

THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

R.A. No. 01 of 2017

Syed Zahir Shah. Versus. Ghulam Muhammad and
others

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C.P.No.S- 01 of 2017

Syed Zahir Shah.Versus. Ghulam Muhammad and
Others

Applicant / Petitioner
Syed Zahir Shah : Through Haji Qalandar Bux
Laghari, Advocate

Nemo for respondent Ghulam
Muhammad in R.A No. 01 of 2017 :

Respondent Ghulam Muhammad
in C.P.No.S-01 of 2017 : Through Mr. Aghis-U-Salam
Tahirzada, Advocate

Date of hearing : 22.03.2021

Date of judgment : 26.03.2021

J U D G M E N T

Zulfiqar Ahmad Khan, J. The abovementioned revision application (arising out of a civil matter) as well as the constitutional petition (arising out of a rent matter) have been filed against the separate but concurrent findings of the Courts below, hence I intend to decide both of these together.

2. Precisely, respondent Ghulam Muhammad (landlord) had filed rent proceedings bearing Rent Application No.04 of 2013 against applicant / petitioner / tenant Syed Zahir Shah for his ejectment under section 15 of Sindh Rented Premises Ordinance, 1979, which was allowed by the learned Rent Controller / First Senior Civil Judge, Mirpurkhas vide order dated 31.08.2015 and the tenant was directed to vacate the subject premises and hand over its possession to the landlord within 60 days. Being aggrieved with these findings, the tenant preferred appeal being First Rent Appeal No.04 of 2015, which was

dismissed by the learned appellate Court vide order dated 01.12.2016 and the order passed by learned Rent Controller was upheld, hence this petition.

3. Subsequent to aforementioned rent proceedings, the tenant Syed Zahir Shah filed F.C Suit No.112 of 2013 against landlord Ghulam Muhammad and others, for Specific Performance of Contract and Permanent Injunction with the following reliefs:

- a. Direct the defendant No.1 to execute the sale deed duly registered in the name of plaintiff after receipt of remaining Rs.50,000/-. In other case Nazir of this Honourable Court may be directed to execute the register sale deed in respect of suit plot in favour of plaintiff. The plaintiff undertake to deposit the remaining amount before this Honourable Court.
- b. Grant permanent injunction against defendant No.1 restraining and prohibiting him from interfering into the peaceful possession of the plaintiff over the suit plot and further sale, alienate, mortgage, the same to any other person and further restrain the defendants No.2 and 3 not to issue clearance certificate and execute the register sale deed in respect of suit land in favour of any other person except plaintiff by themselves, through their agents, servants, agents, friends, associates or through any other means what-so-ever without due course of law.
- c. Cost of the suit be borne by defendants.
- d. Any other relief be granted as may deem fit and proper under the circumstances of the case.

4. After Service, the respondents No.1 filed his written statement however, respondents No.2 and 3 did not contest the matter as such declared ex-parte vide order dated 24.08.2013. The learned trial Court after recording evidence and hearing the parties dismissed the suit of the applicant / petitioner / tenant vide judgment dated 28.08.2015. Against the said judgment, the applicant / tenant preferred Civil Appeal No.29 of 2015 which too was dismissed by the learned Appellate Court through judgment dated 01.12.2016, hence this revision application.

5. Learned Counsel for the applicant / petitioner has argued that the impugned judgments are against all cannons of justice, equity and good conscience; that the impugned judgments are result of mis-reading and non-reading of evidence; that the learned courts below while deciding the matter failed to consider the fact that applicant had brought on record the original agreement to sell, second agreement and in support of his contention he had

examined P.W Nabi Bux and P.W Syed Munawar Shah and thereby the applicant / petitioner had proved the execution of agreement to sell to respondent No.1; that the findings of learned appellate Court are not based on proper appraisal of evidence as the same are non-appreciation of material available on record; that learned courts below failed to consider that the possession of the applicant / petitioner was / is in continuation of agreement to sell because there was no other plea or document to show the possession of the respondent in any other manner or on the basis of any other document, therefore, the judgments of learned courts below are liable to be set-aside.

6. Conversely, learned counsel for respondent No.1 in C.P.No.S-01 of 2017, while supporting the impugned judgments / orders contended that the learned trial Courts have not committed any illegality or irregularity while passing the said judgments / orders and they have applied judicial mind and given due consideration and appreciation to the evidence produced by both the parties and rightly discussed the matter on the basis of valid and sound grounds and reasons. Lastly, he prays for dismissal of instant revision as well as the constitutional petition.

