

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

C.P. No. S-85 of 2014

Ch. Muhammad Shafiuddin
Versus
Muhammad Ateeque & others

Date of Hearing: 22.02.2018

Petitioner: Through Mr. Zahid Hamid along with Mr. Muhammad Imran Baig Advocates.

Respondent No.1: Through Mr. Naseer Ahmed and Mr. Riaz Hussain Soomro Advocates.

J U D G M E N T

Muhammad Shafi Siddiqui, J.-This petition involves determination of fair rent of shop situated on the ground floor of Muhammad Ali Building, Plot No.17-RB-10, Gidumal Lekhraj Road, Off. Bunder Road, Karachi.

2. The application was taken up as Rent Case No.265 of 2010. After notice the written statement was filed by the petitioner and the evidence was recorded. The application was allowed by the Rent Controller vide judgment dated 30.05.2012 whereby the fair rent was determined at the rate of Rs.10,000/- per month from the date of filing of the rent application i.e. 03.03.2010 and also applied provision of Section 9(2) of Sindh Rented Premises Ordinance, 1979. The petitioner was directed to complete the deficiency in rate of rent within three months of the order. Aggrieved of the judgment, the petitioner filed appeal No.194 of 2012 before the appellate Court i.e. VI-Additional District Judge Karachi South who found no illegality or irregularity in the judgment impugned therein and the appeal was dismissed vide impugned judgment dated 09.12.2013.

3. Learned counsel for the petitioner against the concurrent findings submitted that the order of the Rent Controller as well as of the appellate Court was not based on the evidence available on record. He argued that the premises was acquired on payment of Pugree in the year 1960 which amount was paid to the predecessor/previous owner of the subject building. He submitted that the increase in terms of section 8 of Sindh Rented Premises Ordinance, 1979 is almost more than 1000% and is not justified.

4. He next argued that though the property was in the name of one Shamima Khatoon however she was only a benami owner as the property was owned by her husband and as such the alleged gift in favour of her two sons is also a sham and bogus transaction/document. He further submitted that without prejudice to such execution of gift it was not even a complete gift as no possession was delivered to the respondent. The partition/gift could only be completed provided it is physically divided by its metes and bounds, which was not done.

5. He further submitted that the determination of fair rent was based on certificate of an estate agent who neither appeared himself in the witness box nor the letterhead/certificate discloses any date or stamp.

6. Learned counsel submitted that under Article 122 of Qanoon-e-Shahadat Order, 1984 a statement of petitioner with reference to the payment of Pugree stands proved and the provisions of Section 8 of Sindh Rented Premises Ordinance, 1979 cannot be applied to the premises acquired on Pugree basis. Counsel submitted that though Sindh Rented Premises Ordinance, 1979 does not recognize Pugree but such admission amounts to an agreement between the parties which according to him cannot be vitiated by any provision of Sindh Rented

Premises Ordinance, 1979 and hence in terms of Article 4 of Constitution of Pakistan the rights of the tenant are to be dealt with in accordance with law and the agreement of Pegree is to be taken into consideration which is not in defiance to any provisions of the Sindh Rented Premises Ordinance, 1979.

7. Learned counsel for the petitioner in support of his contentions has relied upon the case of Razia Bivi v. Ali Sher reported in 2008 YLR 33 and Saadia Muzaffar v. Khadija Manzur reported in 2006 CLC 401.

8. I have heard the learned counsel and perused the material available on record.

9. Perusal of the written statement available at page 65 shows that the relationship of landlord and tenant was never denied categorically. In paragraph 1 of the parawise reply to the ejectment application the execution of gift was challenged, on the ground that donor was only benami. The petitioner is in no other relationship with donor except that of a landlord and tenant and had been paying rent to her. None of the relatives of donor have challenged the gift. Tenant being stranger to such transaction is not in a position to challenge it in the absence of any challenge from close relatives. Notice of ejectment application is a notice of attornment in presence of gift executed by owner. Moreover, since there was no denial of such relationship therefore no issue was framed by the trial Court. The petitioner has not argued before the appellate Court as to non-existence of relationship of landlord and tenant between them as can be ascertained from the judgment of appellate Court. With this background of pleadings of the petitioner, it does not lie in the mouth of the petitioner to now challenge the relationship of landlord and tenant.

10. The execution of gift as between mother and two sons is an issue amongst them and the petitioner, being a tenant cannot interfere in a transaction/understanding amongst them. Insofar as the question of benami ownership is concerned the petitioner could hardly raise such ground to these proceedings. He was inducted as a tenant and he would remain a tenant of the premises and such challenge by a stranger would also be hit by the provisions of Section 42 of the Specific Relief Act.

11. The affidavit-in-evidence was filed by the respondent Muhammad Ateeque as co-owner of the demised premises. In paragraph 5 he categorically denied to have received any amount of Puggree including his mother. In the same paragraph it is stated that it was acquired by the petitioner on rental basis. In paragraph 6 it is stated that at the time of filing application for determination of fair rent the petitioner was paying rent at the rate of Rs.135.25. The shop was situated in the heart of the city adjacent to commercial area commonly known as Urdu Bazar. In paragraph 8 he stated that prevailing rent of similar premises situated in similar circumstances in the same locality was up to Rs.175,000/- per month and that the subject premises could have easily fetched upto Rs.60,000/- per month had it been rented out to any other tenant. A copy of certificate issued by an estate agent disclosing the rental value in the locality is also produced along with the affidavit-in-evidence. In paragraph 9 the inflation and devaluation of Pak Rupee was stated. It was further stated that cost of construction and maintenance charges including government taxes have been increased manifold.

