

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

**CP No. 3- 55 of 2021**

Petitioners : Bilal and others through  
Farhad Ali Abro, Advocate

Respondents : Babar Ali and others  
through Mazhar Hussain Kalwar, Advocate

Mr. Allah Bachayo Soomro, Addl. A.G.

Date of hearing : 12.9.2022  
Date Order : 23.09.2022

**ORDER**

**ADNAN-UL-KARIM MEMON, J.** Through this constitutional petition, the petitioner has called in question the judgment dated 21.1.2021 passed by learned VIth Additional District Judge / MCAC-II, Hyderabad in First Rent Appeal No. 12 of 2020, whereby the learned Judge while dismissing the Appeal maintained the order dated 27.2.2020 passed by learned VIIth Rent Controller, Hyderabad in Rent application No. 19 of 2017.

2. At the outset I asked learned counsel about the maintainability of the instant petition on the premise that in rent matters, this Court in Constitutional Petition has narrow scope in terms of the ratio of judgment rendered by Honourable Supreme Court in the case of Muhammad Lehrasab Khan v. Mst. Aqeel-un-Nisa and 5 others (2001 3CMR 338), however in the present matter, the petitioners have reservation against the original and appellate orders and in this regard, Mr. Farhad Ali Abro learned counsel for petitioners has briefed this court on the subject issue and submitted that the impugned orders are nullity in the eyes of law, learned Rent Controller, as well as learned appellate court, failed to appreciate that no relationship of landlord and tenant was proved in the rent proceedings as no oral or written agreement to rent was proved. He further argued that the petitioners reside in the premises as legal heirs of original owner. In support of his contentions, he relied upon the statement dated 12.9.2022 along with certain documents and referred to the grounds agitated by him in the memo of petition, and lastly prayed for allowing the instant petition.

3. Mazhar Hussain Kalwar learned counsel for respondents has supported the impugned decisions of both the courts below and submitted that the grandmother of respondent namely Mst. Asoli wife of Muhammad Sharif owner had rented out the rented premises to the respective predecessors of petitioners/opponents and after

her death, the shown premises devolved upon her son Rauf and others and with time it was inherited by respondents/applicants, and further, the petitioners/opponents have been occupying the same as tenants but they committed default in payment of rent hence to vacate the same while plea of petitioners / opponents raised by them in their objections filed to the eviction application is that they are co-owners of rented premises, hence no question of payment of rent could arise. In this regard respondents/ applicants examined their attorney who produced number of documents and then petitioners examined themselves respectively; that the petitioners/opponents in their reply to eviction application denied their being as tenants making categorical statement that no question of payment of rent could arise as they were/are co-owners in the rented premises but contrary to that it is the matter of record that during pendency of eviction application respondents/ applicants filed an application under 16(1) of Sindh Rented Premises Ordinance, 1979 in which they made a request the court to order the petitioners/opponents to pay the arrears of rent till final disposal of the matter and opponent Muhammad Waseem filed objection to this application made a very surprising statement, stating that he along with petitioner/opponents No.1 to 4 is depositing monthly rent before the Nazir of learned 1<sup>st</sup> Senior Civil Judge/Rent Controller-4 Hyderabad and all the receipts were annexed with the objections. In addition to this, learned Rent Controller examined the Nazir of learned 1<sup>st</sup> Senior Civil Judge/Rent Controller Hyderabad who brought the ledger on record opened in Rent application No.81 of 2007 which shows that opponent No.1 kept on depositing the rent of premises right from August 2007 to July 2019 in the name of Abdul Rauf, father of respondents No.5 to 11. Thus such admission by petitioner/opponent Muhammad Waseem coupled with documents produced by Nazir alone was/is sufficient which not only negates the version of petitioners disclosed by them in their joint objections but proved the fact of default in payment of rent. Thus learned Rent Controller as well as the appellate court rightly allowed the eviction application by impugned order which being legal does not call for interference; therefore, the point under discussion is answered in the negative; that the owner may not always be determining factor to establish the relationship of landlord and tenant between the parties. He prayed for the dismissal of the instant petition.

4. I have heard the learned counsel for the parties and perused the record with their assistance.

5. It appears from the record that the respondents filed *rent application with following prayers:-*

- a) *To pass ejectment order against the opponent No.1 for 1st-floor front portion Ward "A" Extract from City Survey No.1881 admeasuring 113-7 sq. yards Silawat Para Prince Ali Road Hyderabad;*
- b) *To pass ejectment order against opponent No.2 for ground floor Ward "A" Extract from City Survey No.1881 admeasuring 113-7 sq. yards Silawat Para Prince Ali Road Hyderabad;*
- c) *To pass ejectment order against the opponent No.3 for 1st floor last portion Ward "A" Extract from City Survey No.1881 admeasuring 113-7 sq. yards Silawat Para Prince Ali Road Hyderabad;*
- d) *To pass ejectment order against the opponent No.4 for 1st floor last portion Ward "A" Extract from City Survey No.1881 admeasuring 113-7 sq. yards Silawat Para Prince Ali Road Hyderabad;*
- e) *To direct the opponents to pay their dues/arrears of rent of their demise premises in possession since fault till today and in future;*
- f) *To direct the opponents to pay monthly rental amount of their respective premises in the Honourable Court till disposal of instant rent mater or till decision of this Honourable Court;*
- g) *Cost of the case may be awarded;*
- h) *Any other / further / additional relief which this Honourable Court may deem fit and proper under the circumstances be also awarded;"*

