

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

(1) C. P. No.S-668 of 2016

Shahroz Petitioner
Versus
Muhammad Rafiq & another Respondents

(2) C. P. No.S- 689 of 2016

Mohammd Anwar Petitioner
Versus
Muhammad Rafiq & another Respondents

(3) C. P. No.S-704 of 2016

Haji Chirag Din Qureshi Petitioner
Versus
Muhammad Rafiq & another Respondents

Mr. Raja Jawad Ali Saahar, Advocate for the petitioners in all captioned petitions.

Mrs. Razia Ali Zaman Patoli, Advocate for respondent No.1-3/Landlord.

Mr. Muhammad Humayoon Khan, Deputy Attorney General for Pakistan.

Mr. Rafique Ahmed Dahri, Assistant A.G. Sindh.

Date of hearing : 07.03.2022.

Date of Judgment : 24.03.2022.

Date of announcement : 28.03.2022.

JUDGMENT

Muhammad Saleem Jessar, J.- Since all the captioned petitions arise out of one order involving similar facts, evidence and the issue required to be resolved, hence the same are being decided by this common judgment.

2. The captioned three petitions have been filed by the three different petitioners against Judgment dated 14.03.2016, passed by

District Judge, Hyderabad in three Rent Appeals bearing Nos.03/2014, 04/2014 and 01/2014, whereby the above three appeals were allowed, the impugned Judgment dated 24.12.2013, passed by Senior Civil Judge / Rent Controller, Kotri in Rent Application No. 04/2013 (Muhammad Rafiq & others v. Shahroz); Rent Application No. 03/2013 (Muhammad Rafiq & others v. Muhamad Anwar); and Rent Application No.01/2013 (Muhammad Rafiq & others v. Haji Chiragh Din Qureshi), whereby the rent applications filed by the respondents were dismissed, was set aside, the rent applications were allowed and the petitioners / tenants in the above three appeals were directed to vacate the demised premises within one month.

3. The facts of the case, as gleaned from C. P. No.S-668/2016, are that father of respondents No.1 and 2, and grandfather of respondent No.3, namely, Faqeer Mohammad, was the sole owner of property bearing No. 465/465-A, measuring 36.5 Sq. Yards, situated at Ward 'B', Main Liaquat Road, Kotri. After the demise of said Faqeer Muhammad, the property devolved on his sons, namely, Rafiq Mohammad and Yar Mohammad (respondents No.1 and 2 herein) and Dost Mohammad. Later on, Dost Mohammad expired and he is represented by his son Daud Khan (respondent No.3). The petitioners herein are tenants in respect of three shops in the above property. The respondents requested the petitioners to vacate the demised premises for their personal use. However, the petitioners neither vacated the shops nor paid rent to the respondents since November, 2011. The respondent issued legal notice to the petitioners but to no avail. Thereafter, the respondents filed the above rent applications, which were dismissed by the Rent Controller. The respondent, feeling aggrieved, filed Rent Appeals before the District & Sessions Judge, Jamshoro @ Kotri, which were allowed as above. The petitioners / tenants feeling aggrieved have filed the present petitions assailing the impugned Judgment.

4. Learned counsel for the petitioners submitted that the judgments delivered by the Rent Controller in Rent Application Nos.01, 03 and 04 of 2013 are speaking one and the Appellate Court without considering the discussions made in the judgments

passed by Rent Controller had wrongly allowed the appeals filed by the respondents and set aside the judgment of the Rent Controller. He further submitted that the respondents have failed to establish their ownership of the demised premises as well as relationship with the petitioners as tenant and landlord. He also submitted that respondents were not entitled for the relief sought from the Trial Court therefore, their rent cases were rightly dismissed by the Rent Controller. He next submitted that one Mola Dino Shah is the owner of demised premises, who had also filed Civil Suits which are pending adjudication before competent Courts of law, therefore, the Judgments suffer from many illegalities as well as irregularities and are liable to be set-aside.

