

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD**

C.P. No. S- 70 of 2018

Aqsa Jawed Ahmed _____ Petitioner

VERSUS

Muhammad Haseen & others _____ Respondents

Date of hearing: 07.09.2020

Date of decision: 18.09.2020

Mr. Muhammad Arshad S. Pathan, Advocate for Petitioner
Mr. Sajid Ali Soomro, Advocate for Respondent No.1
Mr. Allah Bachayo Soomro, Additional Advocate General, Sindh

ORDER

ADNAN- UL - KARIM MEMON, J. Through instant petition, the Petitioner has impugned the Order dated 21.8.2017 passed by learned trial court i.e. 1st Senior Civil Judge / Rent Controller-1, Kotri, whereby his Rent Application No.1 of 2016 was dismissed. The petitioner being aggrieved by and dissatisfied with the aforesaid Order, filed First Rent Appeal No.01 of 2017, which too was dismissed by learned II-Additional District Judge, Jamshoro @ Kotri, vide order dated 22.12.2017. Hence the petitioner has filed the instant petition.

2. Brief facts of the case are that the Petitioner is owner of property bearing House No.673, constructed over C.S. No.198 Ward "B", situated at Dhobi Para Kotri, District Jamshoro. The above said property was purchased by the Petitioner from one Muhammad Nauman son of Muhammad Anees Siddiqui through registered Sale Deed dated 05.04.2016 and the same was mutated in the Record of Rights vide mutation entry dated 27.7.2016. Thereafter, the Petitioner through her attorney served Legal Notice under Section 18 of the Sindh Rent Premises Ordinance, 1979 calling upon Respondent No.1 to pay rent at the rate of Rs. 10,000/- per month from March 2016 till 30.11.2016, total amounting to Rs.80,000/ and future rent at the same rate. The Respondent No.1 was further directed to execute fresh Rent Agreement with advance payment of Rs. 1,00,000/- (Rupees one lac only). Petitioner receiving no reply from Respondent No.1 instituted Rent Application No.1 of 2016 before learned

Rent Controller / Senior Civil Judge, Kotri. Respondent No.1 contested the Rent Application by filing Counter Affidavit and denied the relationship of landlord and tenant. The learned Rent Controller after recording evidence and hearing the parties dismissed the Rent Application vide Order dated 21.07.2017 on the premise that the petitioner has failed to establish the relationship of landlord and tenant between the parties. The petitioner being aggrieved by and dissatisfied with the said order dated 21.07.2017 preferred First Rent Appeal No.1 of 2017 before learned Additional District Judge-II, Jamshoro @ Kotri. The learned Appellate Court framed the following points for determination:

- i. Whether there exists any relationship of landlord and tenant between applicant and opponent?
- ii. Whether the opponent has committed default in payment of rent willfully?
- iii. Whether tenement is needed for personal bonafide use of applicant?
- iv. Whether the applicant is entitled to recover the arrears of rent from March 2016 till getting vacant possession from the opponent?
- v. Whether the applicant is entitled for getting physical possession of tenement?
- vi. What should the order be?

The learned Appellate Court after hearing the parties dismissed the Rent Appeal vide order dated 22.12.2017.

3. The important fact of this *lis* is that the Petitioner filed an Application under Section 15(2) of Sindh Rented Premises Ordinance, 1979 (SRPO) against Respondent No.1, claiming to be owner of the rented premises (subject matter of the dispute). She sought Respondent No. 1's eviction on the grounds of default in payment of rent and personal bonafide need.

4. During the course of arguments, this court asked learned counsel for the Petitioner as to how the Petitioner is claiming ownership of the subject premises? To which learned counsel while giving brief history of the subject property submitted that the subject property was transferred from Settlement Department in the name of Maqbool Hussain, son of Ghulam Abbas vide order dated 03.05.1962 and through second order of Settlement Commissioner, Dadu, the same was made in the name of sons of Maqbool Hussain namely Qayoom Hussain, Rafique Hussain and Atique Hussain. That said mutation was done in the Record of Rights and Power of Attorney was executed in favour of

one Muhammad Anis Siddiqui, son of Qayoom Hussain Siddiqui. The said power was registered vide RD No.6 Book-4 dated 12.02.1995 having MF Roll No.67 dated 13.02.1995, registered before Sub-Registrar Kotri and on the basis of said Power of Attorney, Sale Deed bearing RD No.483 dated 28.11.2001 was executed by them through their General Attorney in favour of Muhammad Nauman son of Muhammad Anis and mutation was also effected in the Record of Rights in his name. That said Muhammad Nauman executed Sale Deed in the name of Petitioner, registered vide RD No. 118 Book-I dated 05.04.2016 before Sub-Registrar Kotri;. Accordingly, mutation was also effected in the Record of Rights in the name of Petitioner.

