

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

First Rent Appeal No. 3-03 of 2022

[Mst. Farah Naz & another Vs. Mst. Naheed Chandio]

1. For hearing of C.M.A No.1310/2022
2. For hearing of main case

07.11.2022

Mr. Arbab Ali Hakro, advocate for appellants.

Mr. Irfan Ahmed Qureshi advocate for respondent No.1

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Date of hearing : 07.11.2022.
Date of order : 18.11.2022.

ORDER

ADNAN-UL-KARIM MEMON, J. The instant First Rent Appeal has been filed impugning two orders firstly on application under the provisions of section 17 (8) of Cantonment Rent Restriction Act, 1963 dated 02.02.2022 whereby directions issued to tenant/appellant No.1 to deposit future rent at the rate of Rs.100,000/- per month from February 2022, secondly order dated 06.04.2022 passed by the learned Rent Controller Hyderabad Cantt whereby he allowed an application under section 17(9) of the Cantonment Rent Restriction Act, 1963 filed by the respondent/landlady by directing tenant/appellant No.1 to vacate the demised premises bearing House No.34/2, Dr. Ziauddin Road near Dawn News, Hyderabad and its physical peaceful possession be handed over to respondent/landlady within thirty (30) days.

2. Briefly stated the facts necessary for the decision of this lis are that respondent/landlady filed aforesaid applications against appellant No.1 claiming to be the owner of the rented premises, sought her eviction on the grounds of default in payment of rent and personal use. The appellant-tenant failing to comply with the tentative rent order dated 02.02.2022 passed on application under section 17 (8) of Cantonment Rent Restriction Act, 1963 compelled the rent controller to pass final order, directing the tenant/appellant No.1 to vacate the premises in question and handover the peaceful possession to landlady/respondent within 30 days, hence tenant/appellant being aggrieved by and dissatisfied with the above orders has filed First Rent Appeal No.03 of 2022.

3. The main thrust of the arguments advanced by Mr. Arbab Ali Hakro, learned counsel for the appellants is that the impugned rent order dated 02.02.2022 is in violation of order dated 15.11.2021 passed by this Court in First Rent Appeal No.24 of 2021; that learned Rent Controller on his own wisdom fixed the rate of Rs.100,000/- to be deposited by the respondent No.1 whereas another order dated 03.03.2021 showing the rent amount of Rs.65,000/-; that impugned orders are passed without proper reasoning hence same are liable to be set aside; that learned Rent Controller erroneously observed in order dated 06.04.2022 that opponent was barred from withdrawal of rent till final disposal of this rent application but such directions are not contained in order dated 22.02.2022; that objections by way of counter affidavit filed by appellants were not considered by learned Rent Controller and illegally exercised the jurisdiction not vested to him; that the findings of the learned Courts below are arbitrary and perverse. He lastly prayed for allowing the instant petition.

4. Mr. Irfan Ahmed Qureshi, Advocate for the respondent supported the impugned orders by contending that respondent No.1 being a widow needs subject premises for her personal use; that appellant No.1 paid the rent till June 2019 in the sum of Rs.145,000/- per month to the respondent thereafter from January 2020 she could not receive the rent from her, as such, she becomes a willful defaulter of the rent in the sum of Rs.145,000/- along-with increment of 10% so also respondent from January 2020 could not receive the utility bills from her; that cause of action accrued in January 2020 when tenant stopped the payment of rent to her, hence she applied for vacating the premises in question. He lastly prays for dismissal of this First Rent Appeal.

5. I have heard the learned counsel for the respective parties and have also gone through the record with their assistance.

6. The learned Rent Controller Cant Area Hyderabad disposed of the application under Section 17(9) of the Cantonment Rent Restriction Act, 1963, by striking off the defense of the tenant as she failed to comply with the order dated 02.02.2022 passed by the learned Rent Controller in Rent Application No.06/2020. The stance taken by the learned counsel for the appellants was/is that appellant No.1 denied the relationship of landlord and tenant and the learned Rent Controller failed to decide the preliminary issue regarding the relationship of landlord and tenant. Per learned counsel, the husband of appellant No.1 was the tenant of appellant No.2 through a

