

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.S-1673 of 2017

Present: Mr. Justice Nazar Akbar

Petitioner : Mst. Rabia Gul W/O Arshad Ali
Through Mr. Anwar Muhammad Siddiqui,
Advocate.

Respondents 1&2 : Mst. Khatoon Begum (Since deceased)
Through her legal heirs.
1. Mst. Razia Gul W/O Imranullah
2. Nasim Gul W/O Muhammad Shahzad.

Respondent No.3 : IIIrd Additional District Judge Karachi-East

Respondent No.4 : III Rent Controller, Karachi-East. (Nemo).

Date of hearing : **18.10.2018**

Date of decision : **26.10.2018**

J U D G M E N T

NAZAR AKBAR, J:- This constitution petition is directed against the concurrent findings of IIIrd Rent Controller Karachi (East) in Rent Case No.420/2010, whereby ejection application filed by the petitioner was dismissed by order dated **03.09.2015** and the III-Additional District Judge East Karachi, who affirmed the impugned order in FRA No.125/2015 by Judgment dated **15.05.2017**.

2. Brief facts of the case are that the petitioner claimed herself to be owner/landlady in respect of house constructed on Plot No.34-A, Block-2, P.E.C.H.S, Karachi (demised premises) by virtue of Relinquishment Deed. It has been contended by her that the deceased Respondent namely Khatoon Begum was the tenant in respect of one portion of subject property consisting of 2 rooms with fixtures and fittings on the 1st floor of the demised premises. The same was let out to Mst. Khatoon Begum on monthly rent under a

written tenancy agreement dated **02.7.2009** and the monthly rent was fixed at Rs.3,000/- per moths and no any security amount was taken from the respondent due to close relation. The petitioner has even exempted the deceased respondent from payment of rent as well as other expenses since the respondent was mother of the Petitioner. When the deceased respondent Khatoon Begum fell seriously ill, respondents No.1 and 2 (her daughters) visited her at the demised premises to look after their ailing mother and started residing in the demised premises without paying monthly rent. The petitioner, after the death of Respondent No.1 demanded rent from her daughter (Respondents No.1 and 2) from the month of June, 2010 at the rate of Rs.3,000/- per month. Respondents No.1 and 2 initially promised to pay the rent but as they had no any source of income, they failed to tender monthly rent and did not pay even utility charges. Therefore, after repeated requests to vacate the demised premises, when respondents No.1 and 2 failed to vacate the same, the petitioner filed ejectment application No.420/2010 before the Court of III Rent Controller, East Karachi.

3. The ejectment application was initially decided in favour of petitioner by ex-parte order dated **26.3.2011** and when execution application bearing No.19/2011 was filed, respondents No.1 and 2, during pendency of said execution application appeared before the Rent Controller and filed application under **Section 19** of Sindh Rented Premises Ordinance, 1979 (SRPO, 1979) which after hearing was allowed and the ex-parte order dated **26.3.2011** was set aside. Thereafter respondents No.1 and 2 filed their written statement stating therein that initially the demised premises was purchased by Mr. Sheikh Gulab who was father of the Petitioner and respondents No.1 and 2 and others. On the death of their father, the demised

premises was devolved upon his legal heirs namely Mst. Khatoon Begum, widow (deceased respondent), Mohammad Shamim (son), Rabia Gul (the petitioner), Mst. Razia Gul (respondent No.1), Mst. Nasim Gul (respondent No.2) and Mst. Salma Gul (daughter). It was further alleged that respondents alongwith their deceased mother Khatoon Begum and brother continued to occupy 1st floor of the demised premises. Their mother had never executed any tenancy agreement with the petitioner as the demised premises was also inherited by respondents, their mother and brother as legal heirs of deceased owner who was husband/father. The deceased father also used to receive rent from the tenants of ground floor and shops in the said premises. The rent from shops was the only source of income. It was also averred that the petitioner was not owner of entire demised premises and the respondents or their mother were never on rent. The alleged tenancy agreement was false and the petitioner had no right over the entire building as she has no title documents.

4. After recording evidence and hearing learned counsel for the parties, learned Rent Controller dismissed the Rent case filed by the petitioner by order dated **30.09.2015** holding that the relationship of landlady/owner and tenant between the petitioner and respondents has not been proved by the petitioner, therefore, the question of default does not arise. The order of Rent Controller dated **30.09.2015** was challenged by the petitioner in F.R.A. No.125/2015 before the III-Additional District Judge East Karachi which was also dismissed by the impugned order dated **15.05.2017**.

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

6. The Petitioner's case was based, amongst others, on the sole claim of having obtained title of the demised premises through a deed of relinquishment. She claimed that the deceased mother of the Petitioner was her tenant through a tenancy agreement. However, the courts below have carefully examined the facts of the case on tenancy agreement alleged by the Petitioner and rightly came to the conclusion that no tenancy agreement was in existence between the Petitioner and deceased mother of the Petitioner with whom the Petitioner and the Respondents were also residing in the same premises being co-owners. Admittedly none of the Respondents including deceased mother of the Petitioner have ever tendered rent to the Petitioner before or after the so-called relinquishment deed. Without prejudice to the rights of the contesting parties, by merely executing a relinquishment deed by family members of deceased owner of the immovable property in favour of one of them, the others cannot become tenant and/or tress-passers in the said property. There is hardly any reference to the misreading of evidence by any of the two courts below.

7. Therefore, in view of the above facts and circumstances of the case the relationship of the landlord and tenant was not established and the two Courts below have rightly dismissed the rent case by relying on the relevant case law. In view of the above, this petition is dismissed.

JUDGE

Karachi
Dated: 26.10.2018.

Ayaz Gul/P.A