

THE HIGH COURT OF SINDH, KARACHI

Suit No. 570 of 2020

[Sadaqat Hussain versus Mrs. Shamim Ishaq]

Plaintiff : Sadaqat Hussain son of Barkat Ali Awan through Mr. Muhammad Nazir Tanoli, Advocate.

Defendant : Mrs. Shamim Ishaq widow of Muhammad Ishaq (Late) through Mr. S.M. Intikhab Alam, Advocate.

Suit No. 1968 of 2021

[Mst. Shamim Ishaq versus Sadaqat Hussain]

Plaintiff : Mst. Shamim Ishaq widow of Muhammad Ishaq (Late) through Mr. S.M. Intikhab Alam, Advocate.

Defendant : Sadaqat Hussain son of Barkat Ali Awan through Mr. Muhammad Nazir Tanoli, Advocate.

Date of hearing : 25-04-2022.

Date of decision : 05-09-2022.

ORDER

Adnan Iqbal Chaudhry J.- Suit No. 570/2020 is by Sadaqat Hussain against Shamim Ishaq for specific performance of a sale agreement dated 12-07-2019 in respect of House No. R-277, comprising of ground plus 2 floors and a pent house, over 120 square yards, situated in Block-9, Federal B-Area, Karachi [**suit premises**]. Suit No. 1968/2021 is by Shamim Ishaq *inter alia* for cancellation of that very sale agreement.

2. In Suit No. 570/2020, Sadaqat has moved CMA No. 4545/2020 under Order XXXIX Rules 1 & 2 CPC to restrain Shamim from creating third party interest in the suit premises; whereas Shamim has moved CMA No. 14635/2021 under section 151 CPC for a direction to Sadaqat to deposit Rs. 35,000,000/- that is mentioned in the sale agreement as the sale consideration. Shamim's counsel submitted that the latter application has been moved not because she acknowledges

the alleged sale agreement, but to put Sadaqat on terms who is enjoying the suit premises without payment under an interim order passed by this Court. In Suit No. 1968/2021, Shamim has moved CMA No. 14592/2021 under Order XXXIX Rules 1 & 2 CPC to restrain Sadaqat from creating third party interest in the suit premises; and CMA No. 14593/2021 under section 151 CPC for a direction to Sadaqat to deposit the rent of Rs. 22,000/- he is admittedly receiving from a tenant inducted by him in the suit premises.

3. Sadaqat's case is that he runs a registered partnership firm under the name and style 'M/s. Goat2goats'; that by letter dated 20-05-2019, Shamim expressed the desire to purchase a 10% share in the firm; that by a sale agreement dated 12-07-2019, Sadaqat agreed to sell to Shamim a 10% share in the firm out of his share of 90%; that the parties valued such 10% share at Rs. 35,000,000/-; that in consideration of the share transfer, Shamim agreed to transfer the suit premises to Sadaqat; that in furtherance thereof, Shamim was inducted as a 10% partner in the firm by way of an amendment to the partnership deed. It is further pleaded by Sadaqat, that subsequently, the parties entered into another agreement dated 15-07-2019, whereby Shamim agreed to sell back to Sadaqat a 5% share in the firm for a sale consideration of Rs. 17,500,000/- payable by Sadaqat over a period of two years in installments of Rs. 80,000/- per month which he is paying regularly. Per Sadaqat, after one month of the sale agreement dated 12-07-2019, Shamim evicted her tenants from the suit premises and delivered possession of the suit premises to him, where after he proceeded to let the ground floor to a tenant; that Shamim then called upon Sadaqat to pay Rs. 800,000/- to clear outstanding taxes and charges in respect of the suit premises; that when Sadaqat protested, Shamim tried to dispossess him; hence the suit for specific performance.

