

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-546 of 2010

Date of hearing: 18.09.2020
Date of decision: 05.10.2020
Petitioner: Mst. Zahida Haroon
through Mr. Altaf Sachal Awan,
advocate.
Respondent No. 1: Muhammad Ashique
through Mr. Noor Ahmed Memon
advocate.

JUDGMENT

Rashida Asad, J. – Petitioner Mst Zahida Haroon, widow of Muhammad Haroon, claims to be the landlady in respect of Shop. No. 19, constructed on plot C.S. No. 940, Ward-B, Madina Market, Nawabshah, Sindh, (hereinafter referred to as “the demised premises”) has preferred this Constitution Petition to assail the order of Appellate court dated 07.09.2010, in First Rent Appeal, whereby the appeal was dismissed and order dated 24.04.2010, passed by the Rent Controller, was maintained.

2. Briefly stated, relevant facts of the case are that the petitioner filed Rent Case No. 16/2009 against respondent No. 1, seeking his eviction from the demised premises, on the ground of personal bona fide need and willful default in payment of monthly rent.

3. In his written statement, respondent No. 1 strongly denied the version of the petitioner and also denied his relationship being tenant of the petitioner and took the plea that he is in possession of shop No. 19, on plot C.S. No. 940/23, Ward B-2, Madina Market, Nawabshah, which is owned by Umar Din, who had filed R.A. No. 24/2002 and in compliance of the rent order he is depositing monthly rent in the court. The said R.A, filed by the landlord/Umar Din was dismissed. Respondent No. 1, also disputed the area of the demised premises measuring 11.4 Sq Yards as disclosed by the petitioner. He contended that the area of shop in his possession is 10.2 Sq Yards. Respondent No. 1, averted that eviction application filed by the petitioner is just ipse-dixit and so also misconceived to manage

respondent's eviction from the shop in his possession after being unsuccessful in the first round of litigation instituted by landlord Umar Din.

4. At the stage of evidence the petitioner filed her affidavit in evidence and produced extract from property register and also the correspondence between her and respondent No. 1, through legal notices and replies thereto. In support of her case she also examined two witnesses namely Jawaid Iqbal and Abdul Rasheed both sons of Din Muhammad, and her brothers in law (brothers of her deceased husband). Respondent No. 1, filed affidavit in evidenced, examined himself and produced extract of property register in respect of shop No. 19, C.S. No. 940/23, Nawabshah, admeasuring 10.2 Sq Yards, purported rent agreement between himself and Umar Din, order in Rent Appeal No. 37/2003. Respondent No. 1, also examined two witnesses Murad Ali and Muhammad Yusuf to corroborate his version about denial of relationship being tenant of the petitioner and the tenement being different to demised premises.

5. The learned Rent Controller adjudicated the point of relationship in negative and thus further points for alleged default in payment of monthly rent and personal bona fide need were deemed redundant and accordingly the rent application for eviction of respondent No. 1, from the demised shop was dismissed. The First Rent Appeal filed by the petitioner also met the same fate and it was dismissed vide impugned order dated 24.04.2010. The operative part of the impugned judgment has much significance to resolve the controversy involved in the instant petition and as such the said part is reproduced as below: -

“As far as the relationship between the parties as landlord and tenant is concerned, it is an undisputed fact that previously one Umar Din said to be elder brother of applicant's husband has filed ejectment application against the respondent in respect the shop in his possession. The said ejectment application was allowed by Rent Controller. However, the order of Rent Controller was set-aside in appeal No. 37/2003 passed by this Court. The ejectment proceeding has been repeated for same shop in second round of litigation by appellant. It is an admitted fact by appellant even in his rent application that the suit shop was being managed

by her in-laws. She further claimed that all rights have been handed over to her along with management about six months prior to filing of rent application but admittedly neither she has produced any documentary proof with regard to handover of the management nor examine the witness/previous landlord in support of her contentions that she has already been actually delivered management.....”

