

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

C.P. No.S-85 of 2020

Petitioner: Muhammad Aslam Son of Haji Abdul Sattar, through Mr. Aqeel Ahmed Siddiqui Advocate

Respondent No.1: Mst. Tahira Wife of Ali Bhai through Mr. Parkash Kumar, Advocate

Respondents No.2&3: Through Mr. Wali Muhammad Jamari, Assistant Advocate General, Sindh.

Date of hearing: 19.01.2021.

Date of decision: 16.02.2020.

JUDGMENT

IRSHAD ALI SHAH, J: The facts in brief necessary for disposal of instant petition are that the private respondent claiming to be owner/landlord of shop constructed on C.S No.76 (84 sq. ft.) situated at Ward No.F Risala Road Hyderabad filed an application u/s: 15 of the Sindh Rented Premises Ordinance, 1979 against the petitioner for his ejection from the above said shop for personal bonafide need of her son Qaim Ali before learned 2nd Senior Civil Judge/Rent Controller Hyderabad.

2. The petitioner in his objection to the above said application by denying the relationship of tenancy stated that the subject shop is in his possession since 100 years; it is situated within jurisdiction of P.S Cantonment Hyderabad and it is not part and parcel of the property as is detailed by the private respondent.

3. Both the parties led their respective evidence and on the basis of evaluation whereof, learned Rent Controller directed ejection of the petitioner from the subject shop vide his order dated 1st July 2019. It was impugned by the petitioner by preferring an appeal, it was also

dismissed by learned Vith Additional District Judge/MCAC-II, Hyderabad vide his judgment dated 13th February 2020, which is impugned by the petitioner before this Court by way of the instant petition.

4. It is contended by learned counsel for the petitioner that no tenancy existed between the parties; the shop is different to the one which is claimed by the private respondent; it is situated within cantonment area, therefore, learned Rent Controller was having no jurisdiction to have entertained and decided the ejectment application. By contending so, he sought for setting aside of orders passed by learned Courts below. In support of his contention, he relied upon the cases of *Allies Book Corporation through L.Rs Vs. Sultan Ahmad and others [2006 SCMR 152]*, *Doha Bank Limited through Duly Authorized Attorneys Vs. Javaid Carpets (PVT.) LTD. Through Managing Director and 6 others [2001 MLD 1532]*, *Beejal Mal Vs. Punaji [1987 C L C 1134]* and *Mst. Naz Sultana Vs. Mst. Hajra Begum [1994 CLC 1754]*.

5. It is contended by learned counsel for the private respondent that the tenancy existed between the parties and learned Courts below have rightly ordered ejectment of the petitioner from the subject shop which is required by the private respondent for personal bonafide use of her son. By contending so, he sought for dismissal of instant petition. In support of his contention, he *relied upon the cases of Muhammad Hayat Vs. Muhammad Miskeen (DECD.) through LRs and others [2018 SCMR 1441]*, *Shajar Islam Vs. Muhammad Siddique and 2 others [PLD 2007 Supreme Court 45]*, *Ahmad Ali alias Ali Ahmad Vs. Nasar-ud-din*

and another [PLD 2009 Supreme Court 453] and Ghulam Samdani Vs. Abdul Hameed [1992 S C M R 1170].

6. It is contended by learned A.A.G that no public interest is involved in the instant petition.

7. I have considered the above arguments and perused the record.

8. The petitioner has specifically denied to be tenant of the private respondent over the subject shop by stating that it is the different to the one which is owned by the private respondent. In that situation, before proceeding further learned Rent Controller ought to have framed the preliminary issues to determine the existence of tenancy between the parties, status of the subject shop being owned by the private respondent or otherwise and his jurisdiction over the matter. No such exercise was undertaken. In that way the petitioner was denied right of fair trial which is guaranteed by Article 10-A of the constitution of the Islamic Republic of Pakistan, 1973.

9. The case law which is relied upon by learned counsel for the private respondent is on distinguishable facts and circumstances. In case of *Muhammad Hayat* (supra) issue of personal need was involved. In the instant matter the tenancy is denied. In case of *Shajjar Islam* (supra) it was held that in absence of any evidence in rebuttal to tile of landlord there would be strong presumption of tenancy. In the instant matter, since beginning it is claimed by the petitioner that the subject shop is not part and parcel of the property owned by the private respondent. In case of *Ahmad Ali alias Ali Ahmad* (supra) the relationship of land and tenant was proved. In the instant matter, the relationship of tenancy is denied with an assertion that the property is

different to the one which is owned by the private respondent. In case of *Ghulam Samdani (supra)* the tenant instead of making payment of rent to the landlord/successor-in-interest deposited the same with the Court, such deposit was not found enough to exonerate him of his liability of making payment of rent to the landlord. In the instant case, the tenancy is denied and even the jurisdiction of land controller is disputed by the petitioner by taking specific plea that the subject shop is situated within jurisdiction of P.S Cantonment.

10. In view of the facts and reasons discussed above, the orders passed by learned Courts below could not be sustained; those are set-aside with direction to the learned Rent Controller to proceed with the matter afresh in view of the observation recorded above and conclude the proceedings expeditiously preferably within two (02) months, after receipt of copy of this Order.

11. Instant petition is disposed of accordingly.

Judge

*Muhammad Danish Steno**