

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-235 of 2004

Present: Mr. Justice Nazar Akbar

Petitioner : Dareza Khan
Through Mr. Muhammad Tamaz Khan,
advocate.

Respondent No.1 : District & Sessions Judge, Karachi Central.

Respondent No.2 : The Senior Civil Judge, Rent Controller,
Karachi Central.

Respondent No.3 : Raza Mohammad
(None present for respondents)

Date of hearing : 17.5.2018

Date of decision : 17.5.2018

J U D G M E N T

NAZAR AKBAR,J:- This constitution petition is directed against the appellate order dated 18.3.2004 passed by the learned District and Sessions Judge, Karachi Central, whereby the First Rent Appeal No.50/2003 was allowed and the order of dismissal of rent case No.201/1992 passed by the learned IInd Senior Civil Judge, Karachi Central was set aside.

2. Precise facts of the case are that the Respondent has filed rent case against the petitioner for his eviction from the property bearing House No.K-346, Haji Mureed Goth, Golimar, Karachi (hereinafter the tenement) claiming that the Petitioner is tenant who has initially paid rent at the rate of Rs.80 per month and it was increased to Rs.150 per month. It was also alleged that the Petitioner was a habitual defaulter. The Petitioner in his written statement contended that there is no relationship of landlord and the tenant, therefore, there is no question of default.

3. The Respondent has filed his affidavit in evidence and also affidavit in evidence of his witness Haji Imam Bux as PW-1. In rebuttal, the Petitioner in his affidavit in evidence has relied on a sale agreement and receipt dated **3.2.1998**. He has also filed affidavit in evidence of his witnesses Naseeb Gul, Wazeer Khan and Miskeen Khan. The rent application was dismissed since Rent Controller had held that the relationship between the parties does not exist. In appeal, learned appellate Court after thorough examination of the evidence concluded that the Petitioner has failed to establish his claim of ownership and allowed the appeal.

4. I have heard learned counsel for the Petitioner as well as perused record.

5. The counsel for the Petitioner has contended that as the appellate Court has misread the evidence but he was unable to point out which piece of evidence was overlooked by the appellate Court. I have also gone through the evidence of the parties with the help of learned counsel and found that the findings of the appellate Court are based on the evidence as the Petitioner has failed to lead convincing evidence in support of his claim that he owns the tenement. Learned Rent Controller has erred in passing the order of dismissal of rent case. The appellate Court has repeatedly referred to the evidence of the Petitioner in the impugned judgment starting from his admission in the written statement to the statement of his witnesses. The Petitioner in his written statement has not mentioned about the payment of Rs.10,0000/- as token money and he admitted that Imam Bux had not sold the case premises to him but it was sold to him by his brother Nabi Bux. Learned appellate Court has also observed that earlier petitioner was ordered to vacate the tenement in an ex parte rent proceedings and the Petitioner had filed a First Rent

Appeal No.211/2001 against the exparte judgment and in said FRA the Petitioner had not taken the plea that the tenement was purchased by him and that he was not tenant.

6. The record shows that the Respondent was duly registered owner in the Excise and Taxation Department and his PT-I form showing his title was also on record. The Petitioner has failed to establish that the PT-I was not genuine and also that, if at all, he has purchased the property why he did not apply to enter his name in the PT-I Form which was in favour of the applicant. Even Haji Imam Bux, from whom he claimed to have purchased the tenement, was examined by the Respondent but the trial Court ignored his evidence. He has denied that his brother has sold the tenement to the Petitioner on **3.2.1998** against the consideration of Rs.9,35,000/-. The Petitioner has also failed to prove that he has paid sale consideration. All these facts have already been discussed by the learned appellate Court and there is no misreading of evidence in the judgment of the appellate Court.

7. IN view of above facts, this petition was dismissed by a short order dated **17.5.2018**. The Petitioner is directed to vacate the tenement within 30 days from the date of this detailed order. In case of his failure to vacate the same, the executing Court already seized of execution application may issue writ of possession with police aid without notice to the Petitioner.

8. The above are the reasons for dismissal of petition by short order.

J U D G E

Karachi

Dated: .05.2018.