IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Const. Petition No.S-159 of 2022

Petitioner:	Ghaffar Ahmed @ Javed Ghaffar Through Mr. Moizuddin Qureshi Advocate
Respondent No.1	Mst. Anam Rehan, through Suhail-ur-Rehman Shaikh, Advocate
Respondents No.2 & 3:	District Judge Sukkur and another through Mr. Noor Hassan Malik, Assistant Advocate General
Date of hearing:	31.10.2022, 07.11.2022 and 14.11.2022
Date of decision:	01.12.2022

O R D E R

KHADIM HUSSAIN TUNIO, J.- Through instant petition, the petitioner has impugned the order dated 21.09.2022, passed by the learned District Judge, Sukkur in Rent Appeal No.05/2022, whereby the learned appellate court dismissed the appeal filed by the petitioner and upheld the order dated 22.04.2022, passed by the learned Rent Controller.

2. The facts of the case as mentioned in the impugned order by the appellate Court are as under:-

> "Brief facts of the Rent Application No.24/2020 are that the respondent/applicant (hereinafter be referred as respondent) is co-owner of the shop bearing CS No.B-2813 admeasuring 40-8 Sq.Yards situated at Sarafa Bazar Sukkur whereby property/01 shop is constructed over there. The appellant/opponent (hereinafter be referred as appellant) entered into rent agreement with the respondent on 22.01.2019 for the demises premises in the sum of Rs.25,000/-, per month and the advance of Rs.100,000/- was deposited at that time. The

> tenancy started w.e.f 01.02.2019 and ended in January, 2020 and by consent it continued till November, 2020 when the agreement expired and the respondent did not want to carry on the rent agreement and thereby send legal notice dated 23.11.2020 to the appellant which is received on 24.12.2020 by one "Don Hassan" who failed to reply and so also did not pay the rent for the month of December, 2020 and committed default.

3. Learned counsel for the petitioner has contended that the respondent Mst. Anam Rehan executed rent agreement dated 22.01.2019 with the appellant Ghaffar Ahmed alias Javed Ghaffar after receiving Rs.100,000/- and let out the shop for eleven months on rent at the rate of Rs.25,000/- per month; that on expiry of eleven months, no default was committed and then the respondent sold out her 50% share to the petitioner/appellant through sale agreement dated 10.04.2021 for a total consideration of Rs.12,500,000/- and the same amount was paid to the respondent which has been admitted by the attorney of the respondent; that after purchasing the land, the relation of landlord and tenant no longer existed between the parties as such the respondent could not file ejectment application; that the petitioner/appellant has already filed a suit for specific performance of contract which is pending before the 1st Senior Civil Judge Sukkur. In support of his contentions, learned counsel has referred the case law reported as Kalimuddin Ansari v. Director Excise and Taxation Karachi and another (PLD 1971 SC 114), Khawaja Ammar Hussain v. Muhammad Shabbiruddin Khan (1987 CLC 1149), Mst. Hajra Bai v. Muhammad Hassan Khan (1989 CLC 1481), Messrs Mustehoam Construction Company v. Mst. Razia Sultana (1990 CLC 584), S. Zahir Hussain v. Mahbub Jaffer Ali (1991 CLC 1256), Allah Rakha v. Ashfaq Ali

(1995 MLD 874), Muhammad Ishaq v. Syed Muhammad Zubair (1996 MLD 797), Syed Tahawar Hussain Kazmi v. Haji Muhammad Ismail (2002 AC 868), Tanvir Rajput and others v. Mst. Rakia Dada and others (2003 YLR 2069) and Mian Umar Ikram-ul-Haque v. Dr. Shahida Hasnain and another (2016 SCMR 2186).

