

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**

# First Rent Appeal No.58 of 2016

Date \_\_\_\_\_ Order with signature of Judge \_\_\_\_\_

**Present: Mr. Justice Nazar Akbar**

Appellant : Waris Aneel Zareen Shahab  
through Mr. Raghbir Ibrahim Junejo Advocate

## Versus

Respondent No.1 : Benjamin Peter.  
Through Mr. Altaf Ahmed Shaikh, Advocate.

Date of hearing : **04.02.2020**

Date of judgment : **28.02.2020**

## JUDGMENT

**NAZAR AKBAR, J:-** This First Rent Appeal is directed against the order dated **14.07.2016**, whereby the Controller of Rents, Faisal Cantt., Karachi allowed Rent Case No.11/2010 filed by the Respondent and directed the appellant to vacate the demised premises within (30) days.

2. To be very precise, the facts of the case are that the Respondent has filed ejectment application No.11/2010 under **Section 17** of the Cantonment Rent Restriction Act, 1963 (CRRA, 1963) stating therein that he is owner of Flat No.AA-10, 2<sup>nd</sup> Floor, Hunaid City, Block-17, Gulistan-e-Jauhar, Karachi (the demised premises). It was further averred that sister of the appellant was tenant of the demised premises at the rate of Rs.5,000/- per month and she paid rent upto 2009, thereafter she died. The appellant was

also residing along with his mother in the demised premises but after death of his sister/tenant he has not paid rent since May, 2009. It was further averred that the Respondent repeatedly demanded the rent and requested the appellant to execute fresh agreement of rent in his name but he avoided and finally refused to do the needful. Therefore, neither the appellant paid rent nor the amenities bills/charges so also he refused to vacate the demised premises, therefore, the Respondent filed ejectment application under **Section 17** of the CRRA, 1963 on the ground of default in payment of rent as well as personal bonafide need.

3. The trial Court sent notice of ejectment application to the appellant which was served upon him but he remained absent. Consequently his defence was struck off and the case was proceeded exparte against him. The Respondent filed affidavit-in-exparte proof and thereafter the rent case was allowed. Thereafter, the appellant after receiving notice of the execution application, filed application under **Section 12(2) CPC** which was allowed by the trial Court. Then the appellant filed his written statement wherein he denied the relationship of landlord and tenant between the parties. He contended that no document to prove the tenancy is filed except the rent receipts, which are manipulated. He further contended that the Respondent let out the demised premises to his sister namely Zeenat Shahab, who expired and thereafter her legal heirs to be the tenants, while he is not the legal heir of his sister and, therefore, the rent case was not maintainable. He further contended that he has purchased the demised premises from the Respondent for a total sale consideration of Rs.10.89,000/-, out of which he has paid Rs.9,89,000/- in installments in presence of witnesses. He further

contended that he has raised construction of additional floor with his own funds and he has rented the said floor to the tenant.

4. The Rent Controller after recording evidence and hearing the learned counsel for the parties, by order dated **14.07.2016** allowed the rent application and directed the appellant to vacate the demised premises within 30 days. The appellant, therefore, preferred instant First Rent Appeal before this Court against the said order.

5. I have heard learned counsel for the parties and perused the record as well as written arguments submitted by the learned counsel for the appellant.

6. Learned counsel for the appellant before the trial Court has taken the stance that he is not tenant by virtue of the fact that he has purchased the demised premises under an oral agreement from the actual owner Benjamin Peter on installments. Unfortunately the plea taken by the appellant that he has become owner of the property has been rejected by the two Civil Courts and the Respondent with objections to this rent appeal has already placed on record copies of order of dismissal of suit **No.929/2014** filed by the appellant both against the landlord/principal and his attorney by judgment dated **19.4.2016** and even appeal filed by him against the dismissal of the suit bearing Civil Appeal **No.115/2016** has also been dismissed. The appellant has himself conceded that his sister was tenant and he has entered in the demised premises when his sister was tenant. He, in fact, has admitted that he has not been given possession of the demised premises by the landlord with whom he has an oral agreement of sale. The contention of appellant that legal heirs of his sister were not impleaded is misconceived. Being real brother of his

unmarried sister, the appellant was included in the legal heirs of deceased and a legal heir of tenant by operation of law becomes tenant. It is strange coincident that his sister died in May, 2009 and since then rent has not been paid and the demised premises was purportedly purchased on oral sale agreement in **2002**. The contention of counsel of appellant that his possession of the demised premises is protected under **Section 53-A** of the Transfer of Property Act, 1882 is misconceived on two counts. Firstly, the possession was not handed over to him by the landlord under agreement of sale; and secondly his civil suit for specific performance of contract of sale was dismissed and even appeal has also been dismissed. The appellant has never deposited rent in the name of any landlord or owner of the property ever since his sister has died. The contention of the appellant that the attorney has not been lawfully appointed is misconceived. A tenant who is enjoying the demised premises but not paying rent to the landlord/principal or his attorney has no right to object to the status of the attorney. Admittedly the power of attorney is registered and presumption of authenticity is attached to duly registered document. It can only be challenged by the principal for any of the actions of the attorney if it is found to be against the interest of the principal or by the principal himself that he has not appointed him.

7. In view of the above facts and discussion this First Rent Appeal is dismissed. For the last more than 10 years appellant has not paid a single penny towards rent to anyone and he has lost his claim under so-called agreement of sale. Therefore, the appellant is directed to vacate the demised premises within **15 days** from today. In case of his failure the Executing Court seized of Ex. **No.06/2011** shall issue

writ of possession for eviction of whoever is found in possession. The writ should be issued with permission to break open the locks and police aid without further notice to the appellant to handover possession of entire building premises to the respondent.

JUDGE

Karachi  
Dated:28.02.2020

SM / Ayaz Gul

