

# IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.S-673 of 2018

[Muhammad Sabir .....v..... Muhammad Azeem & others]

Date of Hearing : 13.03.2023  
Petitioner through : Mr. Adnan Ahmed, Advocate.  
Respondents through : Mr. Yousuf Moulvi, Advocate for respondent No.1 & 2.  
Mr. Samil Malik Khan, Advocate.

## ORDER

**Zulfiqar Ahmad Khan, J:-** This petition assails the concurrent findings of the learned trial Court dated 24.01.2012 as well as first Appellate Court dated 07.02.2018.

2. It is claimed by the petitioner in his petition that he is owner of shop No. 12, Taj Market, plot No.V-e/4, Paposh Nagar, Karachi (“tenement”) and owing to the default in payment of rent as well as sub-letting by the respondent No. 1 & 2, the petitioner filed a rent case No.380/2006 under Section 15 of Sindh Rented Premises Ordinance, 1979 (“SRPO”) before the learned Rent Controller which was dismissed vide order dated 24.01.2012 on the ground that no default in payment of rent had been committed by the respondent as well as personal bona fide need was also not proved. The Petitioner impugned the said order of the learned Rent Controller before the Appellate Court by filing FRA No.54 of 2012 which was also dismissed vide order dated 07.02.2012 (“Impugned Order”) and order of the learned trial Court was upheld, hence the petitioner before this Court against the concurrent findings of the courts below.

3. The petitioner’s entire case was premised on the argument that petitioner is one of the co-sharer in the tenement which he

proved through concrete evidence but the learned Courts' below failed to consider the submissions as well as material documents produced by the petitioner passed the impugned Judgments against the petitioner which are erroneous in nature, therefore, the same be set aside.

4. In contrariwise, learned counsel for the respondent No.1 & 2 argued that concurrent findings of the Courts below are upon correct appreciation of law and facts presented by the respondent No.1 & 2 and concurrent findings cannot be disturbed, therefore, the petition be dismissed.

5. I have heard learned counsel for the parties at length and have also scanned the available record. It is considered pertinent to initiate this deliberation by referring to the settled law that learned trial Court i.e. Rent Controller is the fact finding authority and the purpose of appellate jurisdiction is to reappraise and reevaluate the judgments and orders passed by the lower forum in order to examine whether any error has been committed by the lower court on the facts and/or law, and it also requires the appreciation of evidence led by the parties for applying its weightage in the final verdict. It is the province of the Appellate Court to re-weigh the evidence or make an attempt to judge the credibility of witnesses, but it is the Trial Court which is in a special position to judge the trustworthiness and credibility of witnesses, and normally the Appellate Court gives due deference to the findings based on evidence and does not overturn such findings unless it is on the face of it erroneous or imprecise. The learned Appellate Court having examined the entire record and proceedings made so available as well as having gone through the

verdict of learned trial Court i.e. learned Rent Controller went on to hold as under:-

“On the perusal of record it appears that the appellant is one of the legal heirs of deceased Muhammad Ahmed. However, there are so may legal heirs of both sisters of deceased Muhammad Ahmed and their title is still under clouds as M/s. Darul Uloom Korangi has also set adverse claim of title against them. In such circumstances, the respondents were not supported to offer rent in person or send the same through money order to any one of them, therefore, he had rightly deposited the rent in MRC. Furthermore, therefore, he had rightly deposited the rent in MRC. Furthermore the appellant himself mentioned in Rent Case No.380 of 2006 that her wife was “ailing in pain of joint and unable to walk”, therefore, she could not runt coaching center. Accordingly, neither default was proved nor the premises appeared to be required for personal need of the appellant and his family and the learned Rent Controller rightly dismissed ejection application filed by the appellant. The impugned order passed by the learned Rent Controller does not required interference of this Court and the instant appeal is hereby dismissed.