4. Conversely, learned AAG assisted by the learned counsel for the respondent No.1 have supported the impugned judgment while contending that the judgment passed by the two courts below do not require any interference as the same are legal; that mere pendency of a suit for specific performance would not come in the way of an ejectment application because the petitioner/appellant was a defaulter; that the petitioner/appellant has not been able to prove his exclusive possession over the suit land. In support of these contentions, learned counsel for the respondent No.1 has cited the case law reported as Samiullah v. Hameed Kausar and 5 others (1988 CLC 131), Mirza Muhammad Sharif and 2 others v. Mst. Nawab Bibi and 4 others (1993 SCMR 462), Muhammad Ilyas v. Hussaini (2000 MLD 160), Amirzada Khan and others v. Ahmad Noor and others (PLD 2003 SC 410), Muhammadi Begum v. Abdul Latif and others (2006 YLR 1588), (Abdul Rehman and another v. Zia-ul-Haque Makhdoom and others 2012 SCMR 954) and Noor Maidar v. Altaf Ahmad Khan (2014 YLR 468).

5. I have heard the learned counsel for the respective parties and perused the record available before me.

6. The controversy involved in the instant matter is the relationship between the petitioner and respondent No.1; whether the same had remained that of a landlord

and tenant or not? To this extent, firstly the petitioner Ghaffar Ahmed had denied any tenancy, but in his cross-examination before the learned trial Court he admitted the same by stating that *"It is correct to suggest that as per rent agreement dated 22-01-2019 I am the tenant in the demised premises, and the applicant Mst. Anum is my land lord... It is correct to suggest that I have denied status of applicant as owner in my written statement... It is correct to suggest that I have denied status of applicant as owner in my written statement... It is correct to suggest that I have also denied from rent agreement in my written statement."* These admissions invariably suggest that there existed a relationship of landlord and tenant between the respondent No.1 and petitioner. The question, now, is whether such a relationship ceased to exist once the alleged sale agreement was created. It is important to note that the sale agreement, so relied on by the petitioner, had a clause therein stating in clear terms that the petitioner would continue paying rent at the rate of Rs. 15,000/- until 10.04.2024, 3 years from the execution of the sale agreement dated 10.04.2021. In agreeing to pay the same, he continued to be a tenant against the suit land which belonged to the respondent No.1. For this, even pay orders pertaining to payment of such rent is available on the record up until the year 2022.

7. On a legal plane, the question whether the relationship of landlord and tenant is terminated through a sale agreement has been a long standing controversy in similar lis before the Superior Courts of Pakistan. This would be easy to establish where there existed a special clause in the sale agreement stating that such relationship has come to an end, however in the absence of such a clause, it has been the consistent view of the Courts in this

country and law pertaining to such agreements all over the common law countries that a mere agreement to sell does not terminate the existence of landlord-tenant relationship, unless done so explicitly. In the case of ***Iqbal and 6 others v. Rabia Bibi*** **(PLD 1991 SC 242)**, the Hon'ble Apex Court was pleased to observe that:-

> "Be that as it may, in some recent Judgments this court has taken the view that in case like the present one, where the sale agreement or any other transaction relied upon by a tenant is seriously and bona fide disputed by the landlord, the appellant/tenant cannot be allowed to return the possession during the litigation; where he continues to deny the ownership of the landlord who had included him as a tenant, without any condition and / or reservation. It has been ruled that in such cases although the tenant has a right to adduce evidence and take a short time for that purpose to remain in occupation despite having set up a hostile title which is denied by the landlord; but ***on the well-known bar of estoppel in this behalf, he (the tenant) cannot be permitted to remain in occupation and fight the litigation for long time—even for decades.*** In this case it is more than a decade that the appellants have been able to keep the possession on a claim which the landlord assets in false. ***Accordingly, as held in those cases in fairness to both sides, while the tenant is at liberty to prosecute the litigation wherein he should try to establish his claim but it should not be at the cost of landlord/owner. It should be at the cost of himself and he must vacate—though of course he would be entitled to an easy and free entry as soon as he finally succeeds in establishing his title against his own landlord.*** See Makhan Ban V. Haji Abdul Ghani (PLD 1984 SC 17), Allah Yar and others V. Additional District Judge and others (1984 SCMR 741) and Province of Punjab Vs. Mufti Abdul Ghani (PLD 1985 SC 1)."
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> ***(emphasis supplied)***

