

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
Constitutional Petition No. S – 439 of 2021

Date	Order with Signature of Judge
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For order on CMA No.5106/2021 (Urgent application) :
For order on office objections No.14, 18, & 31 as at "A" :
For hearing of CMA No.2756/2021 (U/O XXXIX Rules 1&2 CPC) :
For hearing of main case :

18.10.2021 :

Mr. Ashraf Ali Shah advocate for the petitioner.

NADEEM AKHTAR, J. – Rent Case No.628/2018 filed by respondent No.1 / landlord against the petitioner / tenant seeking his eviction on the ground of default in payment of the monthly rent was allowed by the Rent Controller, and First Rent Appeal No.89/2020 filed by the petitioner against the order of his eviction was dismissed by the appellate Court. Through this constitutional petition, the petitioner has impugned the concurrent findings of the learned Courts below.

2. It is contended on behalf of the petitioner that the eviction application filed against him was not maintainable as he had purchased the demised premises from its previous owner and respondent No.1 was neither his landlord nor was he the owner of the demised premises. In view of the above, the petitioner had all along denied the relationship of landlord and tenant between the parties. However, this issue was decided against him by the Rent Controller after examining the evidence led by the parties, and the findings on this issue were upheld by the appellate Court. The record shows that respondent No.1 had produced a registered sale deed in respect of the demised premises as Exhibit A/1-B which was executed in his favour by the previous owner. It is contended that respondent No.1, being the subsequent purchaser, did not acquire any right, title or interest in the demised premises, and as such the registered sale deed in his favour ought not to have been considered by the learned Courts below. Learned counsel concedes that the petitioner did not file any Suit against the previous owner for specific performance or against respondent No.1 for cancellation of the said registered sale deed.

3. It is well-settled that if the tenant asserts that he is no more a tenant as he had purchased the premises, even then he has to vacate the premises and file a Suit for specific performance of the sale agreement ; he would be entitled to possession of the premises in accordance with law only if he succeeds in his Suit ; till such time the Civil Court passes a decree against the landlord in a Suit for specific performance, the landlord would be entitled to recover rent ; and, till the time that the tenant is able to establish his claim for specific performance on the basis of a sale agreement, the landlord would continue to enjoy the status of being owner and landlord of the premises, and till such time the relationship between the parties would be regulated by the terms of the tenancy. The above view is fortified by Haji Jumma Khan V/S Haji Zarin Khan, PLD 1999 SC 1101, Kassim and another V/S S. Rahim Shah, 1990 SCMR 647, Muhammad Iqbal Haider and another V/S Vth Rent Controller / Senior Civil Judge, Karachi Central and others, 2009 SCMR 1396, Syed Imran Ahmed V/S Bilal and another, PLD 2009 SC 546, and Abdul Rasheed V/S Mqbool Ahmed and others, 2011 SCMR 320.

4. In the present case, it is an admitted position that the title of the demised premises is subsisting in the name of respondent No.1 by virtue of a registered sale deed in his favour, and despite having knowledge of this fact, the petitioner never filed any Suit against the previous owner for specific performance or against respondent No.1 for cancellation of the said registered sale deed. The concurrent findings of the learned Courts below are in accord with the law laid down by the Hon'ble Supreme Court, and as such they do not require any interference by this Court. Accordingly, the petition and listed applications are dismissed with no order as to costs.

J U D G E