

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT: MR. JUSTICE SALAHUDDIN PANHWAR

CP NO.S-817/2018

Petitioner : Muhammad Din through legal heirs.
Mr. Adnan Ahmed, advocate.

Respondents : Mst. Kausar Jehan and others.
None present.

Date of hearing : 16.04.2018.

Date of order : 16.04.2018.

JUDGMENT

This petition assails order dated 26.03.2018 passed by appellate Court in First Rent Appeal No.282/2017 whereby FRA filed by petitioner against order passed by the Rent Controller on 21.10.2017, was dismissed.

2. Brief facts of the case are that applicant (respondent No.1 herein) filed Rent Case No.312/2016 before concerned Rent controller pleading therein that she is one of the co-owners/share holders of the property including the rented shop No.1; father of Opponents/petitioners became tenant of Mst. Maqsood Fatima in shop No.1, ground floor, situated at plot No.4/1069, Liaquatabad, Karachi in the year 1983 though said deceased Mst. Maqsood Fatima was not real owner of said shop; the respondent/applicant further stated that the real owner of the whole property namely Fazal-e-Ali in his life time gifted the half portion of his whole property situated at Plot No.4/1069, Liaquatabad, Karachi in the name of his son Khalil

Ali (deceased husband of the respondent No.1) through registered Gift Deed and in this half portion property said shop No.1 is situated; that after registration of Gift Deed in the name of her deceased husband, this fact was intimated to the tenant/deceased father of the opponents but he never paid the monthly rent either to the real owner and/or to husband of the respondent No.1/applicant being the owner of demised premises; respondent No.1/applicant had further pleaded that original tenant viz deceased father of the opponents and thereafter present opponents were proved to be difficult tenant, though they owned sufficient accommodation viz shops and buildings where they are/were running their business and also rented out some of their shops but even then never paid monthly rent of the demised premises to the real owner Fazal-e-Ali in his life time directly and failed to send any money order of monthly rent of the demises premises to him and thereafter to the legal heirs of the deceased husband of the respondent No.1/applicant, that when the monthly rent of the shop No.1 in question was demanded from the original tenant/father of the opponent who instead of paying the same started depositing monthly rent amount in the name of Mst. Maqsood Fatima (wife of Fazal-e-Ali) fraudulently as she was not the owner of that shop, instead of depositing the same in the name of real owner Fazal-e-Ali in his lifetime, by way of fraud and misrepresentation, and by way of concealment of true material facts from the Honourable Court of law in MRC No.2755/1985 (Muhammad Deen Vs Maqsood Fatima) by way of misguiding though she was not the owner of the shop in question and also she was not entitled to sign any deed and/or

agreement for the shop in question and has become a statutory defaulter in payment of monthly rent of the shop No.1 in question. The deceased husband of the applicant namely Khalil Ali during his life time solemnized two marriages and expired on 8.3.2014 leaving behind his two widows, sons, daughters. After death of the real owner of the shop No.1 in question the present applicant has become one of the co-owner of the said property where the present opponents have become their tenants, then the father of the appellants/opponents instead to offer the monthly rent to the real owner and without any money order started depositing the monthly rent amount of the shop No.1 in Hon'ble Court in MRC No.16/2005 and the opponents accepted Khalil Ali as owner but even then the opponents never offered the monthly rent of the rented shop to the husband of the applicant and the opponents are continuously depositing the monthly rent of the rented shop in question in the name of deceased husband of the present applicant against the law of the land therefore committed willful and deliberate default in payment of monthly rent of the shop in question. That after the death of the husband of the applicant the opponents have neither paid the monthly rent to the applicant and/or to any other co-owners nor increased the monthly rent of the shop premises after every three years though demanded as such the opponents have also committed default in payment of monthly rent since December, 1983 therefore the opponents are liable to be ejected from the rented shop. That not only but the son of the applicant is growing up and is jobless as such the applicant requires the rented shop No.1 to establish the business of her son namely Junaid Khalil/attorney of the applicant for

establishing his own business as the applicant is a paralyze lady having no source of income and presently her son is jobless and the rented shop premises is a fit property where the son/attorney of the applicant can run any suitable business, hence respondent No.1/applicant filed Application u/s 15 of SRPO 1979 before Rent Controller which was allowed by order dated 21.10.2017 on the grounds of default and personal bonafide need and directed ejection of opponents/petitioners from the demised premises. Appeal filed was dismissed by impugned order.

