relevant title document in respect of demised premises in order to show that the subject tenement was owned by her father-in-law, viz. petitioner's father.* She denied that the demised premises has been sold out by the applicant to one Faqeer Muhammad (sic). It seems to be a typing mistake, probably it should have been 'Fateh Mohammad'.

14. Another witness of the applicant / petitioner, Muhammad Arman, in his evidence corroborated the version of the applicant. During his cross-examination, he denied that he was not the witness of the tenancy agreement executed between applicant and the opponent and that the applicant has sold out the demised premises to one Fateh Muhammad.

15. The third witness of the petitioner namely, Muhammad Sharif, also deposed on the same line as the applicant. During his cross-examination, he denied the same facts, as denied by witness Mohammad Arman.

16. On the other hand, the opponent deposed that there is no any relationship of landlord and tenant between the applicant and opponent at present. However, he admitted that he was the tenant of the applicant to whom he was regularly paying the rent, but the applicant sold out the demised premises to one Fateh Muhammad on 24.02.2022 and he is paying the rent to new owner vide tenancy agreement dated 01.03.2022. He further stated the same facts as mentioned in his written reply.

17. During his cross-examination, he admitted that he had obtained the demised premises on rent from applicant, Saleem at the rate of Rs.12,000/- vide tenancy agreement dated 11.12.2019 for a period of three years. He also admitted that said tenancy agreement expired on 10.12.2022. He also

admitted that he had spent an amount of Rs.1,86,720/- for renovation of the demised premises and that said amount was fully adjusted in July, 2022. He also admitted that he had not paid the monthly rent to the applicant Saleem from July, 2022. He added that in February, 2022, the applicant had sold out the demised premises to one Fateh Muhammad, therefore, he (the opponent) entered into tenancy agreement with said Fateh Muhammad and started paying rent to him from the month of March, 2022. He also admitted that the applicant himself informed him that he had sold out the demised premises to Fateh Muhammad and that onwards, he should pay the rent to new owner. He also admitted that he has not produced said Fateh Muhammad as his witness in the case.

18. From above it seems that it is an admitted position that the opponent was inducted as a tenant in the demised premises by the applicant / petitioner, that he had paying the monthly rent to the petitioner till February, 2022, and that from March, 2022 he discontinued paying rent to the applicant / petitioner on the pretext that the applicant had sold out the premises to said Fateh Mohammad, that thereafter, he entered into a fresh tenancy agreement dated 01.03.2022 with said Fateh Mohammad and started paying rent to him from March, 2022 and onwards.

19. *It is a settled principle of law that when an opponent in a rent case has admitted his induction in the premises occupied by him as tenant by the applicant, then by virtue of such admission, he is supposed to have admitted the existence of relationship of landlord and tenant between them and notwithstanding any defect in title of the applicant, the opponent would be estopped to deny the relationship of landlord and tenant at a subsequent stage on the ground that he has received notice under Section 18 of the Ordinance regarding change of ownership from a third person.*

20. This point was elaborately discussed by Honourable Supreme Court in the case of *SAIFUDDIN AND ANOTHER VS. SENIOR CIVIL JUDGE/RENT CONTROLLER-VIII, KARACHI (SOUTH) AND 7 OTHERS* **2007 SCMR 128**, wherein it was held as under:

*“4. The petitioners having admitted their induction in the premises in their possession as tenant by the respondent, have accepted the existence of relationship of landlord and tenant between them and the respondents, therefore, notwithstanding any defect in the title of the respondents, they would be estopped to deny the relationship of landlord and tenant at a*