6. Heard the learned counsel for the parties and also perused record with their assistance. Learned counsel for the petitioner argued that both the learned courts have erred in deciding the point of relationship in negative and such findings are flimsy, perverse, devoid of facts borne on record and conflicting and contrary to the evidence on record. Per learned counsel the required notice under Section 18 of SRPO, 1979 (hereinafter the ordinance) was issued to the respondent No.1, and cogent documentary evidence as to the ownership and being land lady of the demised premises has been placed on record but the learned trial court has failed to properly appreciate the available evidence and recorded its findings on surmises and conjectures. In rebuttal the learned counsel for the respondent No. 1, argued that there are concurrent judgments against the petitioner wherein point/issue of relationship of being land lady and tenant could not be established and thus the question for default in monthly rent and personal bona fide need lost its relevancy and accordingly the instant petition is meritless and liable to be dismissed. The learned counsel for the respondent No.1, relied upon above reproduced paragraph of the impugned judgment. The learned counsel further argued that petitioner can not acquire the status of landlady unless there is such declaration by the civil court.

7. In my view, before dialing upon the arguments advanced by the learned counsels, a legal question has to be attended, though not argued, about constitutional jurisdiction of this court to reappraise evidence, where findings of facts were recorded by the court of Rent Controller and the Appellate court under section 21 of the Ordinance, merely for the reason that another view of the matter was possible. In this respect, following are the known reported cases of this court in which reappraisal of the evidence under the constitutional jurisdiction of this court was declined being against the scheme of law:-

- i. PLD 2004 Sindh 502.
- ii. PLD 2007 K- 50

8. The ratio decidendi of above judgments is that section 21 of the ordinance confers only one right of appeal and thus the legislature in its wisdom seemed to have tried a shorten span of litigation in rent cases and, therefore, interference by this court under article 199, of the Constitution in judicial orders passed by Tribunals, merely on ground that another view of the matter was possible, was not to serve any other purpose but to add misery of protracted litigation between parties and defeat the spirit and object of statute. Under extra ordinary Constitutional jurisdiction vide Article 199, this court cannot act as a court of second appeal. Ratio of the citations, academically, seems to be very cogent, meaningful perspective. With utmost respect to the ratio decidendi settled by the said citations, I have little different opinion. In my view, however, the substantial outcome of the judgments of the Tribunal and the only appellate court under section 21 of the ordinance due to misreading and/or non reading of evidence ultimately providing to the tenant the right of command about the use and management of rented premises should not go unchecked due to straight/absolute rule of ouster of jurisdiction under Article 199 of the Constitution. Exercise of jurisdiction in rent matters must be flexible on case to case basis for judicial review of the judgments of court below if found perverse and which practically render the right of the landlord redundant to take a decision about use and management of property, though, a tenant has wide legal protection and cover and he/she cannot be evicted from the premises without due process of law. Realistic and fair approach to facts of present matter reveals that the judgments of the courts below and the span of time since this petition is pending (10 years) has practically made the respondent No. 1 (tenant) a de-facto owner of the demised premises against deposit of a very little sum of money on account of rent settled about 20 years ago. It appears from record that he is not paying rent to the landlord for 16 years but was depositing rent in court even after end of litigation. The statement for deposit of rent in court remained disproved as no positive and cogent documentary evidence has been produced.

9. Sum up of above discussion is that present matter calls for judicial review of the judgments of courts below, by exercising