4. On the other hand, it is Shamim's case that all documents brought forth by Sadaqat are forged and fabricated; that she had never signed any of the alleged agreements of partnership or sale; that Sadaqat was her tenant at the ground floor of the suit premises @ Rs. 22,000/- per month under a tenancy agreement dated 02-02-2018; that subsequently the parties had also entered into another tenancy agreement dated 01-07-2019¹ whereby Shamim let the upper floors of the suit premises as well to Sadaqat @ Rs. 58,000/- per month, making the total rent payable by him at Rs. 80,000/- per month; that in March, 2020, Sadaqat stopped paying rent, and in order to usurp the suit premises he fabricated documents to file Suit No. 570/2020; hence the suit for cancellation.

5. Shamim has also filed Rent Case No. 382/2020 before the Rent Controller for ejecting Sadaqat from the suit premises where Sadaqat has taken the defense that in view of the sale agreement dated 12-07-2019 there is no relationship of landlord and tenant between the parties. By a consent order, the Rent Controller adjourned the rent case *sine die* owing to Suit No. 570/2020.

6. Heard the learned counsel and perused the record.

7. The fact central to the case set-up by Sadaqat is that Shamim had agreed to transfer the suit premises to him under the sale agreement dated 12-07-2019 in consideration of a 10% share in a partnership firm, and it was thereafter that she was inducted as a partner by way of an amendment to the partnership deed of the firm. But that pleading is contrary to the documents annexed with the plaint which reflect that the amended partnership deed was made on 28-06-2019 i.e. before the sale agreement dated 12-07-2019. The certificate issued by the Registrar of Firms that Shamim has been inducted partner in the firm, is also dated 02-07-2019 i.e. before the sale agreement dated 12-07-2019. If Shamim had already been

¹ Copy of tenancy agreement dated 01-07-2019 has been filed by Shamim with her written statement in Suit No. 570/2020.

inducted partner in the firm on 28-06-2019, then the entire premise of the sale agreement dated 12-07-2019 turns out to be false.

8. Furthermore, while the sale agreement dated 12-07-2019 recites that the business of the firm is that of goat farming, the case set-up by Sadaqat does not explain how the parties purportedly arrived at the value of Rs. 35,000,000/- for a 10% stake in such business, and then equated that share to the value of the suit house. Sadaqat has not filed any balance sheet of the firm, any evaluation undertaken for determining the price of the suit premises, nor any document to show that the assets or profits of the firm were so substantial that Shamim, a widow deriving rental income from the suit premises, would straightway offer up her immovable property in lieu of a 10% stake in the firm. Even more incredible is the averment that only after 3 days of the sale agreement dated 12-07-2019, Shamim executed another agreement dated 15-07-2019 to sell back to Sadaqat half of the share she had just purchased from him, and that too for a price payable in monthly installments over a period of two years. The installment amount of Rs. 80,000/- per month if paid over two years also does not add up to the sale consideration of Rs. 17,500,000/- mentioned in that agreement.

9. To assert that Sadaqat is in fact a tenant at the suit premises, Shamim relies upon a tenancy agreement dated 02-02-2018 (as per the date it was notarized) executed by her son as landlord, letting the ground floor of the suit premises to Sadaqat @ Rs. 22,000/- per month; and then a tenancy agreement dated 01-07-2019 executed by Shamim also letting the upper floors to Sadaqat @ Rs. 58,000/- per month, making the total rent payable as Rs. 80,000/- per month. The first tenancy agreement bears the endorsement of the Jauharabad Police Station dated 02-02-2018, which *prima facie* reflects that such document existed as on 02-02-2018 and was not created afterwards as alleged by Sadaqat. Though Sadaqat asserts that he came into possession of the suit premises after '*one month*' of the sale

agreement² dated 12-07-2019, that is belied by the amended partnership deed dated 28-06-2019 and the sale agreements dated 12-07-2019 and 15-07-2019 relied upon by Sadaqat himself, all of which show his address as that of the suit premises. These facts demonstrate *prima facie* not only that Sadaqat was a tenant of the suit premises prior to the alleged sale agreement dated 12-07-2019, but also that the second agreement dated 15-07-2019 whereby he purportedly bought back 5% shares in the firm from Shamim at a monthly installment of Rs. 80,000/, is a document created in hindsight to give a different color to the rent of Rs. 80,000/- being paid by Sadaqat to Shamim.