subsequent stage on the ground that a third person having setup his title in the property, has sent them a notice under section 18 of the Ordinance. The ownership of the property is not an essential condition to create relationship of landlord and tenant rather a person without being owner of the property may acquire the status of landlord of the property, therefore, the defect in the title of landlord may not be as such a valid ground to deny his status as landlord of the property and thus, non-payment of rent for such reason may constitute a wilful default in terms of section 15 of the Ordinance which provides that if the tenancy between the parties is based on a written agreement, the tenant must pay rent of the premises in his possession within 15 days after expiry of period of payment of rent fixed in the agreement and in absence of any written agreement within 60 days after rent becomes due failing which tenant must face the consequence of ejectment. The petitioners by their conduct of denying the status of respondents as landlords of the premises on the pretext of defect in their title subsequent to their induction in the premises as tenant by the respondents, have disentitled themselves from seeking equitable relief in the ejectment petition. This may be seen that the petitioners having taken contradictory pleas at various stages in the proceedings have not only committed default in payment of rent but also disowned the respondents as landlord of the premises in their possession, knowingly that the order by virtue of which the allotment in the name of predecessor-in-interest of the respondents, was cancelled by the Board of Revenue, was under challenge before the High Court. The dispute regarding the title of the respondents being sub judice in the High Court, the petitioner who were initially inducted in the premises as tenant by the respondents neither were justified in asking them to establish their title to maintain their status as landlord of the property nor could deny the existence of relationship of landlord and tenant. This Court has repeatedly held that in such an eventuality, the tenant must face the penal consequence of ejectment and reference may be made to *Muhammad Yousuf v. Asghar Hussain* 1980 SCMR 886; *Amanullah Khan v. Chotay Khan* 1978 SCMR 14 and *Muhammad Shah Alam v. Muhammad Abdul Ghafoor* 1979 SCMR 443."

21. Reference may also be made to the case of *MRS. ASMA MAKHDOOM V/S MRS. YASMEEN AZAM (2018 MLD 976)*, wherein it was held:

*"In view of admissions of the petitioner in acknowledging her as tenant of landlord/respondent, principle of estoppel in terms of Article 115 of Qanun-e-Shahadat, 1984 would automatically come into play and thereby the petitioner was debarred from denying relationship as a tenant".*

22. Reference in this context may also be made to cases of *GUL SHER ABAT KHAN V/S MUMTAZ ALI KHAN & OTHERS (2019 MLD 1991)* and

*SAIFULLAH AND ANOTHER V/S CHAUDHRY GHULAM GHOU* (2000 CLC 1841).

23. Even, the plea taken by the opponent / respondent that as the applicant had sold out the demised premises to one Fateh Muhammad and that the opponent is regularly paying the rent to the new owner, therefore, the relationship of landlord and tenant between applicant and tenant stood terminated and the opponent was absolved from paying the rent to the applicant and he was obliged to pay rent to new owner, is also devoid of force and not tenable.

24. From perusal of record, it reveals that the respondent / tenant in his cross-examination has admitted that the applicant had not asked the opponent to pay the monthly rent onwards to the alleged new owner, Fateh Muhammad. Even, the opponent during course of his evidence, has not produced any written notice under Section 18 allegedly sent by Fateh Muhammad to him regarding payment of monthly rent to him onwards. It is also admitted position that said Fateh Mohammad who, according to the opponent / tenant, had sent him notice under Section 18 of the Ordinance informing him about the alleged change of ownership, has neither been produced as a witness by the opponent in support of his version, nor even he has impleaded as a party in the proceedings, and nor even said Fateh Mohammad himself has come forward by moving any such application for impleading him as a party. In such circumstances, in view of the provisions of Article 129(g) of Qanoon-e-Shahadat Order, 1984, a negative inference could be drawn against the tenant / opponent. It is also astonishing fact that said Fateh Mohammad, the alleged new owners, has not even filed any suit for specific performance against the applicant. Needless to emphasize the settled law that mere execution of sale agreement between the parties in respect of the rented premises, does not absolve the tenant of his obligation to make payment of monthly rent. In this connection, reference may be made to the cases of *MUHAMMAD IQBAL HAIDER V/S 1ST ADDITIONAL DISTRICT JUDGE & 3 OTHERS* (2018 CLC Note 129), *AQSA JAWED THROUGH ATTORNEY V/S MUHAMMAD HASSAN & OTHERS* (2021 CLC 1780), *SHAHID MEHMOOD V/S MUHAMMAD ISMAIL* (2008 CLC 87).

25. In view of above legal position, it is apparent that the Rent Controller rightly decided the issue of relationship of landlord and tenant between the parties in favour of the petitioner / landlord, while the Appellate Court erroneously reversed the finding of the Rent on said issue while allowing the First Rent Appeal filed by the respondent / tenant.