7. Heard the arguments and perused the entire record available before me. It seems from perusal of the record that on 04.03.2013, respondent Ghulam Muhammad filed aforementioned rent proceedings before the learned Rent Controller against the applicant / petitioner for his ejection from the demised premises. Subsequently, the applicant / petitioner appeared in the rent application and filed his reply and thereafter on 16.04.2013, he filed F.C. Suit No.112 of 2013 against the respondent for specific performance of contract and permanent injunction; and, the learned trial Court after framing issues in the said civil suit and points for determination in the said rent application provided ample opportunities to both sides to lead their respective evidence in support of their case(s) and after conclusion of trial the learned trial Court passed the impugned judgment, which was maintained by the learned appellate Court. It is pertinent to mention here that as per stance of the applicant / petitioner he has purchased the subject house from respondent

Ghulam Muhammad through sale agreement in the year 2006 and also made payment of almost whole sale consideration except Rs.50,000/-. However, during such a long period i.e. from 2006 to 2013, the applicant / petitioner did not file any suit for specific performance of contract against the respondent and remained mum until the respondent filed aforementioned rent proceedings for ejectment against him in the year 2013. In these circumstances, a serious doubt has been created itself to believe the veracity of the story narrated by the applicant / petitioner and his supporting witnesses, who are admittedly his close relatives. Admittedly, the suit was filed after filing of the aforementioned rent proceedings by respondent Ghulam Muhammad against applicant / petitioner. It is pertinent to mention that both the witnesses of the applicant / petitioner while examining before the trial Court have admitted that the subject house is / was originally owned by the respondent and that it was remained on rent with the mother-in-law of applicant / petitioner and thereafter the applicant / petitioner himself entered into the subject house. It is also matter of record that applicant / petitioner has not produced any documentary proof during his evidence to prove that under what mode of payment he had made the payment of sale consideration to the respondent with regard to purchase of subject house. Simply making a statement with regard to payment of any amount is not sufficient to prove the fact that the applicant / petitioner has made the payment especially under the circumstances when it is categorically denied by other side (respondent No.1). Moreover, both the learned Courts below have passed elaborate judgments / orders after discussing all material points of the case based on the evidence as well as documents produced / brought on record by both sides.

8. The instant revision bearing R.A No.01 of 2017 has been filed against the concurrent findings of the Courts below as well as C.P.No.S-01 of 2017 has been filed challenging the orders passed by the Rent Controller and the appellate Court in the said matter.

9. Learned counsel for the applicant / petitioner while arguing the matter has read over the entire evidence and the documents; however, was unable to

point out any illegality or irregularity committed by the Courts below while delivering the impugned orders / judgments. The ground realities at hand are that two concurrent findings of the Courts below agitating the instant revision, as well as two independent and concurrent findings of the Rent Controller as well as appellate Court in rent matter are against the applicant / petitioner, hence the same are not maintainable.

10. Further the instant revision having been filed against the concurrent findings of the Courts below. A perusal of the judgments impugned in the instant revision as well as impugned through the constitutional petition shows that the same were rendered after considering the evidence available on record and hearings both the sides, no illegality or irregularity in my view has been committed by these Courts, and in the absence of any defect in the concurrent findings of the Courts below, interference of High Court in civil revision as held by Apex Court in **2006 SCMR 50**, amounts to improper exercise of revisional jurisdiction.

12. In the given circumstances as well as in the light of the above cited judgment of the Apex Court and other judgments delivered on the same point being **2006 SCMR 1304** and **2010 CLC 528**, the instant Revision No.01 of 2017 merits no consideration and the same is accordingly dismissed alongwith pending applications.

13. As regard the constitutional petition bearing No.S-01 of 2017 preferred by the petitioner against concurrent findings of the Courts below, in view of the above findings as well as the result thereof in the light of leading judgment of the Honourable Supreme Court reported in the case of Muhammad Lehrasab Khan v. Mst. Aqeel-un-Nisa and 5 others (**2001 SCMR 338**) as well as in the cases reported as **PLD 2018 SC 81**, **2014 YLR 2331** and **2016 CLC 1850** with regards to maintainability of Constitutional Petitions in rent matter, I do not see any avenue to interfere in the concurrent findings of the forums below; hence the same is dismissed accordingly.

JUDGE