6. After service, the petitioners / opponents 1, 2, 3 & 4 filed their joint written objections stating therein that opponent No.2 is a shareholder and he challenged the ownership through application U/S 12(2) CPC before the court of IIIrd Senior Civil Judge Hyderabad which was transferred to the court of VIth Senior Civil Judge Hyderabad. Mst. Asoli, the grandmother of applicants never rented out the said property to the grandfather of opponent No.2 through any oral rent agreement therefore the question of renewal of tenancy does not arise and the respondent/ applicants have no concern with the utility bills. Petitioner/Opponent No.3 resides in the demised premises as one of the legal heirs of original owner and respondent/ applicants have no concern with the utility bills while applicants should be put to prove an oral agreement between applicants' grandmother namely Mst. Asoli with the father of opponent No.3 namely Qutub Ali. There was no rent agreement either oral or written executed between the grandmother of applicant and the father of opponent No.4 as opponent No.4 owns demised premises being one of the legal heirs of original owner and applicants have no concern with utility bills. Opponents 1 to 4 are residing in the demised premises respectively in the capacity of legal heirs of original owner. One Haji Umar Din was the owner of demised premises and before creation of Pakistan, he had delivered the demised premises to his daughter namely Mst Halifa who was the grand paternal mother of opponent No.2 and the legal heirs of Haji Umar Din and Mst Halifa remained in possession of demised premises

having inherited the same. Sharif son of Haji Umar Din was the grandfather of applicants 5 to 11 who passed away in the year 1936 whereas Haji Umar Din passed away in the year 1944 while Mst Halifa remained in possession of entire building up to the year 1963 and she died in the year 1963 and nobody received rent from the predecessor of opponents. The father of applicants 5 to 11 filed civil suit for declaration, mandatory and permanent injunction and the father of opponent No.2 namely Roshan Ali was alive and his name was recorded in city survey record at serial No.7 yet he was not impleaded as defendant in that civil suit. On 24.12.2016, opponent No.2 and his sisters filed application U/S 12(2) CPC in FC Suit No. 386/1984 which is reportedly pending before the court of learned VIIIth Senior Civil Judge Hyderabad for decision therefore under such circumstances the opponents cannot be considered as tenants of present respondent/applicants meaning thereby there is no relationship of landlord and tenant between the parties, therefore, rent application was/is required to be dismissed. Because of the plea taken by the petitioners, the learned Rent Controller framed, the issue 'whether a relationship between landlord and tenant exists between the applicants and opponents'. Learned Rent Controller after framing the above issue, recorded the evidence of the parties, and after hearing their counsel allowed the rent application vide order dated 27.2.2020.

7. The petitioners/opponents being aggrieved by the said order preferred FRA No. 12 of 2020 which was also dismissed by learned appellate court vide Judgment dated 21.01.2021; an excerpt whereof is reproduced as under:-

"12. The case of the respondents/applicants, as was set up before the learned Rent Controller, is that their grandmother Mst. Asoli wife of Muhammad Sharif being owner had rented out the rented premises to the respective predecessors of opponents and after her death, the shown premises devolved upon her son Rauf and others and with the passage of time it was inherited by the respondents/applicants and further the appellants/opponents are occupying the same as tenants but they committed default in payment of rent hence to vacate the same while plea of opponents raised by them in their objections filed to the eviction application is that they are co-owners of the rented premises, hence no question of payment of rent could arise. As is discussed above, the respondents/ applicants examined their attorney who produced number of documents and then appellants/examined themselves respectively. Strange to be noted that the opponents in their reply to eviction application denied their being as tenants making categorical statement that no question of payment of rent could arise as they are co-owners in the rented premises but contrary to that it is the matter of record that during pendency of eviction application respondents/applicants filed an application Ex.2 U/S 16(1) of Sindh Rented Premises Ordinance, 1979 in which they made a request to order the opponents to pay the arrears of rent till final disposal of the matter and opponent Muhammad Waseem filed objection to this application at Ex.24 who at para No.3 of his objections made a very surprising statement, quite different to that of the version made by them in their objections filed to

the eviction application, stating that he along with opponents No.1 to 4 is depositing monthly rent before the Nazir of the learned 1<sup>st</sup> Senior Civil Judge/Rent Controller-4 Hyderabad and all the receipts are annexed with the objections. In addition to this, the learned Rent Controller examined the Nazir of learned 1<sup>st</sup> Senior Civil Judge/Rent Controller Hyderabad who brought the ledger on record opened in Rent application No.81 of 2007 which shows that opponent No.1 kept on depositing the rent of premises right from August 2007 to July 2019 in the name of Abdul Rauf, father of respondents No.5 to 11. Thus such admission by opponent Muhammad Waseem coupled with documents produced by Nazir alone is sufficient which not only negates the version of the appellants disclosed by them in their joint objections but proved the fact of default in payment of rent. Thus learned Rent Controller rightly allowed the eviction application by the impugned order which being legal does not call for interference, therefore, point under discussion is answered in negative.