3. Case of petitioner is, as was before the Courts below, that the applicant had concealed the real facts before the learned Rent Controller that demised premises was rented out by the mother of the deceased husband of respondent No.1 to the petitioner on *pugree* basis vide tenancy agreement dated 03.7.1983 executed between the parties where late husband of the respondent No.1 was also a witness of tenancy agreement based on *pugree* which shows the status of the shop; that late husband of the respondent No.1 sent a legal notice to the petitioner through his advocate on 18.11.2004 for vacation of the shop which was replied on 10.12.2004; that according to their knowledge that late Khalil Ali had two marriages and his first wife also alive and residing with her children at Gulistan-e-Johar; that they are regularly depositing the rent before the IIIrd Rent Controller Central in MRC No.16/2005 in the name of Khalil Ali after refusal to accept the rent by the deceased husband of the respondent No.1 only to show default in payment of rent; that after refusal of rent amount by late husband

of respondent No.1 which was offered by petitioner they were depositing the rent through MRC in the name of deceased husband of respondent No.1 because they failed to produce any title documents in their name in presence of two widows and their children therefore there is no question about committing any willful and deliberate default in payment of monthly rent of shop No.1 in question; that in presence of two widows and their children they failed to obtain any letter of administration or transfer the property in favour of all legal heirs then how it is possible to claim the applicant personally demand the vacation of the shop in question in presence of rent agreement on basis of *pugree*.

4. At the outset learned counsel for petitioner contends that petitioner is tenant in demised premises for more than 30 years, he is paying monthly rent regularly in Court; property is in name of grandfather of respondent; respondent approached the petitioner for vacation of the property on the plea that she is owner of the property byway of registered gift deed and refused to receive the rent amount hence petitioner started to deposit monthly rent in Court; respondent is not owner of the property as to prove gift deed three ingredients are required, since possession was with petitioner therefore gift if any in favour of the respondent was not complete accordingly respondent cannot claim ownership of that property hence eviction application filed by respondent was incompetent under the law. He refers 2006 SCMR 152 and 1996 SCMR 1260.

5. I have heard the respective sides and have also gone through the available material *carefully*.

6. The petitioner has raised number of legal pleas, I will attend each of them. One of the pleas has been a challenge to legal status of the present respondent no.1 as well competence of the ejectment application, filed by her. The definition of term '**landlord**' , per section 2(f), not only include **owner** but also '**entitled to receive**'. Here, it may safely be added that succession opens the moment dies and his legal heir (s) become the **owners** even without such entry in Record of the Rights. In short, the **ownership**, earned through inheritance is not necessarily dependant upon entry / mutation in Record of the Rights. Reference may well be made to the case of Mst. Subhan v. Allah Ditta & Ors 2007 SCMR 635 wherein it is held as:-

"11. It is a proposition too well-established by now that as soon as someone who owns some property, dies, the succession to his property opens and the property gets automatically and immediately vested in the heirs and the said vesting was not dependent upon any intervention or any act on the part of the Revenue Authorities or any other State agencies. It is also an established proposition that a mutation did not confer on anyone any right in any property as the Revenue Record was maintained only for realization of land revenue and did not, by itself confer any title on anyone. It may also be added that efflux of time did not extinguish any rights inheritance because on the death of an owner property; all the co-inheritors, immediately and automatically, became co-sharers in the property and as has been mentioned above, limitation against them would start running not from the time of the death of their predecessor-in-interest nor even from the date of mutation, if there be any, but from the date when the right of any such co-sharers/ co-inheritors in such land was denied by someone."

The above settled principle makes me to conclude that after demise of the original owner his legal heirs would be construed as '**owner**'

within definition of Section 2(f) of the Sindh Rented Premises Ordinance, 1979. As regard filing of the ejectment petition without any letter of Administration, it would suffice to refer the case of Muhammad Haanif & another v. Muhammad Jamil Turk & 5 others 2002 SCMR 429 wherein it is categorically held as:-

“8. On the contrary, general rule of law has been that a co-sharer can file ejectment proceedings against a tenant without impleading other co-sharers. The wisdom behind such principle is that co-sharer acts on behalf of and represents the interests of all the co-owners of the property.”

Thus, now it could safely be concluded that the ejectment petition, so filed by the present respondent no.1 was / is maintainable.

8. Reverting to merits of the case, the present petitioner has admitted the status of husband of the present respondent no.1 to be as **‘landlord’** and even acknowledged that he (petitioner), on refusal of the husband of the respondent no.1 to accept the rent, started depositing the rent in his name (husband of the petitioner) therefore, the relationship of landlord and tenant between the husband of respondent no.1 and present petitioner was / is never a matter of dispute. Since, the husband of the respondent no.1 has died leaving the present respondent no.1 as one of the legal heirs (**widow**) therefore, the instant ejectment petition was / is maintainable in law and *pleas*, raised with reference to status of petitioner and absence of Letter of Administration, cause no prejudice to competence and maintainability of ejectment petition.

