

IN THE HIGH COURT OF SINDH, KARACHI

Constitutional Petition No. S-822/2009

Petitioner : Muhammad Rafiq, through Mr. Khilji Bilal Aziz, Advocate.

Respondent No.1 : Aftab Hussain, through Mr. Afaq Ahmed, Advocate

Date of hearing : 19.04.2017

Date of Judgment :

J U D G M E N T

YOUSUF ALI SAYEED, J:- The Petitioner has assailed the Judgment of the learned Vth Additional District Judge, Karachi (South) dated 14.09.2009 (the “**Impugned Judgment**”), allowing First Rent Appeal No. 91 of 2006 that had been filed by the Respondent against the Order of 01.02.2006 (the “**Rent Order**”) made by the learned 1st Rent Controller, Karachi (South) in Rent Case No.597 of 2003 (the “**Rent Case**”) instituted by the Respondent under S.15 of the Sindh Rented Premises Ordinance, 1979 (the “**SRPO**”), seeking possession of Shop No.4 situated on the ground floor of a building by the name of Bhabhal Mansion, constructed on Plot No. RC-11/14, Hardas Street, Ranchor Line, Karachi (the “**Subject Premises**”).

2. The Rent case had been filed by the Respondent on the ground of default in rent on the part of the Petitioner, as well as on the ground of personal need, and was dismissed in terms of the Rent Order.

3. On appeal, the finding of the learned Rent Controller was reversed to the extent that the appeal was allowed in terms of the Impugned Judgment on the point of bona fide personal need and the Petitioner was directed to vacate the Subject Premises within 60 days, hence the instant Petition.

4. Learned counsel for the Petitioner submitted that the learned ADJ had erred in failing to consider that a possessory claim on the basis of personal need could only be initiated by a landlord who was also the owner of the premises in question. In support of his contention he relied on the judgments of this Court in the cases reported as Muhammad Kashif Kamal Siddique v. Mirza Farooq Baig 1990 MLD 1009 and Muhammad Hussain v. Adamjee Sheikh Jeevanjee 2001 MLD 1183. He contended that whilst the Rent Controller had dismissed the claim of default and personal need on merits, and thus not recorded any finding on the point of ownership, the learned ADJ also did not decide this issue albeit reversing the finding on the point of personal need. He thus prayed that the Impugned Judgment be set aside and that the matter be remanded for the purpose of determination of this point.

5. Learned counsel for the Respondent strongly controverted this proposition and submitted that the Respondent was quite evidently the landlord and owner of the Subject Premises He averred that the denial of ownership was baseless and was nothing but a mere device to fabricate a ground for the sake of the instant Petition, under cover of which the Petitioner had succeeded in lingering on his possession to date.

6. Learned counsel for the Respondent pointed out that in his application before the Rent Controller, the Respondent had stated the factum of his ownership and had consistently maintained that position in his Affidavit-in-Evidence as well as under cross-examination. He also pointed out that the Petitioner, whilst admitting the relationship of landlord and tenant and that he had been put in possession by the Respondent, had simply denied that the Respondent was the owner without identifying the person with whom the ownership was vested. He referred to certain relevant excerpts from the deposition of the Petitioner in evidence as well as under cross-examination, which are as follows:

“I say that the legal infirmities of the present ejectment application are that the applicant is not the owner of the demised premises. I cannot produce any proof that the applicant is not the owner of the demised premises. I admit that I am the tenant in respect of demised shop. The applicant Aftab had inducted me as tenant in the demised premises.”

“It is correct that I have stated in evidence that I pay the rent to the applicant. Aftab. It is correct that I have accept him as a landlord but I do not accept him as owner of the demised shop.”

7. Learned counsel also pointed out that in the Counter-Affidavit filed by the Respondent in respect of the petition, he had categorically affirmed his ownership of the Subject Premises and filed a copy of the extract from the property register, as said to already have been placed on record before the learned Rent Controller, which showed that the same stood entered in his name. He submitted that no Rejoinder had been forthcoming from the Petitioner in that regard. He also pointed out that pursuant to an Order made in these proceedings on

30.09.2016, the Respondent had placed certain documents on record to show that the utility bills pertaining to the building in which the Subject Premises were contained were in the name of the Respondent and also placed on record a copy of an Order made in Constitutional Petition No. S-68 of 2010 whereby an order of possession in respect of another tenement in Bhabhal Mansion had been made by this Court in favour of the Respondent. He submitted that it was self-evident from the course of proceedings that there was no serious doubt as to the status of the Respondent vis-à-vis the Subject Premises and the learned ADJ had obviously been satisfied in that regard whilst passing the Impugned Judgment without feeling it necessary to record a specific finding to that effect.

8. I have considered the arguments and the material on record. It is clear from the Petitioners own stance in the written statement filed in the Rent Case as well as during the course of evidence that he was admittedly inducted as a tenant of the Subject Premises by none other than the Respondent, and a sum of Rs.375,000/- was paid as pugri. Additionally, it was conceded that a further amount of Rs.25,000/- was spent on making the Subject Premises usable with the permission of the Respondent. When examined in juxtaposition, these aspects are inconsistent with the bare plea that the Respondent is not the owner, as these submissions serve as an acknowledgment on the part of the Petitioner that the Respondent exercised dominion over the Subject Premises and cannot be regarded as a mere rent collector. The aforementioned extract from the property register also suffices to put this controversy to rest, and the judgments cited by learned counsel for the Petitioner are therefore inapplicable under the given circumstances.

9. It is well settled that the Constitutional jurisdiction in matters under the SRPO is narrow in scope and findings of the Courts below are not to be interfered with under Article 199 unless the findings are wholly perverse, arbitrary, based on a misreading of evidence or have resulted in a miscarriage of justice, which does not appear to be the case in the matter at hand. Having undergone the travails of litigation in pursuit of possession of the Subject Premises for almost a decade and a half, it would be unduly onerous to subject the Respondent to de novo proceedings merely for the purpose that a finding be recorded on the point raised, particularly when the material on record supports the contention of ownership and substantial justice has been done in terms of the Impugned Judgment.

10. In view of foregoing, no case for interference stands made out. Accordingly, this Petition is dismissed with no order as to costs.

JUDGE

Karachi.

Dated _____