8. This view was reiterated by the Hon'ble Apex Court in the case of ***Nabi Bux v. Mst. Naseem*** **(2000 SCMR 1604)**, wherein it was observed that:-

> "In the case of Iqbal and 6 others V. Mst. Rabia Bibi (PLD 1991 SC 242) plea of the tenants to stay ejectment was declined and the fact that they

> were tenants in possession and where holding an agreement of sale and had filed a suit for specific performance of such agreement, was held to be of no consequence. Reference may also be made in this regard to Muhammad Rafique V. Messrs Habib Bank Ltd. (1994 SCMR 1012). In this case also relief under section 53-A of the Transfer of Property Act was declined to the tenant in absence of any clause in the sale agreement indicating that the relationship and the tenant had ceased to exist and the position of the tenant was that of a purchaser after execution of the sale agreement."

9. In view of the above case law, by taking such a plea, the petitioner/tenant leaves himself with no other option but to put the landlord into possession and then proceed for enforcement of his rights. In this respect, the learned trial Court had rightly relied on the case of ***Abdul Rasheed v. Maqbool Ahmed & others*** **(2011 SCMR 320)**.

10. Now coming to the question of fair use of land and the main purpose of filing of ejectment application, in such like cases the landlord would only require to establish that requirement is reasonable and does not appear to be *mala fide* one. In such eventuality the initial burden would stand discharged when landlord, having stepped into witness box, reiterated on Oath the reasonableness for such occupation. This would carry presumption of truth hence strong evidence would be required from tenant to rebut it. In this respect, reliance is placed on the case of ***Mehdi Nasir Rizvi v. Muhammad Usman Siddiqui*** **(2000 SCMR 1613)** wherein it has been observed that:-

> "4....there is no circumstance available on record tending to show that the desire of the respondent to use his own property is tainted with malice or any evil design. In fact respondent's statement on oath has not been seriously challenged and in law it being consistent with the case pleaded by him must be accepted on its face value and given due weight. In the absence of any strong evidence to rebut the presumption of truth in the statement of the respondent it is difficult to dislodge the

> conclusion drawn by the learned Rent Controller as well as the learned High Court."

11. Furthermore, the findings of the two Courts below are found to be concurrent. It is well settled principle of law that the High Court in exercise of its constitutional jurisdiction is not supposed to interfere in the findings on the controversial question of facts, even if such findings are erroneous. The scope of the judicial review of the High Court under Article 199 of the Constitution in such cases, is limited to the extent of mis-reading or non-reading of evidence or if the findings are based on evidence which may cause miscarriage of justice but it is not proper for this Court to disturb the findings of facts through reappraisal of evidence in writ jurisdiction or exercise this jurisdiction as substitute of revision or appeal. In the case of ***Farhat Jabeen v. Muhammad Safdar and others*** **(2011 SCMR 1073)** wherein the august Supreme Court of Pakistan as under:--

> "Heard. From the impugned judgment of the learned High Court, it is eminently clear that the evidence of the respondent side was only considered and was made the basis of setting aside the concurrent finding of facts recorded by the two courts of fact; whereas the evidence of the appellant was not adverted to at all, touched upon or taken into account, this is a serious` illegality committed by the High Court because it is settled rule by now that interference in the findings of facts concurrently arrived at by the courts, should not be lightly made, merely for the reason that another conclusion shall be possibly drawn, on the reappraisal of the evidence; rather interference is restricted to the cases of misreading and non-reading of material evidence which has bearing on the fate of the case."

12. Similar view was taken again by the Hon'ble Apex Court in the case of ***Sardar Kamal-ud-Din Khan v. Syed Munir Syed and others*** **(2022 SCMR 806)**.

13. For what has been discussed above, I am of the considered view that the petitioner has failed to point out

any illegality or irregularity in the concurrent findings arrived at by the learned two Courts below. As such, instant constitution petition is dismissed being meritless.

J U D G E