5. On merits, learned counsel for the Petitioner contends that the Rent Controller as well as the Appellate Court erred in law in dismissing the Rent Application as well as Appeal of the petitioner without considering the aforesaid factual aspect of the case. Learned counsel for the petitioner has contended that the petitioner has no source of income except the property in question which at the time of purchase by the Petitioner was under oral tenancy with respondent No.1. It is further contended that after the death of Petitioner's parents, she requested respondent No.1 to pay the rent and handover possession of the property in question to her as the same was *bona fide* required for her personal need. It is further contended that respondent No.1 instead of paying rent and vacating the premises in question, filed civil suit No.58 of 2016 for Declaration, Cancellation, Permanent and Mandatory Injunction against the petitioner and others based on false and fictitious pleas; that learned trial Court has illegally, unlawfully decided all the points against the petitioner while ignoring the legal aspect of the case. It is contended that respondent No.1, who is uncle of Muhammad Nauman from whom the petitioner purchased the property in question, is / was not in possession of valid title documents and there is clear misreading and non-reading of evidence apparent on the face of record; that respondent No.1 was bound to pay rent to the Petitioner, but despite several demands and issuance of legal notice under Section 18 of the Sindh Rented Premises Ordinance, 1979 (**SRPO, 1979**), he failed to pay rent to the petitioner. It is asserted that the petitioner being owner of the subject property and elder in her family after the demise of her parents requires the same for her personal bonafide use because the present house in which Petitioner is residing with her sisters is in dilapidated condition; that respondent No.1 is a persistent defaulter in payment of rent and is not paying rent since the petitioner purchased the property from its previous owner; therefore, Respondent No. 1 is liable to be ejected from the subject premises.

6. Mr. Sajid Ali Soomro, learned counsel for respondent No.1 in rebuttal argued that there exists no relationship of landlord and tenant between the parties and Respondent No.1 and his children have inherited the subject property from his deceased father namely Muhammad Qayoom, and Respondent No. 1's uncles and the petitioner or any other person have no concern with the same. Per respondent No.1, he is in lawful possession of the subject property which had been orally gifted to him by the previous owner namely Qayoom Siddiqui (father of Respondent No.1) in presence of his brothers and sisters and since then he is in possession of the property in question. It is averred that Respondent No.1 is not tenant of the subject premises as claimed by the Petitioner and there is no any relationship of landlord and tenant between the parties; that due to some dispute Respondent No.1's brother namely Muhammad Anees with malafide intention managed to transfer the subject property in the name of Muhammad Nauman (nephew of Respondent No.1) who thereafter sold out the same to the Petitioner; that thereafter the Petitioner along with some unknown persons approached Respondent No.1 and stated that they have purchased the property in question from Muhammad Anees and his son Muhammad Nauman and forced to vacate the house; per Respondent No.1, when he came to know about the above situation, he filed civil suit for declaration, cancellation, permanent and mandatory injunction against the Petitioner and others. While denying the contents of instant petition, Respondent No.1 stated that his deceased father was the owner of property in question and he got it constructed, while the petitioner or any other person is not the real owner of the subject property. Learned counsel for respondent No.1 has contended that respondent No.1 is the lawful owner of the subject property and the plot on which the house in question is constructed was orally gifted to him by his late father and uncles (previous owners) in presence of his brothers and sisters in the year 1995. The petitioner has failed to annex any document in respect of alleged tenancy, even the utility bills of the house in question mentions the name of late father of respondent No.1. It is submitted that the brother of respondent No.1 namely Muhammad Anees and his son Muhammad Nauman by means of fraud managed and transferred the subject property to his son namely Muhammad Nauman in the year 2001. The respondent No.1 when came to know about the above factual position, filed civil suit for declaration, cancellation, permanent and mandatory injunction against the petitioner and others. It is contended that the orders impugned in this petition are well reasoned, no illegality or irregularity is committed by learned trial Court as well as the appellate Court while passing the orders impugned herein; therefore, the petition is liable to be dismissed.

7. Heard learned counsel for the parties and perused the record as well as the case law cited at bar.

8. The main argument advanced by respondent No.1 is denial of relationship of landlord and tenant between the parties as well as execution of rent agreement. Besides, per Respondent No.1 civil suit for declaration, cancellation, permanent and mandatory injunction is pending against the petitioner and others.