jurisdiction under Article 199 of the Constitution. 1st question before this court is about relationship being landlady and tenant between the petitioner and respondent No. 1. Though the tenant respondent has disputed the particular of demised premises and averred that according to the extract of property register the petitioner is claiming ownership of shop. No. 19 on plot C.S. No. 941, Ward-B, Nawabshah, admeasuring 11.4 Sq Yards which is different to the premises in his possession i.e. Shop No. 19, on plot No. 940/23, Ward-B, Nawabshah, admeasuring 10.2 Sq Yards and to substantiate his contention, the respondent has produced certified copy obtained on 26.03.2003 of the extract of property register containing name of Umer Din as owner who had filed R.A. No. 24/2002 against the tenant/respondent No.1. On the contrary the petitioner produced (Ex. 8/A) which is certified copy dated 18.03.2009 of the extract of property register in respect of shop No. 19 on plot C.S. No. 940/19 measuring 11.4 Sq Yards. This apparent difference of particulars of premise prevailed to the judicial mind of the two courts below to hold non existence of relationship of being landlady and tenant among the petitioner and the respondent No. 1. But while holding so, both the courts below completely failed to read and appreciate the other available evidence. The learned appellate court while maintaining the judgment of learned Rent Controller has held “.....The ejectment proceeding has been repeated for same shop in second round of litigation by appellant.....”. Such observation is sufficient to settle the point that petitioner has filed R.A for the tenement which is in possession of the tenant. In this context, following admission made by the tenant respondent in cross examination has completely escaped consideration of both the courts below:-

“It is fact that about 6 months back the father in law of the applicant used to look after disputed shop and collect rent.....I am tenant of Umardin in whose name I am depositing rent before the court”.

10. As observed hereinbefore, the statement for deposit of rent in the court, completely remained disproved. Yet, statement of respondent No. 1, appears to be approbate and re-approbate and inconsistent and in a way he has conceded to the case of the petitioner who deposed that previously her late husband was

managing the affairs of the demised shop and thereafter it was being managed by her in laws. She further deposed:-

“That management of the shop along with all the rights and concerns was handed over to me about six month ago from filing the present rent application which is in the possession of the opponent, who is my tenant”.

11. Another aspect of evidence was completely ignored by both the courts below that after service of notice for change of ownership and/or landlord, the tenant has to prove that previous owner was still claiming right and interest in the property and as such, he cannot accept the change of title to remain being tenant of the subsequent landlord. There is no such evidence that previous landlord Umer Din ever disputed to the change of landlord. Evidence of petitioner's witnesses namely Jawaid Iqbal and Abdul Rasheed, who are brothers of Umer Din is duly corroborated to the evidence of the petitioner to the effect of change of landlord. In my view the tenant has no right to deny and/or dispute change of landlord if not disputed by the previous landlord and in such eventuality he is bound to pay rent to the new landlord, which respondent refused to do and willfully failed to make payment to the subsequent landlord. In case the respondent No. 1, was not admitting the petitioner as her landlord, he was required to file Inter pleader proceedings to avoid default in payment of monthly rent. In presence of the above referred admissions of the respondent No. 1 and evidence of petitioner and her witnesses the discrepancies about description of tenement in the extract of property register become irrelevant and meaningless. Even otherwise person who can let out any premises and collect rent thereof sufficiently qualifies to be a landlord. For sake of convenience, definition of landlord as provided in the SRPO, 1979 vide section 2 (f) is reproduced as under:-

“landlord” means the owner of the premises and includes a person who is for the time being authorized or entitled to receive rent in respect of such premises”

Evidence of the petitioner to the affect that management of the demises premises has been handed over to her could not be shattered. As such failure of respondent No. 1 to pay monthly rent of

the demised premises to the petitioner, in the absence of interpleader proceedings, amount to willful default emanating to eviction.

12. As far as the ground of personal bona fide need is concerned, the mere statement of the landlord on oath is sufficient to prove the personal bona fide need and this has also been proved by the petitioner.

13. The upshot of above discussion is that judgment of both the courts below whereby R.A. filed by the petitioner was dismissed are set-aside and eviction application is allowed with direction to the respondent No. 1 to handover physical vacant possession of the demised premises in his possession within 45 days of pronouncement of this order. In view of very long and inordinate pendency and delay in disposal of the matter, the learned Rent Controller is directed to comply with the order positively in letter and spirit and to ensure delivery of possession to the petitioner within stipulated time and to use police aid if so required.

JUDGE