

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P No.S-203 of 2016

Fateh Muhammad V/s Altaf & others
Petitioner : Through Mr. Arbab Ali Hakro,
Advocate
Respondents No.1&2: : Through M/s. Shamsuddin Memon
& Mr. Dhirumal, Advocates
Date of Hearing : 08.10.2019
Date of Judgment : 08.10.2019

J U D G M E N T

MAHMOOD A. KHAN, J: *These proceedings are arise from rent matter wherein conflicting findings are present as the learned trial Court had dismissed the application for eviction filed on account of default on the ground that the relationship was not in existence on account of execution of subsequent sale deed. The learned appellate Court was however, pleased to allow the eviction application on the ground that irrespective to the controversy of the Section 18 of SRPO i.e subsequent landlord and as such relationship arises there-from, the petitioner being a tenant irrespective to the relationship, not having acquired any ownership rights and earlier being a tenant was bound to that relationship and failure is present on his part as to the payment of rent.*

2- *Learned counsel for the petitioner contended that the petitioner is protected under Section 54 of Transfer of Property Act; that the respondents are not owners; that the said respondents in the matter did not have any cause of action and at best were entitled to arrears of rent; that the registered owners of the premises never demanded the eviction of the tenants; that the matter of jurisdiction has not been properly considered by the learned appellate Court and that the learned appellate Court has based its findings on a presumption.*

3- Conversely, learned counsel for the respondents No.1&2 however, contended that background of the matter being that father of the private respondents who are real brother of Majid became the landlord on his death and although subsequently the present respondents had executed the sale deed favoring Majid, there is no distinct between them and they had filed the eviction application. The status of landlord was never disturbed for the petitioner especially in absence of notice under Section 18 of SRPO. It is not open for the tenant to seek protection of any sale deed to which he is not a beneficiary. It is further contended that the petitioner cannot take any protection of any sale as alleged without ever filing a suit for Specific Performance in this regard.

4- Having heard the learned counsel and gone through the record. The case of the petitioner is based upon technicalities and not on merits i.e being that the respondents not being owners of the subject property at the time of entertainment of eviction application and as such, not entitled to acquire the jurisdiction of the Rent Controller. The petitioner however, cannot take a ground of any dealing between the landlords earlier or subsequent other than provided under Section 18 of SRPO, which provides the mechanism whereby the new landlord is to give notice to the tenant. The present petitioner a tenant is found to be a defaulter, irrespective to the question of valid ownership, especially when there is no dispute between the owners. The petitioner has not shown any ground to disturb the finding as to default determined by the learned appellate Court. The petitioner being a tenant and not paying the required rent cannot be entertained in such circumstances, this petition is found not maintainable stands dismissed, with no order as to costs.

JUDGE

Fahad Memon
08-10-2019