10. In the circumstances discussed above where Sadaqat's pleadings are contradicted by his own record, and *prima facie* he appears to be a tenant at the suit premises, he does not have a *prima facie* case for a temporary injunction to restrain Shamim from exercising her rights as owner of the suit premises, and therefore it is futile to argue that a temporary injunction should nonetheless follow simply so that the suit can run its course.

11. Coming now to the application moved by Shamim seeking a direction to Sadaqat to deposit rent in this Court. When confronted with the special remedy provided for such purpose under section 16 of the Sindh Rented Premises Ordinance, 1979, learned counsel submitted that until the relationship of landlord and tenant is finally determined by this Court in these suits, the Rent Controller cannot exercise jurisdiction. That, in my view, is not a correct statement of the law.

12. It was held in *Hayatullah v. Abdul Rasheed* (2000 SCMR 845) that:
“.... it is not an inflexible rule that whenever relationship of landlord and tenant is denied the Rent Controller is invariably bound to refer the applicant to approach the Civil Court for establishment of his ownership. Every case is to be decided on its own peculiar facts. If it is found that the denial by the tenant of the relationship of tenant and landlord is frivolous and baseless as he has not been able to urge

² Per para 5 of the plaint of Suit No. 570/2020.

or bring anything substantial in support of his plea and that the stand of the landlord is supported by solid and cogent evidence on record, then the Rent Controller would be failing in his jurisdiction not to decide the controversy himself and instead directing the parties to resolve the dispute in the Civil Court.”

In *Muhammad Iqbal Haider v. Vth Rent Controller, Karachi Central* (2009 SCMR 1396) it was held that the institution of civil suits, one by the tenant for specific performance of a sale agreement, and the other by the landlord for cancellation of the same, would not *per se* take away the jurisdiction of the Rent Controller under section 16(1) of the Sindh Rented Premises Ordinance, 1969; and that where it is demonstrated *prima facie* to the Rent Controller that a relationship of landlord and a tenant exists between the parties, he is competent to pass an order for deposit of rent.

In *Jumma Khan v. Zarin Khan* (PLD 1999 SC 1101) it was held that till the time the tenant is able to establish his claim for specific performance on the basis of an alleged sale agreement, the landlord would continue to be landlord of the premises, the relationship between the parties would continue to be regulated by the terms of the tenancy, and ejectment proceedings cannot be resisted by taking shelter under section 53-A of the Transfer of Property Act, 1882.

It has further been held in *Iqbal v. Rabia Bibi* (PLD 1991 SC 242) that ejectment proceedings cannot be stayed or stalled on a plea that the tenant in possession holds an agreement to sell from the landlord; that while the tenant pursues his suit for specific performance of such agreement, that cannot be at the cost of the landlord/owner; that in the event the tenant is ejected by the Rent Controller and he subsequently obtains a decree for specific performance, he can be put in possession in execution of such decree.

13. In view of the case-law discussed above, Shamim’s remedy for seeking deposit of rent from Sadaqat is under section 16 of the Sindh Rented Premises Ordinance, 1979 before the Rent Controller where she has already filed a rent case to eject Sadaqat. The application before this Court for such purpose is misconceived. The submission of learned counsel that the Rent Controller has declined to exercise

such jurisdiction is also incorrect as the Rent Controller has only adjourned the rent case *sine die* and that too on Shamim's application.

14. For the foregoing reasons, CMA No. 4545/2020 moved by Sadaqat in Suit No. 570/2020 is dismissed. As a result, CMA No. 14635/2021 by Shamim seeking deposit of the sale consideration as a condition to the grant of any injunction to Sadaqat, is of no further purpose and is accordingly dismissed. Regards CMA No. 14592/2021 by Shamim in Suit No. 1968/2021, since she is admittedly title holder of the suit premises, the application is allowed as prayed. However, CMA No. 14593/2021 by Shamim seeking deposit of rent is dismissed leaving her to the remedy available under the Sindh Rented Premises Ordinance, 1979.

JUDGE

Karachi
Dated: 05-09-2022