

ORDER SHEET

**IN THE HIGH COURT OF SINDH HYDERABAD
CIRCUIT.**

C.P. No. S – 751 of 2014.

| DATE | ORDERS WITH SIGNATURE OF JUDGE |
|-------------|---------------------------------------|
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Of hearing:
26.10.2015.

FOR KATCHA PESHI.

Mr. M. Humayoon Khan, Advocate for the petitioners.
Mr. Naimatullah Soomro, Advocate for respondents.

MUHAMMAD SHAFI SIDDIQUI, J.- This petition was dismissed by a short order on 26.10.2015 and these are the reasons for the same.

2. The petitioner has impugned the order of the District Judge Hyderabad, Sindh passed in First Rent Appeal No.70 of 2001 in terms whereof the appeal of petitioner was dismissed.

3. The facts of the case in brief are that in the first round of litigation the Honourable Supreme Court after allowing the appeal and setting aside in a consolidated judgment remanded the case to the learned District Judge to decide the appeal on the pleas raised before the Honourable Supreme Court which is related to the effect of execution of the sale agreement dated 17.11.1961 between Mst. Zohra Begum and Mst. Haleema Bai.

4. The petitioners predecessor were in possession of the premises in question much prior to 1961 as alleged and it is claimed by the learned counsel for the petitioner that an agreement was executed on 17.11.1961 on the basis of which the respondents were required to transfer the portion of the premises which is in occupation of the petitioner. The entire premises was given number of F/543. That Mst. Zohra Begum was the predecessor in interest of the petitioners whereas Mst. Haleema Bai was the predecessor in interest of respondent No.1. The record shows that Mst. Haleema Bai filed a suit for cancellation of registered sale deed dated 26th February 1969 and 11.6.1976. That the suit though was dismissed by the trial Court but on preferring an appeal the Judgment was set-aside and the suit was decreed and

the Conveyance Deed was thus cancelled and thereafter the petitioners preferred IInd Appeal bearing No.10 of 1987. In the meantime the parallel rent proceedings were also initiated which ultimately came to this Court in the shape of C.P No.22 of 2004 the same were heard by this Court and a consolidated judgment was given disposing of both the aforesaid cases. The IInd appeal No.10 of 1987 filed by the petitioner was dismissed whereas the Constitution Petition No.S-22 of 2004 was allowed thus the record further shows that prior to the date of the alleged agreement dated 17.11.1961 the status of the petitioner's predecessor was only of a tenant of Settlement Department. The ejectment application was considered on the ground of personal bonafide need and it was allowed whereas the ground of default was declined. An appeal has been preferred before the learned III-Additional District Judge Hyderabad bearing First Rent Appeal No.70 of 2001 filed by the petitioner which was allowed on the ground that there is no relationship between the parties. Thus a consolidated judgment was given in terms whereof the appeal in relation to the suit for cancellation filed by the petitioner was dismissed whereas the petition filed in relation to the rent proceedings was allowed. The said judgment was challenged before the Honourable Supreme Court by filing two Civil Petitions one bearing No.308-K of 2007 and the other petition was converted into Civil Appeal No.1484 of 2007. The first petition No.308-K of 2007 relates to C.P No.S-22 of 2004 (rent proceedings) wherein leave was refused, whereas the other petition wherein the leave was granted and was converted as Civil Appeal No.1484 of 2007, the consolidated judgment was set-aside and the case was remanded to consider the effect of execution of agreement dated 17.11.1961.

5. Learned counsel for the petitioner contend that the judgment passed in Civil Appeal No.1484 of 2007 substantially set-aside the judgment passed in suit for cancellation of sale deed/conveyance deed despite the fact that the leave was not granted to the petitioner in Civil Petition No.308-K of 2007 as the effect of execution of agreement dated 17.11.1961 is to be considered by the District Judge Hyderabad, which is irrespective of the decree passed in suit for cancellation of such conveyance deed. He submits that the District Judge has failed to appreciate the effect of

execution of agreement dated 17.11.1961 by relying on the judgment and decree passed by the Appellate Court whereby the suit for cancellation of convenience deed was decreed.

