

IN THE HIGH COURT OF SINDH AT KARACHI

Constitutional Petition No.S-631 of 2010

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

Before: Mr. Justice Nazar Akbar

Petitioner : Shamim Begum through
Mr. Iftikhar Javed Kazi, Advocate.

Versus

Respondent No.1 : Azizul Hasan Khan
Through Mr. Aamir Ashar Azeem, Advocate.

Respondent No.2 : IXth Rent Controller, Karachi East.

Respondent No.3 : 1st Additional District Judge, Karachi East.

Date of hearing : **24.12.2018**

Date of Decision : **08.02.2019**

JUDGMENT

NAZAR AKBAR, J. The petitioner through this constitution petition has challenged the concurrent findings of two Courts below. The IXth Rent Controller, East Karachi by order dated **21.5.2009** allowed **Rent case No.398/2008** filed by Respondent No.1/landlord and the 1st Additional District Judge, East Karachi by Judgment dated **12.5.2010** in **FRA No.135/2009** maintained the said order of Rent Controller.

2. Briefly stated the facts of the case are that Respondent No.1 has filed Rent Case under **Section 15** of the Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) stating therein that he is the owner/ landlord of Flat No.C-1, 1st Floor, Sana Arcade, Block-7, Gulshan-e-Iqbal, Karachi (the demised premises) which he purchased from its previous owner Sohail Mehmood vide sale agreement dated

22.9.2007 coupled with registered power of attorney from the first original owner Syed Mubarak Ali. The said Sohail Mehmood who also had registered power of attorney with sale agreement from original owner has let out the demised premises to the Petitioner on monthly rent at Rs.4200/- per month vide tenancy agreement executed in the year 2003. It was averred that after change of ownership, Respondent No.1 served notice dated **28.9.2007** under **Section 18** of SRPO, 1979 upon the Petitioner requesting her to pay the rent of the demised premises to him, but the same was not replied. Since the Petitioner from **September, 2007** onwards has not paid the monthly rent to Respondent No.1 and the demised premises was also required by Respondent No.1 for his personal use and occupation, Respondent No.1 filed rent case on the ground of default in payment of rent as well as personal bonafide need.

3. The Petitioner/opponent on service of notice of rent case filed her written statement wherein she denied the relationship of landlord and tenant and contended that the demised premises was never let out by Respondent No.1 to her. She averred that she has purchased the demised premises from its previous owner namely **Syed Mubarak Ali** for sale consideration of Rs.265,000/- vide agreement of sale dated **12.10.1999** when the demised premises was mortgaged with the HBFC and she has paid Rs.14,000/- to the HBFC.

4. The Rent Controller after recording evidence and hearing learned counsel for the parties, allowed Rent Application filed by Respondent No.1. The Petitioner filed **FRA No.135/2009** against said judgment before the appellate Court which was dismissed by judgment dated **12.05.2010**. Both the judgments are impugned herein this constitution petition.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for the Petitioner has reiterated the same grounds in this constitution petition which he has urged before the trial Court and the appellate Court that no relationship of tenant and landlord was existing between the Petitioner and Respondent No.1. He has contended that Respondent No.1 has only a sale agreement and, therefore, being the prospective buyer and not the absolute owner of the demised premises, he was not entitled to claim eviction of the Petitioner on the ground of personal bonafide need. The learned counsel further contended that the Petitioner even in her written statement has denied the relationship of landlord and tenant and claimed that she is owner of the demised premises on the basis of agreement of sale dated **12.10.1999** with the original owner Syed Mubarak Ali and, therefore, she cannot be termed as tenant. In the written synopsis learned counsel for the Petitioner contended that when both the sides contest title in the demised premises, the Respondent/landlord ought to have been advised to clear his title before filing the rent case. He has relied on the judgment of Hon'ble Supreme Court reported as Rahmatullah vs. Ali Muhammad and another (**1983 SCMR 1064**).

7. In rebuttal learned counsel for Respondent No.1 has contended that the concurrent findings of the two Courts below are based on the admitted evidence that the original owner of the demised premises was one Syed Mubarak Ali who had executed a registered power of attorney firstly in favour of Sohail Mehmood and then with his consent in favour of Respondent No.1 and he also executed fresh agreement of sale with Respondent No.1. The original owner of the

demised premises Syed Mubarak Ali has appeared in the witness box to support the case of Respondent No.1 and he has categorically denied the claim of the Petitioner that he has sold the demised premises to the Petitioner. He contended that in terms of **Section 18** of SRPO, 1979 once the notice was served on the Petitioner, she has become a statutory tenant of Respondent No.1 by operation of law and in response to the reliance of learned counsel for the Petitioner on the case of Rahmatullah vs. Ali Muhammad and another reported in **1983 SCMR 1064**, he has relied on a subsequent judgment of Hon'ble Supreme Court in the case of Iqbal and 6 others vs. Mst. Rabia Bibi and another reported in **PLD 1991 S.C 242**. He contended that the latest view of the Hon'ble Supreme Court is that if the tenant denies the relationship on the ground of mere agreement of sale, he/she has to vacate the premises and get the sale agreement enforced through the Court of law. He further contended that for the last 20 years the Petitioner has not filed any suit for declaration of ownership or specific performance to perfect her title.