5. Mrs. Razia Ali Zaman Patoli, learned counsel appearing for respondents No.1-3 in all the three petitions, submitted that the respondents are *bona fide* owners/landlord of the demised premises and the learned Rent Controller had not considered the evidence placed before him and, therefore, erred in dismissing the rent cases of the respondents. She further submitted that Appellate Court had rightly passed the impugned judgments, thereby setting aside the Judgments of the rent controller and allowing the rent applications filed by the respondents. Therefore, the petitions in hand are not maintainable, as factual controversy cannot be decided by this Court in its writ jurisdiction. She further submitted that documents with regard to ownership of the respondents which were exhibited in evidence are still intact and had not been challenged by any party claiming himself/ themselves to be the necessary party before any forum or court of law. Learned counsel submitted that the suits referred to by learned counsel for the petitioner were filed after filing of the rent case. She submitted that the said suits were dismissed by the trial Court; however, on appeal, the same have been remanded back to the trial Court. Learned counsel submitted that pendency of civil suit cannot be a ground to dismiss the rent case. She submitted that Civil Court is independent and separate forum and the Rent Controller is not subordinate to it. She; therefore, submitted that by maintaining impugned judgments petitions may be dismissed and petitioners may be directed to vacate the demised premises in favour of the respondents. In support of her contention, She placed

reliance upon the cases of Mst. REHMAT BI and 4 others Vs. MUHAMMAD RASHID and others (1997 SCMR 1775), JAVAID IQBAL Vs. Khawaja ABDUL JALIL and 2 others (2016 YLR 2347), Messrs MUKHTAR BROTHERS Vs. Mst.HAWA BAI ADMANI and 9 others (1992 MLD 1045), and MUHAMMAD IFTIKHAR QURESHI Vs. MUHAMMAD YAHYA QURESHI and 2 others (2016 MLD 1134).

6. Learned Assistant Advocate General, Sindh supported the impugned judgments.

7. I have heard the learned counsel for the parties as well as the learned Assistant Advocate General Sindh and have perused the record with their assistance.

8. The dispute in all these petitions revolves around the ownership of the property in which the shops under occupation of the three petitioners are situated as the rent controller dismissed the rent applications of the respondents primarily on the ground that the respondents were unable to prove the relationship of landlord and tenant between the parties. In this regard the trial Court has observed as under:

“Applicant in order to prove his case led the evidence through his attorney Daud Khan who filed affidavit-in-evidence (Exh. 12), he produced Original Extract from the property register card as Exh. 15, legal notice as Exh.15/A, special power of attorney dated 24th December, 2012 as Exh.15/B, Photo copy of letter dated 12th September, 1959 as Exh.15/D, Photo copy of letter dated 19th September, 1959 as Exh.15/E, Photo copy of letter dated 19th September, 1959 issued by Deputy Settlement Commissioner Dadu as Exh.15/F...”

9. From the above-quoted portion of the Judgment of the Rent Controller, it is crystal clear that the attorney of the respondents, namely, Daud Khan, did produce Extract from the Property Register Card, orders of Deputy Settlement Commissioner, Letter of Mukhtiarkar, Kotri and order of Deputy Settlement Commissioner, Dadu. Once the applicant / landlord had produced these documents which show the predecessor in interest of the applicants / landlords as the owner of the demised premises, it was for the opponents / tenants to rebut the same with equally cogent evidence. There is nothing on record to show that any document in rebuttal was

produced by any of the opponent / tenant in this regard. The Rent Controller was bound to consider the evidence brought on record by the parties in its true perspective and with an unbiased mind.

10. The trial Court, instead of examining the above documents which prove the title of the predecessor in interest of the applicant / landlord, preferred to rely on the following portion of the cross examination of the attorney of the landlord:

“..I don’t know as to whether all the land over 15/20 survey numbers including the disputed one is private property of Syed Qadan Shah. I know Muhammad Bux, who is my relative. I don’t know as to whether the disputed plot on survey No. 21 was obtained on rent by one Muhammad Bux Blouch from Syed Qadan Shah, such rent agreement was executed between them on a draft of advocate Mr. Ghulam Dastgir. I don’t know as to whether there was dispute over the auction of suit plot. I don’t know as to whether my grand-father had obtained the tenements on rent from Syed Mouldino Shah in 1985 and such rent agreement was also drafted by advocate Ghulam Dstgir... I don’t know when construction was raised over whole plot which was registered in the name of Faqir Muhammad... I don’t know that my father and grandfather were tenants of the shops on the suit plots and they were depositing rent to Syed Mouldino Shah. I don’t know that the tenements / opponents are depositing rent to Syed Mouldino Shah under their respective rent agreements. I don’t know as to whether I have produced forged Extract Exh. 16 before the Court. I don’t know as to whether I do not have any right to file the rent application nor I know that I was ever landlord of the tenements and I don’t have any right to collect rent from the opponents. It is correct that I (did) not produce any rent agreement....”