6. On the other hand learned counsel for the respondent submits that a very balanced and satisfactory reasoning were provided by the District Judge which relates to the effect of execution of agreement dated 17.11.1961. He submits that prior to the execution of this agreement both the predecessor of petitioner and respondents were tenants of Custodian and since the P.T.D. was issued in the year 1969 which was challenged by the petitioners' predecessor in terms of filing a suit for declaration and injunction. The suit was dismissed and the orders passed in suit No.334 of 1972 dated 9.9.1976 attained finality. Thus the P.T.D. issued in favour of the respondents' predecessor have attained finality whereas on the other hand suit filed for cancellation of an instrument in favour of son of Mst. Zohra Begum was decreed by the Appellate Court. Thus the effect of the agreement dated 17.11.1961 is available in the shape of the dismissal of the suit filed by the petitioners' predecessor based on the aforesaid agreement. The petitioners claimed the protection of Section 53-A of the Transfer of Property Act on the basis of that agreement. It is perhaps this effect which is to be considered by the District Judge when the matter was remanded by the Honourable Supreme Court.

7. I have heard the learned counsel and perused the material available on record. I have also gone through the impugned order which provides reasoning as to why the protection of Section 53-A of the Transfer of Property Act could not be made available to the petitioners to protect the possession that they were enjoying.

8. The dismissal of the suit for specific performance based on the agreement dated 17.11.1961 is a judicial pronouncement of the possible effect of such agreement.

9. The suit for specific performance has already been dismissed for non-prosecution which has attained finality and since it is a dismissal under Order IX Rule 8 and it could only be restored in terms of Order IX Rule 9 which preclude the petitioners or their predecessor from filing fresh suit for the same cause. Hence the

order passed therein has attained finality. Similarly insofar as the conveyance deed, the shelter of which is taken by the petitioners was also set-aside by a decree and such conveyance deed relied upon by the petitioners loses its force. Thus in my view when the P.T.D. was issued in favour of the respondents and/or predecessor all such rights available to the Custodian stood transferred in favour of respondents and/or their predecessor. The petitioners' predecessor was and is tenant. Initially they were tenants of the Custodian and subsequently when the P.T.D. was issued and the property was transferred in the name of the respondents' predecessor, the petitioners' predecessor then became tenant of the respondents' predecessor by operation of law in terms of Section 30 of Displaced Persons (Compensation & Rehabilitation) Act, 1958.

“30. Protection of certain occupants. –(1) Where any person is in possession of any evacuee house, or shop, or has been declared, by a custodian to have tenancy rights from a date prior to the fourteen of August, 1947, in any industrial concern, cinema house or printing press which is transferred to any other person under the provisions of this Act, then, notwithstanding anything contained in any other law such person shall without prejudice to any other right which he may have in that house, shop, industrial concern, cinema house or printing press, be deemed to be a tenant of the transferee on the same terms and conditions as to payment of rent or otherwise on which he held in immediately before transfer:

Provided that –

- (a) it shall be lawful for the transferee to charge a rent on the basis of the latest assessment carried out by the municipality or local authority, as the case may be, for other properties in the locality generally; and
 - (b) it shall not be lawful for the transferee to eject such persons from the house or shop for a period of six years, and from the industrial concern, cinema house or printing press for a period of three years from the date of transfer, notice of which shall be given by the transferee to the tenant within one month of such transfer by registered post (acknowledgement due).
- (2) Where the transferee does not give notice within one month, as required by proviso (b) to sub-section (1), the period mentioned in that proviso shall count from the date of receipt of such notice by the tenant.
- (3) Nothing in proviso (b) to sub-section (1) shall apply to a tenant –

- (i) who has not within three months from the date of receipt of a notice of demand sent to him by the transferee by registered post (acknowledgment due) paid or tendered the amount of rent or arrears of rent due for any period after the transfer, or
 - (ii) who after the transfer, has sublet or otherwise parted with the possession of the house or shop, industrial concern, cinema house or printing press, or any part thereof, or has committed acts which are destructive of or injurious to the property nor shall anything therein apply to the tenant of any house or shop who in any urban area within the same town or city, owns a house or shop, as the case may be.
- (4) On the expiry of the period mentioned in proviso (b) to sub-section (1) or on the contravention of any of the provisions of sub-section (3), whichever is earlier, the relationship of landlord and tenant between the transferee and the tenant shall be regulated in accordance with the law for the time being in force relating to such relationship.”

10. In view of the above facts and circumstances the District Judge has rightly observed that protection of Section 53-A is not available to retain possession since it cannot be considered to be in part performance. They were already in possession as a tenant when such alleged agreement was executed and secondly the suit for specific performance of the petitioner's predecessor was dismissed and hence it would be a futile effort to provide such protection to the petitioners who are in fact tenant by operation of law. Thus the effect of the aforesaid agreement was considered by the District Judge and he rightly came to the conclusion that they cannot lawfully deny relationship of landlord and tenant. The prerequisite of Section 30 have been complied.

Judge