Though in view of above legal position, the plea of petitioner raised with reference to *gift* becomes of no use however, I

would say that since the status of the **'tenant'** does not give him any other right except that to retain possession of premises till legal continuity of the *tenancy* hence he (*tenant*) in absence of any other *direct* or *indirect* legal character cannot question the title of the *landlord* particularly in rent proceedings. A reference to Section 18 of Sindh Rented Premises Ordinance, 1979 shall bring a complete full-stop to another misconceived plea of petitioner that since the possession was with him (*tenant*) hence the gift was never complete. The proviso reads as:-

"18. Change in ownership. Where the ownership of a premises, in possession of the tenant has been transferred by sale, **gift**, inheritance or by such other mode, the new owner shall send an intimation of such transfer in writing by registered post, to the tenant and the tenant shall not be deemed to have defaulted in....."

The inclusion of **gift** in said section also affirms that validity of a **gift** would not be questioned merely for reason of physical deliver of possession of premises which *otherwise* was / is under *tenancy* but constructive delivery of possession would be sufficient on transfer of title. A reference to Section 152(2) of Muhammadan Law leaves nothing ambiguous in this regard.

"Where property is in the occupation of tenants.—A gift of immovable property which is in the occupation of tenants may be completed by a request by the donor to the tenants to attorn to the donee, **or by delivery of the title deed or by mutation in the Revenue Register or the landlord's Sherista.** But if the husband reserves to himself the right to receive rents during his lifetime and also undertakes to pay Municipal dues, a mere recital in the deed that delivery of possession has been given to the donee will not make the gift complete."

Even otherwise, a *tenant* is not legally entitled to change of ownership and once a notice, within meaning of Section 18 of the Ordinance, is served the *tenant* has to honour his obligations and legally cannot question change of ownership whether it be through *sale, gift* etc. It is also admitted position that the husband of the respondent Khalil Ali had served a notice upon the petitioner and in consequence thereof he (petitioner) started depositing rent in court. Thus, the petitioner was / is never legally justified in raising such *plea*.

9. Having attended all questions, raised by petitioner challenging / questioning the competence of ejectment application, what remains is that whether the concurrent findings of both the Courts) below in respect of the following point was / is correct or *otherwise*.

“Whether the respondent/applicant required the premises for personal bonafide need?”

At the very outset, I would say that jurisdiction under Article 199 of the Constitution cannot be invoked as substitute of another appeal against the order of the appellate Court, as held in the case of *Shakeel Ahmed & another v. Muhammad Tariq Farogh & others* 2010 SCMR 1925, because legally the finality is attached to finding of the Court (s) below, in particular to appellate Court, and merely for reason that a different conclusion is possible the jurisdiction of this Court Under Article 199 of Constitution cannot be used. Reference may be made to the case of *Mst. Mobin Fatima v. Muhammad Yamin & 2 Ors* PLD 2006 SC 214.

However, as an abandon caution, it would be appropriate to refer the relevant portion of the order of appellate Court so as to see whether the same is based on settled principles of law or *otherwise?* . The same reads as:-

“The burden lies upon the respondent/applicant to establish this point. The respondent/applicant has stated in para 7 of his rent application "That not only but the son of the applicant is growing up and is jobless as such the applicant requires the rented shop No.1 to establish the business of her son namely Junaid Khalil/attorney of the applicant for establishing his own business as the applicant is a paralyze lady". The appellants/ opponents have submitted in para 7 of written statement "That the contents of para No.7 to 9 are replied that in presence of two widows and their children they are failed to obtain any letter of administration or transfer the property in their of all legal heirs". The respondent/applicant has reiterated the contents of para 7 in his affidavit-in-evidence and in para 9 of his affidavit in evidence. The respondent/applicant was cross examined and a formal question was put "It is incorrect to suggest that **none of the legal heirs are in need of said premises**". The appellants/opponents have failed to bring on record whether the respondent/applicant son namely **Junaid was not jobless or was doing any business elsewhere**. It is settled principle of law that **once the applicant states on oath that the premises required by him for personal bonafide need same would be considered unless opponent bring on record which established that need was not bonafide**. Admittedly the respondent/applicant has stated in his ejection application as well as in his affidavit in evidence that she needed the property for her son Junaid who was jobless and required the premises for doing his own business. I would like to seek guidance from the case law reported in 2012 SCMR 1498, wherein the Honourable Supreme Court has held that neither the Court nor the tenant would dictate the owner in respect of his choice for premises.”

The perusal of the above, prima facie establishes that the learned appellate Court committed no illegality in responding to the

point/issue and findings were / are in accordance with settled principles of law hence needs no interference.

10. In consequence of what has been discussed above, I am of the clear view that the impugned orders of both the Court below do not warrant any interference and accordingly the instant petition, being devoid of substance, is dismissed.

11. These are the reasons for short order dated 16.04.2018 whereby the petition was dismissed.

Imran/PA

J U D G E