26. From perusal of the judgment passed by the Appellate Court, it seems that the Appellate Court has laid much stress on the fact that in February, 2022, the respondent viz. petitioner herein, had sold out the demised premises to Fateh Muhammad. In this context, he relied upon the sale agreement allegedly executed between the applicant / petitioner, Mohammad Saleem and said Fateh Muhammad, copy whereof was produced by the opponent in his evidence. The Appellate Court has further observed in the impugned judgment that the opponent was paying rent in respect of the demised premises to said Fateh Muhammad from February, 2022 which fact was in the knowledge of the applicant.

27. It may be observed that above fact that the applicant / petitioner had entered into a sale agreement for selling out the premises in question to said Fateh Mohammad is even not denied by the petitioner himself. However, no sale deed was got registered in favour of said Fateh Mohammad, and it seems that subsequent to the execution of said sale agreement, there arose some dispute between the applicant and said Fateh Mohammad and various complaints were filed by both the parties against each other. However, the Appellate Court has even not slightly touched and discussed the legal position as to whether in such a situation, the opponent was legally justified in discontinuing the payment of monthly rent to the petitioner and starting to pay the same to said Fateh Mohammad on the ground that a notice under Section 18 of the Ordinance was received by him from said Fateh Mohammad. However, he could not prove that the applicant / petitioner himself had asked him to make payment of the monthly to said Fateh Mohammad.

28. In view of settled principle of law, as discussed above, the opponent / respondent having admitted his induction in the demised premises, occupied by him, as tenant by the applicant / petitioner, has admitted the existence of relationship of landlord and tenant between them. In the circumstances, at this stage, he would be estopped to deny the

relationship of landlord and tenant on the ground that he has received notice under Section 18 of the Ordinance, which has not been produced by him during the course of evidence, from said Fateh Mohammad, when admittedly the applicant / petitioner has asked the opponent to pay the monthly rent onwards to said Fateh Mohammad. It is reiterated that, as per settled law, the ownership of the property is not an essential condition to create relationship of landlord and tenant, rather a person without being an owner of the property, may acquire the status of landlord of the property, therefore, the plea taken by the opponent / respondent is not a valid ground for non-payment of monthly rent to the petitioner. In this view of the matter, such non-payment of rent is surely a willful default on the part of the tenant / respondent in terms of Section 15 of the Ordinance.

29. Before parting with this judgment, it may be observed with great concern, that learned Additional District Judge, MCAC, (author of the impugned judgment) while delivering the judgment in First Rent Appeal has, at all, not touched the afore-mentioned legal position and the dictum laid down by the Superior Courts as discussed above. Needless to emphasize that the dictum laid down by the Supreme Court is binding upon all the subordinate courts that the same is to be followed, unless it is shown by cogent reasons that the same is distinguishable.

30. In the case of *JUSTICE KHURSHID ANWAR BHINDER AND OTHERS V/S FEDERATION OF PAKISTAN AND ANOTHER*, reported in PLD 2010 SC 483, it was held by a 14 Members Bench of Honorable Supreme Court as under:

*“Where the Supreme Court deliberately and with the intention of settling the law, pronounces upon a question, such pronouncement is the law declared by the Supreme Court within the meaning of Art.189 of the Constitution and is binding on all courts in Pakistan-Such pronouncement cannot be treated as mere obiter dictum.*

31. It was further held that *even obiter dictum of the Supreme Court, due to the high place which the court holds in the hierarchy of courts in the country, enjoy a highly respected position as if it contains a definite expression of the court's view on a legal principle, or the meaning of the law.*

32. In view of above, learned Additional District Judge/ MCAC, (author of the impugned judgment) is warned to be careful in future while passing any order / judgement by strictly following the orders / judgments of the Superior Courts where a law is settled and if in the circumstances of a particular case, he is of the opinion that such pronouncement is distinguishable for certain cogent reasons, he must assign such reason. Said judicial officer may be apprised of above remarks by District & Session Judges, Karachi East.

33. The upshot of above discussion is; that instant constitutional petition is allowed and the impugned Judgment passed by the appellate Court is set aside and the Order passed by the Rent Controller dated 22.02.2024 is maintained. Consequently, the respondent No. 1 / tenant is directed to handover vacant and peaceful possession of the demised premises to the petitioner Muhammad Saleem within 15 days from the date of this judgment.

Karachi  
Dated:31.08.2026  
Approved for Reporting.

JUDGE  
HEAD OF CONST. BENCHES