8. The contention of learned counsel for the Petitioner in the given facts of the case that an agreement of sale in favour of Respondent No.1 does not confer any right and interest on Respondent No.1 in the demised premises to seek eviction of the Petitioner is misconceived since the Petitioner also claims that on the basis of agreement of sale dated **12.10.1999** the Petitioner is an absolute owner of the demised premises. Unfortunately, there is marked difference between the two contestants which the learned counsel for the Petitioner has overlooked. The difference is that Respondent No.1 beside an agreement of sale also has registered irrevocable general power of attorney in his favour duly executed by the original owner Syed Mubarak Ali. Respondent No.1 has even authority to sell and

mortgage the demised premises on the basis of registered irrevocable general power of attorney, whereas the Petitioner has only an agreement of sale dated **12.09.1999** with the said Syed Mubarak Ali. The case of the Petitioner could have some weight, had she in the last 20 years been able to enforce her agreement of sale against the admitted owner Syed Mubarak Ali, therefore, the contention of learned counsel that Respondent No.1 should first get his title on the demised premises cleared is misconceived. Such contention of the Petitioner is also misconceived on the ground that the person from whom the Petitioner claims to have purchased the demised premises namely Syed Mubarak Ali has on oath specifically denied execution of sale of the demised premises with the Petitioner and despite that specific denial of execution of sale till date the Petitioner has not even filed a suit for specific performance before any Court to get such denial declared false and got her title perfected through the due process of law.

9. The reliance placed by the Petitioner on the case of Rahmatullah (supra) reported in **1983 SCMR 1064** is not relevant anymore. Learned counsel for the Petitioner has relied on the case of Iqbal and 6 others (supra) reported in **PLD 1991 S.C 242** is the latest view of Hon'ble Supreme Court. Both the judgments have been authored by Hon'ble Mr. Justice Muhammad Afzal Zullah. The view expressed by Hon'ble Mr. Justice Muhammad Afzal Zullah in the case of **Rehmatullah (1983)** has been changed by his lordship in the case of Iqbal and others (**1991**) on the basis of subsequent judgments of the Hon'ble Supreme Court. The relevant observations of Hon'ble Supreme Court in the case of Iqbal and others (1991) from page No.245 side note "C" is reproduced below:-

Be that as it may, in some recent judgments this court has taken the view that in cases like the present one, where the sale agreement or any other transaction relied upon by a tenant is seriously and bona fide disputed by the landlord, the appellant/tenant cannot be allowed to retain the possession during the litigation where he continues to deny the ownership of the landlord who had inducted him as a tenant, without any condition and/or reservation. It has been ruled that in such cases although the tenant has a right to adduce evidence and take a short time for that purpose to remain in occupation despite having set up a hostile title which is denied by the landlord, but on the well-known bar of estoppel in this behalf, he (the tenant) cannot be permitted to remain in occupation and fight the litigation for long time--even for decades. In this case it is more than a decade that the appellants have been able to keep the possession on a claim which the landlord asserts is false. Accordingly, as held in those cases in fairness to both sides, while the tenant is at liberty to prosecute the litigation, wherein he should try to establish his claim but it should not be at the cost of landlord/owner. It should be at the cost of himself and he must vacate--though of course he would be entitled to an easy and free entry as soon as he finally succeeds in establishing his title against his own landlord. See Makhan Bano V, Haji Abdul Ghani (PLD 1984 Supreme Court 17), Allah Yar and others v. Additional District Judge. and others (1984 SCMR v. Mufti Abdul Ghani (PLD 1985 SC 1).

In the case of Iqbal and others (supra) the facts of the case were that the Petitioner has already filed a suit for specific performance against the Respondent/landlord but in the case in hand the Petitioner has not even filed a suit for specific performance till date and from her own showing she is living in the demised premises for two decades merely on the basis of an agreement of sale which is disputed by the original owner who has sold the demised premises to Respondent No.1 and transferred the title through a registered power of attorney coupled with agreement of sale.

10. In view of the above circumstance, Respondent No.1 who has an agreement of sale coupled with registered power of attorney and

affidavit on oath by the real and admitted owner in his favour has sufficiently discharged his burden to prove relationship of landlord and tenant with the petitioner. The tenancy on service of notice under **Section 18** of SRPO, 1979 on the Petitioner was created by operation of law and Respondent No.1 was entitled to claim eviction of the Petitioner on the ground of default as well as personal need. The use of phrase “**or any other mode**” in **Section 18** of SRPO, 1979 in favour of new owner alongwith other mode such as “sale, gift, inheritance” covers transfer of property by registered irrevocable power of attorney duly registered with concerned registrar of property particularly when such power of attorney is coupled with sale agreement showing consideration. It is also settled principle of law that when the tenant claims ownership on the basis of mere sale agreement and he/she fails to establish the same, the default stand proved in favour of the landlord.

11. In view of the above facts and law, the concurrent findings of two Courts below do not call for any interference. Consequently this constitution petition is dismissed alongwith pending application. The Petitioner is directed to vacate the demised premises within **30 days**. If he fails to vacate the demised premises within **30 days**, the Executing Court will issue writ of possession with police aid and permission to break open the locks of the tenement without even notice to the Petitioner.

JUDGE

Karachi
Dated:08.02.2019

Ayaz Gul/P.A