

**ORDER SHEET****THE HIGH COURT OF SINDH, KARACHI**  
**CP.No.S-2058 of 2018**

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Date                              Order with signature of Judge

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1. For hearing of main case.
2. For hearing CMA No. 8321 of 2018.

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**13<sup>th</sup> March 2020**

Mr. Abdul Waheed Siyal, advocate for the Petitioner.  
Ms. Humaira Junaid, advocate for respondent No.1.

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**Salahuddin Panhwar, J-** This petition assails judgment/order dated 07.08.2018 passed by appellate Court in FRA No.106/2018 and order dated 30.04.2018 passed by Rent Controller in Rent Case No.155/2003 whereby present petitioner was directed to vacate the demised premises. In the first round of litigation ejectment application filed by respondent No.1 was dismissed vide order dated 23.12.2006, against which FRA was filed which also met the same fate, hence the respondent No.1 filed petition before this Court. After hearing learned counsel for the parties, matter was remanded back to the learned Rent Controller to decide afresh after allowing the parties to lead further evidence in the light of the documents referred in the said order.

2. Precisely, the facts of the case are that the respondent filed ejectment application No. 155 of 2003, in respect of shop/godown in premises KESC No.1650-A-254 Sindh Katchi Abadi Authority No.R-171, Madina Colony on the grounds of default in payment of rent and personal *bona fide* need, to which petitioner filed his objections/written statement, *inter alia*, denying therein the relationship as well as questioned title of the respondent over the demised premises. Thereafter, in order to prove their assertions, parties led their evidence and ultimately the learned Rent Controller, vide order dated 30.04.2018, allowed the ejectment application against the tenant. Against such order, an appeal bearing FRA No.106 of 2018 was preferred by the petitioner before the appellate Court, which, *too*, was dismissed vide judgment dated 07.08.2018.2018. The concurrent findings of the Courts below have been challenged through the instant petition.

3. Heard learned counsel for the respective parties.
4. Learned counsel for the petitioner, *inter alia*, contended that there is dispute between Mst. Tahira and present respondent, both are wives of deceased Muhammad Ishaque, however, he admits that petitioner was tenant of deceased Muhammad Ishaque, husband of respondent as well Mst. Tahira since 16/17 years and there was no agreement. Admittedly, property is commercial cum residential; half portion is commercial and half portion is residential wherein respondent No.1 is residing as her dwelling house. *Candidly*, lease is in favour of respondent No.1 and Mst. Tahira is claiming gift deed; there is dispute between two wives of deceased Muhammad Ishaque and petitioner claims that though he is tenant but respondent No.1 is not claimant.
5. The respondent, however, opposed the petition being not maintainable.
6. Now, before proceeding further, it needs to be reiterated that this Court, *normally*, does not operate as a Court of appeal in rent matters rather this jurisdiction is *limited* to disturb those findings which, *prima facie*, appearing to have resulted in some *glaring* illegalities resulting into miscarriage of justice. The finality in rent hierarchy is attached to appellate Court and when there are concurrent findings of both rent authorities the scope becomes rather *tightened*. It is pertinent to mention here that captioned petition fall within the *writ of certiorari* against the judgments passed by both courts below in rent jurisdiction and it is settled principle of law that same cannot be disturbed until and unless it is proved that same is result of misreading or non-reading of evidence. The instant petition is against concurrent findings recorded by both the Courts below, thus, it would be conducive to refer paragraphs No. 13 and 17 of the appellate Court:

13. After hearing of the arguments and perusal of the record including impugned order it appears that some aspects, appearing on the face of record, are admitted aspects being not denied by the respective parties. First of all, it is an admitted position of the record that the subject property was in katchi abadi and late Muhammad Ishaq had no legal title or right on the same. In same context, it is also an admitted position of record that Mst. Tahira's, who was also wife of the Ishaq, status is same. She also had no legal title document or legal right on the same property. Secondly, it is matter of the record that Mst. Atia got the subject property leased in her favour by virtue of registered lease deed No.17692, Book-1, dated 30.11.2005 and deed of rectification dated 27.12.2005. Thirdly, appellant is admitting the fact that she is tenant only on the subject property. All these aspects of the record reveals that after registration of lease deed in favour of the respondent No.1, unless the same is not cancelled, the ownership claim of respondent No.1 on the subject property merits consideration. From perusal of the evidence on record particularly, affidavit of the respondent No.1, para No.14, it further appears that appellant was served with a legal notice on 24.03.2003, i.e. after