rent agreement dated 01.01.2020, and the claim of the respondent through a rent agreement dated 16.8.2018 was denied, therefore, the learned Rent Controller ought to have decided the relationship between the parties before passing the tentative rent order in terms of section 17 (8) of the Cantonment Rent Restrictions Act, 1963. Learned counsel also attacked the vires of the order dated 6.4.2022 on the plea that the learned Rent Controller had no jurisdiction to pass the order of eviction of the appellant No.1 from the rented premises as the alleged landlady was not the sole owner of the subject premises. Per learned counsel, Mst. Hina and appellant No.2 are real daughters of respondent and through rent agreement dated 01.01.2020 rent was/is being paid to them through rent receipts therefore, the application under section 17 (8) of the Cantonment Rent Restrictions Act, 1963, filed by the respondent-mother was/is not maintainable under the law; that dispute between the legal heirs of deceased Ashique Hussain (original owner) in FC Suit No.170/2020 for declaration, separate possession, partition, recovery of share and permanent injunction is pending before the learned IInd Senior Civil Judge Hyderabad; and rented house is the subject matter in the above suit; that the appellant No.2 attempted to be made party in the rent proceedings, however, no order could be passed on the application; and learned Rent Controller struck off defense of appellant No.1 in the Rent Application; that the appellant No.2 is co-sharer and landlady of disputed premises and learned Rent Controller failed to entertain her application under Order 1 R 10 CPC and erroneously passed orders dated 02.02.2022 and 06.04.2022, therefore, she has also preferred appeal being co-appellant.

7. The purpose of passing a tentative rent order is to ensure protection to the landlord that the tenant will not run away with his money after utilizing the premises of the landlord and at the same time, the tenant's rights to continue to occupy/use the premises is protected from any unlawful harassment by the landlord to dispossess the tenant. Since the compliance of the tentative rent order was the statutory obligation of the appellant, therefore, because of clear default, the learned Additional Controller of Rents Clifton Cantonment had no option except to strike off the defense of the Appellant. The statutory default committed by the tenant takes away the discretion available to the judicial officer/Court and the use of the word "shall" in Section 17(9) of the Act, 1963 makes it mandatory for the Court to pass an ejection order once the Court concludes that the tenant has failed to comply with tentative rent order.

8. It is also a settled principle of law that once a tenant is always a tenant, thus he could not deny the relationship just to defeat the purpose of the Act, 1963. Perhaps due to the conduct of the appellant/tenant for which the legislature has enacted the provision of tentative rent orders in almost all rent laws throughout the country. Compliance with Sections 17(8) and 17(9) of the Act, 1963 is mandatory. Further, a tenant cannot deny the title of the landlord and cannot challenge the same, unless he is a rival claimant himself, and in such case, he must seek a declaration of the competent court to that effect. Besides Rent Controller was not required to have first framed the issue of the relationship of landlord and tenant in such circumstances before ordering the tenant to vacate the rented premises. It is settled that when a person inducted in the rented premises subsequently denied his/her status as the tenant, it was not a rule of thumb that the Rent Controller was bound to first frame point for determination/issue to such effect and decide it before passing a rent order to secure the interest of the landlord during the pendency of such proceedings. On the aforesaid proposition, I am guided by the decision of the Honorable Supreme Court in the case *Mst. ZARINA KHAN VS Mst. FARZANA SHOAIB* (**2017 SCMR 330**).

9. On the issue of co-ownership of the subject premises and ejection of the tenant, it is a settled principle of law that the Application for ejection filed by the co-sharer cannot be defeated on the ground that remaining co-sharers were not joined as applicants in the ejection application. A co-owner can file ejection proceedings against a tenant without impleading other co-owners. The wisdom behind such a principle is that the co-sharer acts on behalf of and represents the interest of all the co-owners of the property. Reliance is placed on case law reported in (**2002 SCMR 1112**). In the present case, it is not denied that respondent No.1 is not a co-heir/sharer in the subject, and absence of any evidence in rebuttal, there would be a strong presumption of the existence of tenancy between the parties. 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 between landlord and tenant. However, in normal circumstances in absence of any evidence to the contrary, the owner of the property by his title is presumed to be the landlord and the person in possession of the premises is considered as a tenant under the law or the tenancy may not be necessarily created by a written instrument in express terms rather may also be oral and implied. In such a situation, the owner of the property shall be presumed and taken as landlord and the occupier of the same who is not the owner of the premises as the tenant, and this

general principle can only be rebutted if a contesting claimant came up with a declaration of the competent court of law declaring him to be the owner of the property. On the aforesaid proposition, I am guided by the decision of the Honourable Supreme Court in the case of Shajar *Islam vs Muhammad Siddique and 2 others* (PLD 2007 SC 45).