11. The Rent Controller, after quoting the above portion of the deposition of the attorney of the respondents, drew the following conclusion:

“In such circumstances, when the attorney of applicant is not aware about his capacity, genuineness of documents produced before court and his authority as a landlord or not how such evidence can be considered as fruitful for the applicant.”

12. The Rent Controller also observed that the applicant has never produced any copy of rent agreement during evidence. Thus, one of the reasons which was made the basis for the dismissal of the rent application of the respondents was that no written rent agreement was produced by the applicant / landlord. Suffice it to say that a written agreement is not a compulsory requirement for creating a tenancy, as tenancy can be created by verbal agreement also.

13. The Rent Controller further held, *“Since the opponent has taken a plea and challenged his relationship with the applicant as tenant and landlord then the applicant was under burden to prove and establish the relationship by leading strong evidence and any corroborative evidence as well. But here in the present case applicant focused only the documents of tenement which is attested copy of Extract and the same is challenge as forged by the opponent.”*

14. Thereafter, the trial Court produced the cross examination of the opponent which reads as under:

“I have been in possession of the tenement before that my father was tenant but he passed away. It is incorrect to suggest I have not produced any rent agreement or rent receipts nor filed any title documents of the tenement showing the ownership of Moulidino Shah.”

15. And, finally, the Rent Controller held as under:

“In such situation, the rent controller cannot decide the title over the property and the parties concerned may approach the civil court for seeking declaration of their respective title.”

16. From the above-quoted portions of the Judgment of the Rent Controller one thing is very clear that he (Rent Controller) did not take into consideration the evidence brought on record by the applicants / respondents 1-3 and mostly he discussed and relied on the cross examination of the attorney of the respondents or on the evidence of the opponent. It is correct that to most of the questions in cross examination, the attorney of the respondents answered “I don’t know”, however, this does not mean that he was admitting that the documents or his claim as being landlord was false. It was the duty of the rent controller to have examined the entire evidence of the opposing parties in juxtaposition to arrive at a just and fair conclusion. The appellate Court has observed that the rent controller cannot decide the title over the property and the parties concerned may approach the civil court for seeking declaration of their respective title. Was there any dispute between the tenant and landlord with regard to the title of the demised property? The tenant was not claiming ownership of the demised premises. Therefore,

there was no occasion to refer the tenant for seeking declaration of his title. If there was any dispute between the respondents and any other person same will not be of any help to the tenant or the tenant cannot take shelter behind such dispute. The respondents have proved their ownership by producing title documents and now if anybody was aggrieved he could knock at the door of law for redressal of his grievance.

17. On the other hand the respondents / landlord produced title documents which were not considered by the rent controller for reasons best known to him. The attorney of the respondents produced Extract from property register. This is a title document. This document cannot be ignored. In the case of M/s. Mukhtar Brothers (supra), a PTD as well as extract from property register was produced as title document and a learned single Judge of this Court held as under:

“3. Exh. A-1 is the copy of PTD which proves the transfer of the demised premises in the name of deceased Haroon Admani. This is also evident from the extract of the property register which clearly mentioned that "premises No.G-2 has been transferred to Haroon Admani son of Abdul Latif for Rs.1,440 vide FTO No. Karachi/13569." The petitioners could not controvert this evidence and, as such, the learned Rent Controller rightly held that the demised premises was transferred by the Settlement Department to deceased Haroon Admani and since the petitioners are admittedly in possession of this premises, statutory relationship of landlord and tenant did exist between the parties.”

18. The rent controller also ignored the affidavit-in-evidence of the attorney of the respondents, namely, Daud Khan, wherein he clearly claimed that father of other respondents and his grandfather, namely, Faqeer Muhammad, was the sole, absolute and exclusive owner of the demised premises. In support of his such claim, he produced title documents.