05.10.2002, when her husband Ishaq was died. Not only this, later on, appellant got the property leased in her favour. This reflects that by sending legal notice to the appellant, respondent No.1 claimed the on going rent from the appellant right from 24.03.2003. Record shows that sending of legal notice by the respondent No.1 to the appellant is also an admitted fact by the appellant and this finds support of para No. 10 of written statement filed by the appellant in rent case No.155/2003. As per para-10 of appellant written statement, appellant stated that respondent falsely claimed in the legal notice. Nothing stated by appellant further in his pleadings that what legal remedy he availed or by Mst.Tahira against said notice of the appellant. Respondent No.1 claim vide legal notice dated 24.03.2003 finds strong support of subsequent registered lease deed and deed of rectification which are available in record being Ex-AA/ 1 and AA/2. These gathered circumstances reveal that claim of the respondent No.1 on the subject property attend finality after registration of lease deed in her favour. This further makes it clear that after said process, appellant, who herself admitting to be tenant on the subject property, had to pay the further rent to the respondent No.1. On the aspect of knowledge about the respondent No.1 ownership, suffice to mention here that continuous demand of rent by respondent No.1 right from 24.03.2003, from the appellant is sufficient to presume that the matter remained in the knowledge of appellant. All this makes it clear that appellant had to pay the rent to the respondent No.1 without raising objection on her title on the property. Even otherwise, appellant is not supposed to raise ownership objection on the ground that she is not aggrieved of ownership title which is the matter between Atia Begum and Khatoon Bibi. Appellant being tenant is supposed to pay the rent to the owner having clear title.

17. The aforesaid discussion makes it clear that **after admission of the appellant that she is tenant on the subject property, she has to pay the rent to the respondent No.1** who is legal owner of the same property by virtue of registered sale deed documents in her favour. However, from perusal of the rent application of the respondent No.1 it appears that in para-12 of her amended title application, she has claimed for recovery of rent from November, 2002 till today. This claim of the respondent No.1 cannot sustain in view of above judgment of Honourable Sindh High Court; therefore, the period of rent is to be computed from the date of registered lease deed in favour of the respondent No.1. **Since, it is an admitted position of record that for said period, appellant did not pay rent to the respondent No.1; therefore, it is clear default of non-payment of rent on the part of appellant.** On this score, impugned order passed by learned Rent Controller does not suffer from illegality. There is no question of non-reading or misreading of evidence accordingly."

7. As well it would be conducive to refer relevant point of determination of trial Court which is available at page 237 is reproduced as under:-

"Heard both the sides and perused the record, after hearing and going through the material available on record this court is of the view that this court has framed the above issues in the light of order passed in C.P. No. S-638 of 2009, after recording evidence afresh of both the parties. This court is of the view that during evidence of the applicant Mst. Attia Ishaq, she stated that she is the owner of the suit property and the alleged forged gift deed in favour of Mst. Tahira has no value. The property was leased out in her (applicant) favour in the year 2005 also but despite knowledge of ownership opponents failed to pay rent to her (applicant), hence become defaulter in payment of rent after the death of her husband