10. Further on the subject, it is well-settled law that on the death of a person, his/her legal heirs become owners of his estate under Muslim law. The Honourable Supreme Court in the case of *Ghulam Ali v Mst. Ghulam Sarwar Naqvi*, PLD 1990 SC 1. it was held that:

“The main points of the controversy on this behalf get resolved on the touchstone of Islamic law of inheritance. As soon as an owner dies, succession to his property opens. There is no State intervention or clergy’s intervention needed for the passing of the title immediately, to the heirs. Thus, it is obvious that a Muslim’s estate legally and juridically vests immediately on his death in his or her heirs and their rights respectively come into separate existence forthwith. The theory of representation of the estate by an intermediary is unknown to Islamic Law of inheritance as compared to other systems. Thus there being no vesting of the estate of the deceased for an interregnum in anyone like an executor or administrator, it devolves on the heirs automatically, and immediately in definite shares and fraction.”

11. In the present case, appellant No.2 being the daughter of respondent No.1 claiming to be co-heir/owner and exclusive possession of the subject premises; and, entered into a separate agreement of rent with appellant No.1, thus submitted that respondent No.1 was/is not entitled to claim ejection of the appellant No.1 from the subject premises who has been paying rent to the appellant No.2, to cater this situation, it is also a well-settled principle of law that though the mere holding of possession does not disentitle other co-owners from claiming a share in the property; and suit in this regard is pending adjudication before the competent court of law, thus it is not for this court to dilate upon the merit of that case in the collateral proceedings, however, there is no cavil with the proposition that if the property is joint, possession of one co-heir is sufficient to be considered as a possession of all co-heirs. Some co-heirs on the ground of exclusive possession cannot defeat the claim of other co-heirs by taking the plea of adverse possession. Persons taking such plea have to produce positive evidence to show exclusion and ouster of other co-heirs. It is well settled that when the

property is inherited by co-heirs of the deceased, then possession of one co-heir is in law possession of all the co-heirs and mere non-participation in profits of property by one co-heir and exclusive possession by others would not be sufficient to constitute adverse possession. Persons making such claims have to show that they were in hostile possession of the property in dispute to the exclusion and ouster of others. On the aforesaid proposition, reliance in this regard is placed on the case of Moolchand and 9 others vs. Muhammad Yousuf (Udhamdas) and 3 others (PLD 1994 SC 462), Shahro and others v Mst. Fatima and others (PLD 1998 SC 1512), and Mst. Omai and others vs. Hakeem Khan and others (1970 SCMR 499).

12. On the proposition of the term personal use, to mean the use of the premises by the owner thereof or his wife (or husband), son, or daughter. Law on the subject is clear that the Rent Controller shall make an order directing the tenant to put the landlord in possession of the premises within such period as may be specified in his order if he is satisfied that the landlord requires the premises in good faith for his occupation or use or the occupation or use of his spouse or any of his children. The law on the subject makes it very clear that the landlord and his spouse or his son or daughter as 'one unit and to be satisfied to hand over the possession to the landlord. There are numerous precedents, where the word (bona fide) to the need of a landlord has been dealt with. A conclusive reading of these precedents shows that for proving bona fides, it is the landlord has to bring evidence of his necessity, desire, and the preparations made by him for using the property for his proposed need. The conclusion from the above examples cements the understanding that where the landlord is bonafide or genuinely requires the property, such bona fide be assessed by the Court only by examining the landlord and the trial Court would not require the testimony of the forthcoming occupier. It is well-settled law that the sole testimony of the landlord is sufficient to establish his bonafide need if the statement of bonafide on oath is consistent with his averment in the ejectment application. On the aforesaid proposition, I am fortified with the judgments of the Honorable Supreme Court rendered in the cases of Muhammad Hayat Vs Muhammad Miskeen and others (2018 SCMR 14441), Pakistan Institute of International Affairs Vs Naveed Marchent And Others (2012 SCMR 1498), Shakeel Ahmed & Ors Vs Muhammad Tarique Farogh & Ors (2010 SCMR 1925), Zarina Ayaz Vs Khadim Ali Shah (2003 SCMR 1398), Abdul Rehman Through Legal heirs & Ors Vs Pakistan State Oil Company Ltd & Ors (PLD 2004 SC 921).

13. In view of the above facts, the findings of the Court are not impeachable. Consequently, this First Rent Appeal is dismissed along with the pending application. Appellant No.1 is directed to vacate the demised premises within 30 days from the date of this order. In case she fails to vacate the same, the executing Court as soon as it receives an execution application should issue the writ of possession with police aid to ensure delivery of possession of the demised premises to the respondent/landlady, subject to her entitlement of share in the suit property, pending adjudication which needs to be decided to enable the parties to have their respective share in the subject premises under law.

JUDGE