19. It is also surprising to note that the rent controller with regard to the title document produced by the respondents has observed as under:

“Since the opponent has taken a plea and challenged his relationship with the applicant as tenant and landlord then the applicant was under burden to prove and establish the relationship by leading strong evidence and any corroborative evidence as well. But here in the present case applicant focused only the documents of tenement which is attested copy of Extract and the same is

challenged as forged by the opponent. Applicant's attorney during his cross examination stated about the Extract as under:

"I do not know as to whether I have produced forged Extract Exh.15"

20. It is very strange that on mere words of the tenant that he challenged the document as forged, the rent controller completely ignored the title document by treating it as forged without any evidence in this regard. A written and attested document cannot be ignored like this unless it is proved, and I repeat, proved by the opposing party to be forged by strong evidence and not by mere words. Nothing was produced by the tenant to prove the document forged except his words. At the most, the representative from the concerned department should have been called to authenticate the said document.

21. On the other hand, the appellate Court framed the following points for determination:

1. *Whether there exists relationship of landlord and tenant between the parties?*
2. *Whether the petitioners required the premises in question for their personal bona fide need?*
3. *Whether the respondent has committed willful default in payment of rent to the petitioners?*
4. *What should the judgment be?*

22. The appellate court first referred to the affidavit-in-evidence filed by the attorney of the respondents, namely, Daud Khan, as under:

"The applicants' witness namely Dawood filed his affidavit in evidence, stating therein that he is attorney of other petitioners, his grandfather and father of other petitioners namely Faqeer Mohammad was sole, absolute and exclusive owner of Waqf property bearing CS-21 admeasuring 36.6 sq. yards, situated at Ward B', Main Liaquat Road, Kotri. He further stated that after demise of said Faqeer Mohammad the property devolved in the names of legal heirs and he is representing his deceased father Dost Muhammad who expired away and was real brother of other petitioners and son of deceased Faqeer Mohammad. He stated that opponent is their tenant, who has failed to pay rent to them and they also need the property for their personal bona fide use."

23. The appellate court also referred to the cross-examination of the petitioner in C.P. No.S-668 of 2016, wherein he admitted himself as a tenant – but of Syed Moledino Shah, as under:

“The respondent has stated in his objection as well as in his affidavit in evidence that he is tenant of one Syed Moledino Shah. Said Moledino Shah appeared before learned trial Court and filed application under Order I, rule 10, CPC r/w section 151, CPC for impleading him as party and he did not produce any document hence his application was dismissed. Thereafter he filed revision application against the said order , but the same was also dismissed. It is settled law that tenant remains tenant apart from the fact of any change in ownership in respect of the property. It is an admitted fact that the respondent is tenant of the premises in question.”

24. Once again the rent controller travelled on the wrong path by admitting such statement of the petitioner although he did not produce any evidence in this regard. A tenancy agreement cannot be termed as a title document, particularly when it has come on record that said Moledino Shah filed an application under Oder I, rule 10 CPC but the same was dismissed. The rent controller, it is baffling to note, did not consider the title document produced by the respondents but relied on the tenancy agreement between the petitioner and said Moulidno Shah in dismissing the rent applications.

25. In this case, although the trial Court (Rent Controller) had held that there was no relationship of landlord and tenant but this finding was overturned by the appellate Court. I have examined the reasoning given by the appellate Court and I fully agree with such reasoning. Apart from this, in the case of Mst. Rehmat Bibi (supra), relied upon by learned counsel for the respondents, a Division Bench of the Apex Court held as under:

“11. Mr. Naraindas C. Motiani, Advocate-on-Record has rightly repelled the second objection by pointing out and which is indeed correct exposition of law that the petitioners could not be declined the relief on the ground that in the earlier round in Rent Case No.264 of 1986 wherein the finding on the question of relationship of landlord and tenant went against the petitioners in view of the dismissal of Suit No.298of 1988 filed by respondent No.2 in the Civil Court to establish her proprietary rights, in the disputed premises. Besides the case of Kassim 1990 SCMR 647 relied upon by the Mr. N.C. Motiani, Advocate- on -Record, reference can also be profitably made to a rent case of Muhammad Ihsan v. Muhammad Hafeez (1995 SCMR 1380) wherein what is to say of dismissal of suit of the tenant for claiming title to the premises, the

mere pendency of the suit filed by a tenant against the landlord relating to the property in dispute was held to be of no significance unless it raised serious doubt about the landlord's title to the property". The earlier order of learned Rent Controller had not, therefore, attained finality on the aforesaid score."