[Emphasis supplied]

6. It is gleaned from appraisal of the foregoing that the neither any default in payment of rent was proved by the petitioner before the learned Rent Controller nor personal bona fide need, however, the petitioner admitted during course of cross-examination that his sister is unable to run coaching center in the tenement owing to her ailment. It is considered expedient to illustrate here that the petitioner in the instant petition also filed another petition bearing C.P. No.S-1321 of 2019 which was also dismissed by this Court vide order dated 13.03.2023 and relevant paras of the said order would be of worth reproduction hereunder:-

“It is gleaned from appraisal of the foregoing that the petitioner failed to produce any concrete evidence before the learned trial Court that he is the owner of the tenements rather admitted there are 44 co-owners of the tenements which constructed in a building known as Taj Market. It would be conducive to reproduce the relevant excerpt of cross-examination of the petitioner which are delineated hereunder:-

“it is correct that original owner of the property in question was Haji Muhammad Ahmed, who has been died. It is correct still

property in question is in the name of deceased Haji Muhammad Ahmed. It is correct deceased owner has left behind only two sisters, later on both died. It is correct to say that Mst. Sherin Sukhan is daughter of my maternal aunt Jamila Begum. It is correct to say that there are 44 co-owners/co-sharers of the property in question.

It is correct I filed SMA No.266/2004 before Hon'ble District Judge Karachi for obtaining letter of administration which was issued in my name and later on cancelled on the application/objection of mst. Shirinsukhan.

It is correct to say that out of 44 co-owners no one given any power of attorney to me for filing of this rent case.

I do not have original title documents of plot No.VE/4 Paposh Nagar Karachi.

It is correct I do not have copy of tenancy agreement executed by me which the opponent No.1.

It is correct till to date after passage of long time still no any decision has been given in my favour."

It is gleaned from appraisal of the foregoing that the petitioner having adduced his examination-in-chief before the learned trial Rent Controller was put to the test of cross-examination whereby he admitted that there are 44 other co-owners of the subject property but none had given him any authority/power to file rent proceedings against the tenants/respondents for their ejection. It further unfurls from appraisal of the foregoing that the petitioner admitted that he initiated proceedings under Succession Act for obtaining letter of administration of the subject property which was granted too but later on was recalled by the concerned Court. It is expedient to illustrate here that the petitioner miserably failed to establish the relationship of landlord and tenant which is the moot point of rent proceedings before considering the same.

It is well established legal position that after demise of the original owner, his legal heirs would be construed as 'owner' within definition of Section 2(f) of the Sindh Rented Premises Ordinance, 1979, but in the instant case, neither any letter of administration had been introduced

on record by the petitioner rather he admitted (as reproduced supra) that though the letter of administration was granted to him but was later on withdrawn/ cancelled upon the application of the other co-owners. It is also an admitted position that the petitioner went on to admit that approximately 43 other co-owners of the subject property/building did not accord any power of attorney to him to initiate eviction proceedings. There is no denial that the tenant since then has been paying rent through MRC.”

7. It is common knowledge that the object of exercising jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (“Constitution”) is to foster justice, preserve rights and to right the wrong where appraisal of evidence is primarily left as the function of the trial court and, in this case, the learned Rent Controller which has been vested with exclusive jurisdiction. In constitutional jurisdiction when the findings are based on mis-reading or non-reading of evidence, and in case the order of the lower fora is found to be arbitrary, perverse, or in violation of law or evidence, the High Court can exercise its jurisdiction as a corrective measure. If the error is so glaring and patent that it may not be acceptable, then in such an eventuality the High Court can interfere when the finding is based on insufficient evidence, misreading of evidence, non-consideration of material evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where an unreasonable view on evidence has been taken. No such avenues are open in this case as both the judgments are well jacketed in law. It has been held time and again by the Apex Court that findings concurrently recorded by the courts below cannot be disturbed until and unless a case of non-reading or

misreading of evidence is made out or gross illegality is shown to have been committed.<sup>1</sup>

8. In view of the rationale and deliberation delineated above, the petition at hand is dismissed alongwith pending application.

Karachi  
Dated: 13.03.2023.

Aadil Arab.

JUDGE

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<sup>1</sup> Farhan Farooq v. Salma Mahmood (2022 YLR 638), Muhammad Lehasab Khan v. Mst. Aqeel un Nisa (2001 SCMR 338), Mrs. Samina Zaheer Abbas v. Hassan S. Akhtar (2014 YLR 2331), Syed Shariq Zafar v. Federation of Pakistan & others (2016 PLC (C.S) 1069).