Muhammad Ishaq. One of the opponent Shahid Iqbal (Exh.OO) during the cross examination on fresh affidavit in evidence filed after the remand of this case, admitted that they got tenement on rent about 16 to 17 years back from Muhammad Ishaq under written tenancy agreement, hence admittedly the opponents are tenant but only the dispute is that opponent claimed her landlady to Mst. Tahira 2nd wife of Muhammad Ishaq, but the applicant also claimed herself as owner and landlady on the basis of lease deed also in her favour executed in the year 2005, executed after filing/ during pendency of this ejectment application in favour of the applicant first wife of Muhammad Ishaq. Admittedly there is no any document in favour of Muhammad Ishaq regarding ownership of case premises. During the cross examination opponent admitted that Mst. Tahira filed civil suit No.1412 of 2006, in which the plaint was rejected under order VII Rule 11 CPC and admittedly Mst. Khatoon Bibi (mother of the LRs) was the party to that suit. Mst. Khatoon Bibi is one of the opponent and legal heirs of Ashrafuddin. Admittedly Mst. Tahira filed suit for declaration and cancellation of lease bearing No.1412 of 2006, but the plaint was rejected under order VII Rule 11 CPC vide order dated 11.08.2008. Furthermore, admittedly Muhammad Ishaq was not the owner of case premises at time of executing alleged gift deed in favour of Mst. Tahira and secondly gift was allegedly executed on 07.04.1997, allegedly signed on the same date but on the 3rd page of alleged acceptance the attestation date has been shown as 08.04.1997, here question arises how the alleged gift deed signed on 07.04.1997 but attested on 08.04.1997, which clearly shows that the alleged gift deed was not signed before the attesting authority attested on next day of execution, hence the alleged gift has no value in eye of law and is also defective one. The opponent has knowledge about lease deed in the year 2005 in favour of the applicant and suit filed by Mst. Tahira was dismissed / disposed of by rejection of plaint, hence it is the duty of the tenant to pay rent to the applicant being lease holder / owner of the premises, the opponent even failed to deposit rent in the name of applicant after leasing the property in the year 2005 in favour of the applicant despite the knowledge."

8. The question, so surfaced, needs to add that *rent jurisdiction* has got nothing to do with title or ownership but shall be competent only if there exists relationship of landlord and tenant. Equally such dispute, if any, would not be available to be presented for '*determination/ adjudication*' because such *adjudication / determination* is not within competence / jurisdiction of *Rent hierarchy*. Needless to add that if any observation in that regard is made by a Rent Controller or appellate authority thereof, the same would not cause any prejudice to competent of a *Civil Court* to decide such controversy. The decision of the competent *Civil Court* on any *civil dispute* shall prevail. Such view is within guidance, so provided in the case of *Afzal Ahmed Qureshi v. Mursaleen* 2001 SCMR 1434 wherein it is observed as:-

"4. ... In absence of relationship of landlord and tenant between the parties the question of disputed title or ownership of the property in dispute is to be determined by a competent Civil Court as such controversies do not fall within the jurisdictional domain of the learned Rent Controller. It is well-settled by now that "the issue whether relationship of landlord and tenant exists between the parties is one of jurisdiction and

should be determined first, in case its answer be in negative the Court loses scission over lis and must stay his hands forthwith". PLD 1961 Lah. 60 (DB). There is no cavil to the proposition that non-establishment of relationship of landlady and tenant as envisaged by the ordinance will not attract the provisions of the Ordinance. In this regard we are fortified by the dictum laid down in 1971 SCMR 82. We are conscious of the fact that **'ownership has nothing to do with the position of landlord and payment of rent by tenant and receipt thereof by landlord is sufficient to establish relationship of landlord and tenant between the parties'**.

The petitioner, once having admitted to be *tenant*, cannot deprive the respondent from possession of the property only which, *too*, on the ground that there is dispute between two wives of late Muhammad Ishaque (landlord), who was residing in that premises. Mst. Atia Ishaque was also residing in that premises at that time and still she is residing there. Moreover, there are concurrent findings of both courts below wherein findings regarding question of *relationship* of landlord and tenant as well default have properly and legally been adjudicated. With regard to earlier order of this court whereby case was remanded back with direction to decide the controversy with regard to gift deed and lease is concerned, suspension of lease deed by Katchi Abadi or any observation or declaration with regard to legal character of the property in favour of any party has no nexus with the rent jurisdiction. Accordingly, Petitioner cannot get benefit of the dispute with respondent and Mst. Tahira. The findings on ground of personal *bona fide* also do not appear to be unjustified or unreasonable, thus, failure of the petitioner in pin-pointing any material illegalities in concurrent findings of both rent hierarchy is sufficient for dismissal of the instant petition. The case law relied upon by the learned counsel for the Petitioner is not helpful in the present case, hence, instant petition is dismissed along with pending applications. However, petitioner shall hand over peaceful possession of the demised premises to the respondent No.1 within two months from today.

J U D G E

SAJID