26. Apart from above, it appears from the impugned Judgment of the appellate court that the petitioners admitted having received Notice under section 18 of the Sindh Rented Premises Ordinance, 1979 requiring them to pay the monthly rent to the respondents/ landlords, but they did not reply the same.

27. In view of the above discussion, the appellate court was of the opinion that the respondents have proved the relationship of landlord and tenant between the parties and thus answered the Point No.1 in the affirmative. I find myself in complete agreement with the appellate Court on this finding.

28. As a corollary of the above finding in affirmative to Point No.1, under Point No.3 the appellate Court held as under:

"Admittedly, notice under section 18 of the Sindh Rented Premises Ordinance has been issued by the owner showing ownership documents to the respondent, who failed to pay rent. Therefore, they have committed willful default to pay the rent."

29. Under Point No.2, the appellate Court observed that respondent / petitioner disputed the relationship of landlord and tenant between them and it is well-settled law that when the tenant denies relationship of landlord and tenant and if such relationship is proved, then the tenant is to be evicted from the premises. This seems logical as when the tenant is not admitting the relationship of landlord and tenant, then he must not be paying rent to the landlord and therefore, once relationship of landlord and tenant is proved between the parties, the tenant automatically renders himself liable to be evicted on account of default in payment of rent.

30. In the case of Javaid Iqbal (supra), a learned single Bench of this Court on the point of bona fide personal need of the landlord, held as under:

"10. It is well settled that sole testimony of the landlord is sufficient to establish his personal bona fide need for the premises, when his

statement on oath was quite consistent with the averments made in ejectment application and neither his statement was shaken nor anything was brought in evidence to contradict his statement that would be sufficient for acceptance of the ejectment application. While considering the need of landlord in good faith, the Rent Controller has to evaluate the genuineness and honest aspect of statement of the landlord and if the same is not tainted with malice, he should not hesitate to allow the rent application. In this regard, I am fortified by the dicta laid down in case of Iqbal Book Depot and others v. Khatib Ahmed and 6 others (2001 SCMR 1197), wherein the honourable Supreme Court has observed that where the statement of landlord on oath was quite consistent with her averments made in the ejectment application and same had neither been shaken nor anything had been brought in evidence to contradict the statement, such statement on oath would be considered sufficient for the acceptance of the ejectment application.”

31. Learned counsel for the respondents had contended that these petitions are not maintainable as factual controversy is involved in these petitions, suffice it to say that these petitions are assailing the judgment of the Appellate Court whereby the judgment of the trial court was set aside and this Court will only determine whether the appellate judgment suffers from any illegality or from non-reading or misreading of the evidence. This court will not go into any factual controversy as factual controversies cannot be decided by this Court while exercising writ jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. So far as the jurisdiction of the High Court in a Constitutional Petition is concerned, suffice it to observe that High Court cannot substitute its own finding in place of finding of the appellate Court unless it is shown that the same flout the provision of the relevant statute. Reliance can be placed on the case of Muhammad Iftikhar Qureshi (supra), wherein following observation was made:

“12. ...The constitutional jurisdiction of the High Court is limited to interfere in the impugned orders where the appellate judge had flouted the provision of relevant statute or failed to follow the law relating thereto. The High Court has no jurisdiction to substitute his own finding in the findings recorded by the Tribunals below.”

32. In view of the above discussion, I am of the considered opinion that the judgments of the rent controller dated 24.12.2013 in all the three petitions are result of non-reading and mis-reading of evidence and, therefore, were correctly set aside by the appellate Court and the impugned judgment dated 14.03.2016, passed by

District & Sessions Judge, Hyderabad in three Rent Appeals bearing Nos. 03/2014, 04/2014 and 01/2014, whereby the above three appeals were allowed, do not call for any interference by this Court. I find no merit in these petitions, which are hereby dismissed and the Judgments of the appellate Court dated 14.03.2016 are maintained. The petitioners are directed to vacate the demised premises within one month, failing which they shall be evicted without any further notice to them.

33. Office is directed to place a copy of judgment in each file.

Hyderabad, 28th March, 2022.

Judge