9. I do not find any legal justification in the above mentioned stance taken by Respondent No.1 for the reason that institution of civil suit by respondent No.1 for cancellation of sale deed of the Petitioner per se does not merit dismissal of Rent Application filed by the petitioner under Section 15 of the Ordinance, 1979. In this regard, Honorable Supreme Court has held in its various pronouncements that determination of pivotal question related to the legal status of the parties' vis-à-vis the premises and the nature of their relationship inter se, would certainly be a mixed question of law and fact to be decided in the light of evidence.

10. In the present case, there is no evidence against the title of the Petitioner. Therefore, presumption of existence of tenancy between the parties is not uncalled for. This is settled proposition of law that the landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties. However, in the normal circumstances, in absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered as tenant under the law or the tenancy may not be necessarily created by a written instrument in express terms rather may also be oral and implied.

11. It is well settled law that once Respondent No.1 is shown to be inducted as tenant of the demised premises, he could not claim any exemption from payment of rent on account of institution of suit for cancellation of sale deed. Article 115 of the Qanoon-e- Shahadat Order, 1984 lays down that no tenant of immovable property shall, during continuance of the tenancy, be permitted to deny that his landlord had a title to such property. The relationship of landlord and tenant is not severed even if the execution of sale deed / agreement to sell is admitted.

12. Under Section 16 Rule 1 of Ordinance, 1979 the respondent No.1 was not absolved of his responsibility of payment of arrears and future rent. The

learned Rent Controller based his findings in absence of relationship of landlord & tenant between the parties. The learned Appellate Court concurred with the view of trial Court.

13. In my considered view, both the courts below have failed to appreciate that the petitioner is / was owner of the subject property and she sent notice to respondent No.1 under Section 18 of Sindh Rented Premises Ordinance, 1979, wherein she disclosed all the factual aspects of the case. But, the same was discarded on the ground that no any evidence was brought on record proving relationship of tenant and landlord between the parties. This is hardly a ground for rejection of Rent Application. Therefore, learned Appellate Court also committed material illegality by maintaining the order of Rent Controller.

14. In order to ascertain the legal position of the case, I hereby refer to the definition of word tenant as defined in Section 2 (f) (j) of Sindh Rented Premises Ordinance, 1979, which enumerates that a person who was in possession or occupation of premises owned by someone else, although he may not have undertaken to pay rent to the owner thereof, was normally bound to pay rent to him as consideration for being in possession or occupation of that premises. Such person should be treated as tenant.

15. Record reflects that after change of ownership of subject property, a notice was served upon Respondent No. 1 / Tenant under Section 18 of the Ordinance, 1979 for payment of rent. But, Respondent No. 1 / tenant failed to pay rent to the Petitioner / Landlord. Therefore, as a last legal resort, the Petitioner rightly instituted Rent Application for ejecting the Respondent No. 1 / Tenant on the ground of default in payment of rent.

16. Record further reflects that the petitioner in her affidavit in evidence has asserted that she needed the subject premises for her personnel bone fide need. However, the said factum was not considered by both the courts below.

17. Reverting to the issue of relationship of landlord and tenant between the parties, I am of the view that mere denial of relationship of landlord and tenant between the parties and pendency of Civil Suit for declaration, cancellation, permanent and mandatory injunction does not take away the jurisdiction of Rent Controller to entertain a Rent Case. Therefore, respondent No.1 on the basis of pendency of Civil Suit cannot restrain the owner of the subject premises from claiming her legal right or deprive her from benefit accruing or arising out of the said property. Hence, no proceedings before the Rent Controller can be stopped to wait for the final outcome of said suit. In such circumstances, the

tenant must vacate the subject property and if succeeds in obtaining Decree in the suit then he can be given easy excess to the subject premises. Reliance is placed upon the case of AMIN and others v. HAFIZ GHULAM MUHAMMAD and others (P L D 2006 Supreme Court 549).

18. I am of the view that in rent matter, Constitutional Jurisdiction of this Court is limited and confined only to ascertain whether the subordinate Courts have flouted the statute or failed to follow the law relating thereto? In the instant case, there is perversity, illegality and infirmity in the orders passed by learned Trial Court as well as Appellate Court. Besides, I do see misreading and non-reading of evidence which warrants interference of this Court.

19. In the light of facts, circumstances and law cited above, the instant Constitutional Petition is allowed along with pending application(s) and the orders passed by learned Rent Controller and learned Additional District Judge, Jamshoro @ Kotri are set-aside. The respondent No.1 is directed to vacate the premises in question and handover its vacant and peaceful possession to the petitioner within sixty days from the date of this Order. In case of failure, Respondent No.1 shall be evicted from the subject premises without any notice.

JUDGE