**POINT NO.II.**

13. In the light of the discussion aforesaid, instant first rent appeal stands dismissed and the impugned order passed by learned trial Court shall hold the field. The parties to bear their own costs. Let true copy of order be transmitted to learned trial Court along with R&Ps for information and record.”

8. In my view learned trial court rightly decided the issue of relationship of landlord and tenant as in principle, the Rent Controller is not mandated by the law to determine the question of title of the property assuming the role of Civil Judge. However, if the tenant fails to produce documentary evidence to support his title over the premises in dispute the Rent Controller can determine the relationship between the landlord and tenant. On the aforesaid proposition, reliance is placed on the case of *Ahmed Ali alias Ali Ahmed v. Nasar-ud-Din* **PLD 2009 SC 453.**

9. This is a settled proposition of law that a landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties. However, in normal circumstances in absence of any evidence to the contrary, the owner of the property under his title is presumed to be the landlord and the person in possession of the premises is considered a tenant under the law or the tenancy may not be necessarily created by written instrument in express terms rather may also be oral and implied. In this regard, reliance is placed on the case of *Shajjar Islam v. Muhammad Saddique* **PLD 2007 SC 45.**

10. On the stance of the petitioners about pendency of suit proceedings, it is well settled that mere pendency of suit for declaration, cancellation, partition, mandatory injunction, and permanent injunction by itself is no ground to hold that there is no relationship between landlord and tenant. Even in circumstances

of possession by the tenant was no other capacity but as a tenant. In this regard, reliance is placed on the case of *Allah Yar and others v. Additional District Judge and others* (1984 §CMR 741). Even pendency of suit for declaration, cancellation, partition, mandatory injunction, and permanent injunction is held to be no ground to avoid eviction of tenant by the Rent Controller. The tenant could not be allowed to retain his possession till decision of their title by the Civil Court of competent jurisdiction. In the present case, the petitioner/tenants denied the relationship of landlord and tenant on the purported pleas that a civil suit wherein disputed title of landlord is pending, in such circumstances it is a settled principle of law that the tenant is bound to, first of all, deliver possession of premises in question then to contest his proprietary right in the suit property. In this regard, reliance is placed on the case of *Abdul Rasheed v. Maqbool Ahmed* 2011 §CMR 320. It is settled law that in a case filed for eviction of tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of sale agreement whereafter he would be given easy access to the premises in case he prevails. In this regard, reference can be made to *Shameem Akhtar v. Muhammad Rashid* (PLD 1989 §C 375), *Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi* (PLD 1991 §C 242), *Muhammad Rafique v. Messrs Habib Bank Ltd.* (1994 §CMR 1012), and *Mst. Bor Bibi v. Abdul Qadir* (1996 §CMR 877).

11. In so far as the determination of relationship of landlord and tenant is concerned, such inquiry by the Rent Controller is of summary nature. Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former, he, later on, purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. Even in the tentative rent order, learned Rent Controller has to carry out such summary exercise and decide whether the relationship between the parties exists or otherwise.

12. So far as the point of determining whether a subject premise is required by a landlord for personal use, in this regard, the fundamental importance is to be attached to the statement of landlord himself and if the statement of landlord is confidence-inspiring and no material is on record to detract from its veracity, such statement should be given all important weight and shall not be treated as a statement of an interested person. However, the landlord is also primarily

responsible for establishing his claim, through cogent and reliable evidence. The need has to be reasonable and bona fide and not actuated by bad faith and ulterior motive. Good faith means honesty and not being motivated by an oblique motive. In the present case, nothing has been brought on record by the petitioners to that effect.

13. A review of the judgment passed by learned trial and appellate Courts as discussed supra, shows that it is well reasoned, speaking, and rendered after considering all material aspects of the case within the four corners of law and no illegality, patent error, or material irregularity apparent on the surface, which requires interference of this Court in Constitutional Petition which has narrow scope and this Court could not have taken cognizance of under the Constitutional jurisdiction in terms of the ratio of judgment rendered by Honorable Supreme Court in the case of Muhammad Lehrasab Khan supra.

14. Primarily, all the pleas taken by the petitioners in the present proceedings are found to be untenable in terms of the ratio of the judgments passed by learned courts below as this court does not have to revisit the decisions as discussed supra on the aforesaid purported stance of the petitioners.

15. In the given circumstances, where no mandate is available in the Constitution to openly interfere with the rent proceedings; consequently the Petition is dismissed with costs, with direction to the petitioners/tenants to vacate the demised premises within next 30 days from today and handover the possession of the subject premises to the respondents/landlord.

**JUDGE**