12. The witness was cross examined in detail however majority of the first page of the cross-examination was not related to the subject issue of determination of fair rent. Witness was asked that he has not produced any proof that the original owner has not received the Puggree from opponent (petitioner). How and why would this witness/respondent

produce such proof when he has denied categorically. It was required to be proved by the petitioner/tenant. A positive assertion as to the payment of Pugree could only be proved by leading positive evidence and by producing originals of all such documents i.e. cheques, receipts and acknowledgements etc. through which such payment was made and acknowledged and by producing witness of such transaction. It is nobody but tenant could discharge this burden. Neither the previous owner was summoned nor any document in this regard was produced by the petitioner/tenant. Landlord's statement being ignorant of any payment to any previous owner would not go on to prove that such payment of Pugree and that it does not discharge the burden of the petitioner in terms of Article 122 of Qanoon-e-Shahadat Order, 1984.

13. It is however a matter of fact that he (respondent's witness) has not enclosed any tenancy agreement, rent receipt of adjacent or similar properties with regard to prevailing rent mentioned in the paragraph 8 of the affidavit-in-evidence except certificate of a estate agent. However, this hard fact cannot be ignored that ever since this property was purchased in the year 1980 by the predecessor of the respondent, the rent was being paid at the rate of Rs.135 and 25 Paisa per month and it was for this reason only that the rent was not determined at a rate as suggested by Estate Agent in his certificate i.e. Rs.150,000/- to Rs.200,000/-. (It was an era when even 25 Paisa counted and had a value). It was only fixed at Rs.10,000/- per month. This was done on account of the fact that most of the contents of the affidavit-in-evidence have gone un-rebutted and unchallenged in the cross-examination. Apart from rent prevailing in the near vicinity, there are other ingredients relied upon, such as inflation, rise in cost of construction etc., may be oral but not challenged in cross. The history of the litigation between the predecessor of the respondent and the

petitioner would not vitiate the proceedings initiated under section 8 of Sindh Rented Premises Ordinance, 1979. This application was filed after almost 30 years of acquiring the property from the predecessor in interest of the respondent.

14. The petitioner may have been entitled for recovery of Pugree had it proved to have been paid to the present landlord. But such agreement of Pugree or payment would not vitiate the proceedings initiated under any provision of Sindh Rented Premises Ordinance, 1979.

15. The petitioner has invoked jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 and thus not first appellate Court. The shortfall in the evidence in establishing claim of rent to the tune as suggested in the Estate Agent's certificate or in the affidavit-in-evidence was taken into consideration by the Courts below and it is for this reason that the claim for fixation of fair rent to the tune of Rs.150,000/- to Rs.200,000/- was not appreciated and instead got it determined at Rs.10,000/- only. One may count impugned order as a substantial rejection of claim of landlord.

16. Insofar a question of gift is concerned the reliance of the petitioner's counsel on the case of Razia Bivi v. Ali Sher reported in 2008 YLR 33 is not justified as it was a dispute amongst the co-owners and it was a suit for partition of a joint property, which is not the case here.

17. Similarly the case of Saadia Muzaffar v. Khadija Manzur reported in 2006 CLC 401 the parties derived title through gift in equal shares and it was amongst the co-owners that the dispute was decided in a civil suit. A tenant against the co-owners cannot raise such grounds when no such objection on behalf of other co-owners was raised.

18. Section 8 provides determination of rent when all four or any one of them may exist. At times it is a cumulative effect of all four

ingredients that may be taken in to consideration. One factor out of four may negate or cut off the effect of the other factor and hence it is the respective burden which is supposed to be discharged by the parties for having cumulative effect. If a party relying on any of the four factors of having negative effect, does not discharge burden, it does not restrict Rent Controller to pass order in determining fair rent on the basis of evidence on available factors. Once a fair rent is determined it cannot be said that it cannot be re-determined again under section 8 of Sindh Rented Premises Ordinance, 1979, if the circumstances so warrants. There may or may not be fluctuation in the four ingredients after first determination under section 8 of Sindh Rented Premises Ordinance, 1979 and hence could also be invoked subsequently by the parties if the circumstances so required. However, once the fair rent is determined, the provisions of section 9 would then be applicable with its limitations i.e. the first increase over and above fair rent should not be before three years and that too may not be in excess to 10% per annum and the future rent was also subject to the provision of Section 9(2) of Sindh Rented Premises Ordinance, 1979 and hence the provisions of section 9(2) with its limitation would apply to fair rent and was ordered accordingly by the Rent Controller. Rent Controller applied the provision as required under section 9 of Sindh Rented Premises Ordinance, 1979

19. In view of the above the impugned judgments of the two Courts below do not suffer from any illegality or irregularity and do not call for any interference hence the petition was dismissed vide short order dated 23.02.2018 for the above reasons.

Dated: 28.02.2018

Judge