

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.

F.R.A. No.S — 01 of 2014.
F.R.A. No.S — 02 of 2015.

DATE	ORDER WITH SIGNATURE OF JUDGE
Date of hearing:	13.05.2022.
Date of order:	13.05.2022.
Appellant:	Fakir Muhammad Mr. Muhammad Muhammad Arshad S. Pathan Advocate for appellant.
Respondent:	Mst. Sakina through Mr. Abdul Khaliq Mughal Advocate. -----

MUHAMMAD SHAFI SIDDIQUI, J.- These two rent appeals arising out of the orders passed by Rent Controller Cantonment Area Hyderabad, in Rent Applications No.04 and 05 of 2012 respectively filed by one Mst. Sakina d/o Nawab. First one against Shahnawaz s/o Waryam Khan whereas other against Dr. Aftab Ahmed s/o Abdul Ghani. The status of the property has a clouded claim by few individuals as it changed multiple hands on the basis of its pedigree line on the basis of correspondence between Cantonment Board Hyderabad and them. It is claimed to be a property within Katchi Abadi and no conclusive title is drawn either by the appellant or the respondent No.1 who filed eviction applications before the Rent Controller. The eviction applications were filed on the strength of some rent agreement only, without any reference to any right over the property either on the basis of taxes to be paid / being paid or any communication with the Cantonment Board.

2. Mr. Muhammad Arshad S. Pathan learned counsel for appellant submits that as soon as they came to know about pendency of these collusive litigation, they moved an application under order 1 rule 10 CPC along with certain documents which shows their some nexus with the Cantonment Board. The applications remained pending for about 02 years and even the counter affidavit was filed without it being supplied to appellant. It is a case of the appellant that on the crucial date when the application under order 1 rule 10 CPC was fixed

for hearing, he was not present, instead his associate / junior was present to receive the copy of counter affidavit, but he was not told about passing of the order under order 1 rule 10 whereas the parallel proceedings as far as striking out of defence is concerned was too passed on the same day by way of a separate order. Appellant cumulatively have challenged the orders of 3.7.2014. By virtue of disposal of application under order 1 rule 10 CPC, appellant claimed that it was not disposed of on merit, perhaps after hearing and that the defence of the respondent was struck off as it was a collusive exercise since the possession intended to be delivered to the respondent No.1 by the respondent No.2. Counsel submits that it is only final order which struck off the defence and disposing off lis could be challenged along with an interim or interlocutory order of same date, which they did.

3. On the other hand Mr. Abdul Khaliq Mughal learned counsel for respondent has vehemently opposed the contention of Mr. Pathan. He submits that they had deliberately avoided to appear to contest the application under order 1 rule 10 and even otherwise they have not specifically challenged the order passed on an application under order 1 rule 10 separately. He submits that such final order could not be challenged unless a specific challenge to an order passed on application under order 1 rule 10 CPC is made.

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

5. As I observed above the case has a chequered history as no party asserting their rights over the property could establish their title or better status over the property, with the Cantonment Board. The property claimed to have been situated at Katchi Abadi where only the possessory rights were regularized by the Cantonment Board by accepting taxes etc. Resolution of a dispute of title was/is not with jurisdiction of rent controller and law has already developed in that such case title has to be clarified from civil court. The Cantonment Board is only inclined to recover the taxes whosoever is in constructive possession of the property. However, as record could be seen neither appellant nor respondent No.1 who moved an application under order 1

rule 10 supported their case with any authentic title document. Appellant, however, presented the application under order 1 rule 10 along with certain annexures which has nexus with the predecessor of the property to whom letters were issued by Cantonment Board Hyderabad. The appellant claimed to have acquired such possessory rights from him. He has further filed a statement today on the directions of the court if he has any nexus with the Cantonment Board. He has placed on record a acknowledgment of the Cantonment Board whereby he acquired possessory rights from the previous owner along with a notice of January 2017 whereby the appellant was warned that he was keeping unauthorized milch animals, cattle at the premises in question. Had there been proper hearing and adjudication, the collusiveness of the parties, whosoever it may be could have been identified, or the matter could have been referred to civil court for adjudication. The application under order 1 rule 10 CPC, on the crucial date was dismissed for non-prosecution. Although it was appellant who should have been vigilant in pursuing their application it was however, the junior counsel of appellant who was present on that day but he could not convince the court as to the pre-occupation of the senior counsel in some other court.

6. In view of the above facts and circumstances of the case it appears that the appellant and the respondent No.1 are disputing over possessory rights of property. It is also a case, as made out by respondent that at some point of time some documents as being of possessory rights were issued in the name of respondent No.1 but those were only "Benami" as claimed, as respondent No.1 was only a house wife of Shahnawaz who was also arrayed as respondent No.1 in the connected appeal / rent application as being tenant. The relationship of landlord and tenant is yet to be proved and a tentative rent order was passed. Since the case is at the initial stage where only tentative rent order was passed followed by an order striking out defence, I therefore, deem it appropriate to allow these appeals and remand the case to the trial court to enable the appellant to argue the application under order 1 rule 10 CPC, however, it is expected that the application shall be heard and decided in one months' time

without fail. In case the appellant fails to appear on any of the date fixed by the Rent Controller, the Rent Controller would be at liberty to pass appropriate order as deem fit and proper and no further indulgence be given. Since I have noticed that the appellant remained absent on the crucial date as well as on the previous dates when adjournment was granted to him, I impose a cost of Rs.10,000/- in each appeals to be paid to respondent No.1 by the appellant in two week's time

7. With these observations the appeals are disposed of and the case are remanded to the trial court to decide the case expeditiously preferably within a period of four [04] months from the date of receipt of this order.

JUDGE

A.