

IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-2098 of 2017

Before: Mr. Justice Muhammad Shafi Siddiqui

Syed Shahzad Ali	-----	Petitioner
	Versus	
Abdul Ghaffar & others	-----	Respondents

Date of Hearing: 12.03.2018

Petitioner: Through Mr. Muhammad Najeeb Jamali
Advocate

Respondent: Through Babar Ali Shaikh , Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J: This case was initially heard on 18.12.2017, however on 31.1.2018 counsel for the respondent Mr. Babar Ali Shaikh had made a request that he would like to file some additional documents for consideration hence on his request, matter was fixed on 09.2.2018 with intimation notice to all the Counsels. On 09.2.2018 an statement was filed along with certain documents however the documents were perused and he was unable to satisfy as to how subject documents could form basis of a decision since that was an extraneous material. He sought time to assist this Court on the next date and the matter was adjourned to 12.3.2018. On the aforesaid date i.e. 12.3.2018

the respondent's Counsel after arguing sought withdrawal of the statement along with documents and stated that he is not relying on the documents that he filed along with a statement hence the matter was again reserved on 12.3.2018.

2. In brief the facts are that an ejectment application was filed by one Abdul Ghaffar son of Rustam Ali against (i) Syed Asif Ali son of Syed Shabbir Ali, (ii) Syed Faizan Ali son of Syed Shabbir Ali and (iii) Syed Shahzad Ali son of Syed Shabbir Ali. The title disclosed that they were tenants of Flat No.3, Third Floor, House No. R-225, Sector 8-A, Ibn-e-Sina Lines near F.T.C. Bridge, Karachi. In the ejectment application in para-1 the respondent pleaded that the applicant is lawful owner of the Flat No.3, Third Floor at the subject plot which was rented out to the Opponent.

3. In para-2 it is disclosed that the building was built on Plots No. R-225 and LC-22 and 23 situated in Sector 8-A, Ibne Sina Lines, Karachi admeasuring 45 square yards and 32+ 32 square yards respectively, together formed 109 square yards. The structure of property as disclosed in application, having three shops and one portion consists of two rooms with common and attached bath at Ground Floor and additional Four Floors i.e. 5 storeyed building in all.

4. In para-3 the subject premises i.e. flat No.3 at Third Floor was again discussed along with rate of rent. The executants of rent agreement is one of the brother of appellant i.e. Syed Asif Ali and it is claimed that he was living with his family members which include mother, brothers and sisters. The two brothers include Syed Shahzad Ali and Syed Faizan Ali. One of the brothers however now claimed independent entitlement on the basis of an agreement executed with one Muhammad Almas, one of the brothers of respondent No.1.

5. I have heard the learned Counsels at length and perused the material available on record.

6. It is a matter of fact that this petition is against the concurrent findings of two Courts below and insofar as the concurrent findings of the facts are concerned, there is not much scope to reconsider and reappraise the evidence even in case another view is possible. The contention now raised by the petitioner's Counsel is that he is an independent tenant of another tenement, irrespective of any previous relationship between respondent No.1 or any of his brother or brothers. He pointed out that the subject agreement as relied upon by the respondent appears to be of 2nd Floor as mentioned in the agreement whereas the subject premises where he lives is situated at 3rd Floor and hence the two premises are not common. He further submitted that since it is not a common premises therefore, neither any receipt of rent was produced nor it could be. It is not lawful for the respondent to claim, as argued, that he reoccupied the premises on execution of an agreement with brother of the respondent with whom the respondent is having a dispute of title.

7. Before such rent agreements could be perused and considered, the material thing is to peruse the pleadings of the parties. As discussed above, the respondent pleaded that the applicant is owner of Flat No.3, Third Floor constructed on the subject plots whereas the Opponent are occupying the premises as tenant. Paras-2 and 3 of the application also discloses about the three plots whereupon the subject building was constructed and the Third Floor being occupied by the petitioner under an agreement executed by one of the brother Syed Asif Ali. The three petitioners were arrayed as Opponent in the ejectment application but the written statement was filed by two brothers i.e. Syed Shahzad Ali and Syed Faizan Ali.

8. The parawise reply is very material in which the contents of para-1 of the application were not denied as being matter of record. This goes on to prove without relying on any evidence that the petitioners do

not dispute the respondent being owner of Flat No.3, Third Floor and that the petitioners are the tenants. Insofar as paras-2 and 3 of the eviction application are concerned, petitioners again do not dispute specifically. All they said was that it requires strict proof and hence denied the relationship. They claimed that Opponent No.1 i.e. Syed Asif Ali entered into an agreement of tenancy in August, 2015 and he vacated the premises in December, 2014. I am unable to understand how the Opponent No.1 could enter into an agreement in August, 2015 and would vacate the premises in December, 2014. They further went on to say that the subject premises was handed over to one Mst. Razia Bibi. This is also very surprising that on showing a sale agreement between Mst. Razia Bibi and respondent No.1, he (brothers/tenants) handed over possession to Mst. Razia Bibi. It seems that present petitioner/tenant is holding brief for executants of earlier rent agreement. In the entire pleadings the petitioner has even not discussed the alleged tenancy agreement of 09.12.2014. These contentions, as raised in the written statement, were not substantiated. There cannot be any evidence structure of which not pleaded in written statement. It appears to be an attempt to support the allegations in respect of the property in question, as undertaken by some of the brothers of respondent who are in dispute as to its title. However the definition of landlord and owner are defined which would restrict tenant to probe once they consider respondent as their landlord.

9. I would not like to comment as to the merits of such dispute as it may prejudice the case of parties, however the evidence in support of petitioners' contention as recorded appears to be of interested parties and hence not confidence inspiring. Furthermore based on concurrent findings of facts, I would not re-appreciate such evidence to form another view.

10. Insofar as the independent rights as claimed by the petitioner is concerned, the pleadings in the written statement itself would come in the way of petitioner and any evidence contrary to the pleadings would be immaterial. It is not denied in the pleadings that they were residing in the same Flat No.3, 3rd Floor along with other brothers and that a surreptitious act of handing over of possession to one Mst. Razia Bibi is nothing but revealed an attempt of collusion to deprive the respondent at least from the fruits of the eviction application. The dispute of title may take its lawful course but for the purposes of this application enough evidence is available on record which were considered by the two Courts below that the petitioner was the tenant in occupation along with other brothers in pursuance of earlier tenancy agreement and relationship could not be denied on the alleged execution of rent agreement with one Muhammad Almas brother of respondent. Nomenclature of floor incorrectly shown as second floor in the tenancy agreement (earlier) would not takeaway anything when application pleaded it as third floor and not denied in the written statement. There is nothing in the case to reconsider and form another view and hence the petition is dismissed.

Dated:____.5.2018

Judge