

IN THE HIGH COURT OF SINDH, KARACHI

Constt. Petition Nos. **S-271/2009**

Petitioner : Majeed Ali
Through Mr. Muhammad Khalid,
advocate.

Respondent No.1 : Altaf Ali
through Mr. Nazar Iqbal, advocate.

Respondent No.2 : Rafiq,

Respondent No.3 : Ist Addl. District & Session Judge
at Karachi (East),

Date of hearing: 26.10.2018

Date of Judgment: 15.11.2018

J U D G M E N T

Nazar Akbar, J- The petitioner through this constitution petition has challenged findings of the Ist Additional District Judge (East) Karachi, passed in FRA No.77/2008.

2. Brief facts of the case are that the petitioner is claiming to be the owner of a house and six shops constructed on Plot No.49/I, Area 4-C, measuring 80 sq.yds, situated in Landhi Township Karachi. Per learned counsel the said property was allotted to him by KDA vide allotment order bearing Book No.18 and Sr. No.1738. The KDA on receipt of full and final cost of land leased the said property in the name of the petitioner vide lease deed dated 18.11.1976. It is averred by the petitioner that RespondentNo.1 is his son-in-law and therefore, in consideration of relations with him, petitioner allowed Respondent No.1 to live in one room of the said property. According to the petitioner, he is an old aged

illiterate person and was dependent upon Respondent No.1 for doing some outdoor work and always had confidence in him. The petitioner had no other independent advice. The petitioner has alleged that in the month of July, 2004, Respondent No.1 verbally represented to the petitioner that in his opinion the present accommodation is insufficient and construction of one new room is required. Petitioner has further alleged that he under the influence of Respondent No.1 accompanied him to an officer for obtaining permission for construction of one additional room. After few days Respondent No.1 requested the petitioner that he may be allowed in writing to live in one room of the said property and the petitioner under the influence of Respondent No.1 signed an agreement dated 27.08.2004. It is averred that six shops are also constructed in the said property and the petitioner has rented out all the shops to different persons. The petitioner came to know in the month of June, 2007 that Respondent No.1 is claiming the ownership of the property and had filed ejectment applications against the tenants. Then the petitioner approached the concerned court of law and found that Respondent No.1 has filed rent case No.229 of 2005 and same has been allowed in his favour. In such situation the petitioner to safeguard his property from bad intention of Respondent No.1 filed an application under **Section 12(2) CPC** read with Order 1 Rule 10 read with Section 151 CPC but the learned trial Court dismissed the said application vide order dated **15.5.2008** and then petitioner filed FRA No.77/2008 which was also dismissed by the Ist Addl.

District Judge (East) Karachi in First Rent Appeal No.77/2008

with the following observations:-

In view of the above discussion so also I have gone through the order passed by the learned trial Court against which the present FRA was filed by the appellant but he himself admitted that by way of fraud, the Respondent No.1 executed a registered sale deed from him for which he filed the rent case. Now the question arises there is controversy between the appellant and the Respondent No.1 in respect of the title. It is clear that Respondent No.1 is in possession of registration sale deed of the demised premises and such type of controversy only to be decided by the Civil Court having jurisdiction. As far as the rent controller has authority to decide the issue in respect of the landlord and tenant of the premises as defined in the Sindh Rented Premises Ordinance, 1979. Further other controversies about the landlord and tenant has not been touched in this rent appeal. The appellant has executed the registered sale deed and the application under Section 12(2) CPC has to be decided accordingly by the learned trial Court. Therefore, the order passed by the learned rent controller on application under Order 12(2) r/w. Order 1 Rule 10 CPC needs no interference, hence, I hereby dismissed the instant FRA with no order as to costs.

3. Learned counsel for the appellant contended that the impugned order passed by the learned 1st Additional District & Session Judge (East) Karachi is contrary to the fact and law applicable to such facts and impugned order is nonspeaking and without reasons and learned appellate Court did not discussed the case law relied upon by the petitioner at the time of hearing of appeal. It is further contended that the order passé by the learned Appellate Court suffers from infirmity, illegality and material irregularity which has resulted in absolute miscarriage of justice and without jurisdiction being violative of principles well settled by

the Apex Courts. It is further contended by learned counsel that the learned appellate Court did not bear in mind that rent case was filed by Respondent No.1 in collusion with Respondent No.2, who deliberately did not offer any defence. Learned Appellate Court also failed to appreciate that the original documents of the property in question are lying with the petitioner and Respondent No.1 failed to produce the original documents during his evidence before the Trial Court and so also the leaned Appellate Court failed to understand the motive of filing rent application only to part with the possession of the property under the shelter of the Court's order instead of genuine ejection. Respondent No.1 has concealed the material facts from the Court that original lease deed in respect of the property in question is in the name of petitioner lying in possession of the petitioner. Such material concealment of the facts from the Court amounts to a fraud upon the Court and lastly the impugned order is bad precedent in law and not sustainable.

4. I have heard the learned counsel and perused the record.
5. The perusal of record shows that the petitioner, before filing an application under **Section 12(2) CPC** in the Court of Rent Controller on **2.7.2007** has already filed a civil suit against Respondent No.1 for cancellation of the title of the said Respondent. Therefore, at the time of filing rent case in **2005** the issue of ownership of Respondent No.1 (Altaf Ali) was not even subjudice and he has certain documents with him on the basis of which he has filed rent case against the tenant / respondent No.2. After ejection orders irrespective of the facts tenant has

seriously contested the matter or not, the execution was also filed by Respondent No.2 bearing **Ex.No.12/2007**. Learned Rent Controller has refused to adjudicate on the question of ownership of the applicant on the ground that the applicant's civil suit bearing **suit No.1512/2007** is already pending against the opponent / respondent No.1. There is no cavil to the proposition that Rent Controller even in the proceeding under **Section 12(2) CPC** cannot decide the issue of ownership of title between contestant whether the contestant is tenant in the same property or stranger to the rent proceeding. Therefore, the application under Section 12(2) CPC has been rightly dismissed by the Rent Controller and the said order has been affirmed by the Appellate Court in **FRA No.77/2008**.

6. Perusal of the record further shows that during pendency of this petition, the petitioner has already got a decree in Suit **No.1512/2007** against Respondent No.1 on **03.12.2009**. Now he can obtain possession of the tenement from the Respondent and / or whoever is in possession through execution proceeding in the Civil Court

7. In view of the above, the findings of the Courts below were legally justified and no illegality was committed by them nor there was misreading of facts while dismissing the application under Section 12(2) CPC. However, it is clarified that the instant order would have no bearing in the civil litigation between the parties.

8. In view of the above, this petition is dismissed.

JUDGE