

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Constitutional Petition No. S – 478 of 2020

Date	Order with signature of Judge
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- For orders as to non-prosecution as office objection has not been complied with by learned counsel :
- For orders on Main Petition :

15.03.2021 : Mr. Muhammad Jibran, Advocate for the petitioner.

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NADEEM AKHTAR, J. – Learned counsel for the petitioner was heard at length on the point of maintainability of this petition, whereafter the matter was reserved for orders. Late Abdul Jabbar, the predecessor-in-interest of the present petitioners, had filed Rent Application No.20/2016 against respondent No.1 seeking the latter's eviction from the demised premises on the ground of default in payment of monthly rent. The said application was allowed by the learned Rent Controller vide judgment dated 02.03.2019 (page 41), however, the said judgment was set aside by the learned appellate Court vide impugned judgment dated 17.09.2020 (page 15).

2. Record shows that respondent No.1 had denied the relationship of landlord and tenant between the parties by claiming that the said Abdul Jabbar / landlord / owner had entered into an agreement with him for the sale of the demised premises. It was alleged by him that as the said Abdul Jabbar was avoiding to complete the sale in his favour, he had filed a Suit against him for specific performance. It was an admitted position before both the learned Courts below that the said Suit for specific performance filed by respondent No.1 had not been decreed in his favour and was still pending. Therefore, respondent No.1 could not claim with conviction nor could the learned appellate Court assume that he will succeed in his said Suit as specific performance cannot be claimed as a matter of right and it is the discretion of the Court to grant it or not which discretion is exercised by the Court keeping in view the facts and circumstances of each case. Accordingly, respondent No.1 was not entitled in law to claim ownership of the demised premises till a decree to this effect was passed in his favour and such decree had attained finality. This being the legal position, mere pendency of the Suit filed by respondent No.1 for specific performance would not have changed the position.

3. The above view is fortified by the law laid down by the Hon'ble Supreme Court in the following authorities :

- A. In Haji Jumma Khan V/S Haji Zarin Khan, **PLD 1999 S.C. 1101**, it was held, *inter alia*, by the Hon'ble Supreme Court that till the time that the tenant is able to establish his claim for specific performance on the basis of alleged 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 ; genuineness or otherwise of alleged sale agreement and its consequential effect will be independently determined by the Civil Court ; and, ejection proceedings could not be resisted by taking shelter under Section 53-A of the Transfer of Property Act.
- B. In Kassim and another V/S S. Rahim Shah, **1990 SCMR 647**, the Hon'ble Supreme Court was pleased to hold that till such time the Civil Court passes a decree against the landlord in a Suit for specific performance, landlord was entitled to recover rent.
- C. In Muhammad Iqbal Haider and another V/S Vth Rent Controller / Senior Civil Judge, Karachi Central and others, **2009 SCMR 1396**, it was held, *inter alia*, by the Hon'ble Supreme Court that Article 115 of the Qanun-e-Shahadat lays down that during the continuance of the tenancy, no tenant of immovable property shall be permitted to deny the title of his landlord ; once a person was prima facie shown to be inducted as a tenant of the demised premises, he could not claim any exemption from payment of rent on account of institution of Suits for specific performance and cancellation of sale deed ; the relationship of landlord and tenant is not severed even if the execution of an agreement to sell is admitted ; and, institution of two Civil Suits by the tenant one for specific performance of the agreement and the other for cancellation of sale deed in favour of the landlord, per se would not be sufficient to refuse compliance of an order passed by the Rent Controller under Section 16(1) of the Sindh Rented Premises Ordinance, 1979, pending final determination.
- D. In Syed Imran Ahmed V/S Bilal and another, **PLD 2009 S.C. 546**, it was held, *inter alia*, that a sale agreement in favour of a tenant does not itself create any interest or even a charge on the property in dispute ; and, till such time that a person suing for ownership of property obtains a decree for specific performance in his favour, he cannot be heard to deny the

title of the landlord or to deprive the landlord of any benefits accruing to him or arising out of the said property.

E. In Abdul Rasheed V/S Mqbool Ahmed and others, **2011 SCMR 320**, it was held, *inter alia*, by the Hon'ble Supreme Court that it is settled law that where in a case filed for eviction of the tenant by the landlord, the tenant takes up a position that he had purchased the property and hence is no more a tenant then he has to vacate the premises and file a Suit for specific performance of the sale agreement and if he succeeds, he would be given easy access to the premises ; and, relationship between the parties for purposes of jurisdiction of Rent Controller stood established and by passing tentative rent order, the Rent Controller had carried out summary exercised by deciding such relationship. The order passed by the Rent Controller was maintained by the Hon'ble Supreme Court.

4. Prima facie, it appears that the learned appellate Court has not only failed to appreciate the above important aspect of the case, but also failed to follow the law laid down by the Hon'ble Supreme Court in relation thereto. In the above circumstances, let notice be issued to respondent No.1. Till the next date of hearing, operation of the impugned judgment of the learned appellate Court shall remain suspended. To be listed in the first week immediately after summer vacations.

J U D G E