

ORDER SHEET
THE HIGH COURT OF SINDH, KARACHI
C. P. No.S-515 of 2023

Dated: Order with signature of Judge(s)

- 1.For orders on Office Objection as at 'A'.
- 2.For orders on CMA No.4047/2023.
- 3.For orders on CMA No.4048/2023.
- 4.For hearing of Main Case.

Date of Hearing : 2 June 2023

Petitioner : Shakeel Ahmed Khan through
Mr. Naimutalh Khan Marwat, Advocate.

Respondents : Mst. Shinreen Jamal & Others.

ORDER

Mohammad Abdur Rahman, J. The Petitioner has maintained this Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, impugning the order dated 4 May 2023 passed by the XIIIth Additional District & Sessions Judge Karachi (East) in First Rent Appeal No. 20 of 2023 emanating from an order dated 2 February 2023 passed by the VIth Rent Controller Karachi (East) in Rent Case No. 1 of 2021 on two applications under Rule 10 of Order 1 of the Code of Civil Procedure, 1908 and under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908.

2. Rent Case No. 1 of 2021 had been instituted by the Respondent No. 1 seeking the eviction of the Respondent No. 5 from the first floor of House No.A-124, Block-2, Gulshan-e-Iqbal, Karachi (the "Said Tenement"). Rent Case No. 1 of 2021, had been granted in favour of the Respondent No. 1 by an order dated 14 March 2022 whereby the Respondent No. 5 had been directed to hand over possession of the Said Tenement to the Respondent No. 1. It is apparent that the order dated 14 March 2022 was assailed by the Respondent No. 5 in FRA No. 56 of 2022 and which was also dismissed. The Respondent No. 5 had thereafter preferred a petition before this Court

bearing C.P. No. S-496 of 2022, which was also dismissed vide an order dated 30 October 2022 and the matter reverted back to the court of the VIth Rent Controller Karachi (East) for execution of the order dated 14 March 2022 passed by that court in in Rent Case No. 1 of 2021.

3. At this belated stage in execution proceedings the Petitioner, who was not a party in the proceedings in Rent Case No. 1 of 2021, filed:

- (i) an application under Rule 10 of Order 1 of the Code of Civil Procedure, 1908 alleging that as he had acquired the title to Plot No. A-124, Block-2, Gulshan-e-Iqbal, Karachi, admeasuring 240 square yards by a Sale Deed dated 18 December 2008 which was registered at No. 955 of Book-I in the office of the Sub-Registrar Gulshan-e-Iqbal Town, Karachi he should be impleaded as a party in Rent Case No. 1 of 2021; and
- (ii) an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 seeking to set aside the Judgment and Decree dated 14 March 2022 passed by the VIth Rent Controller Karachi (East) in Rent Case No. 1 of 2021 alleging that as he had acquired the entire Plot No. A-124, Block-2, Gulshan-e-Iqbal, Karachi, admeasuring 240 square yards by a Sale Deed dated 18 December 2008 which was registered at No. 955 of Book-I in the office of the Sub-Registrar Gulshan-e-Iqbal Town, Karachi the Respondent No. 1 could not be considered as a "landlord" within the meaning given to that expression in sub-section (f) of Section 2 of the Sindh Rented Premises Ordinance, 1979 and as a consequence the Judgment and Decree dated 14 March 2022

passed by the VIth Rent Controller Karachi (East) in Rent Case No. 1 of 2021 should be set aside and Rent Case No. 1 of 2021 should be dismissed.

4. It has come on record that Petitioner has instituted Suit No. 983 of 2005 before this Court seeking declaratory relief as to his title to Plot No. A-124, Block-2, Gulshan-e-Iqbal, Karachi, admeasuring 240 square yards. This suit is being contested by the Respondent No. 1 on the basis that a Power of Attorney that the Respondent No. 1 had executed in favour of a third party was used by that person to register the Sale Deed in favour of the Petitioner illegally as the Respondent No. 1 had cancelled the Power of Attorney by a Deed of Revocation in or around in January 2009.

5. It is also common ground that the Petitioner had earlier filed Rent Case No. 174 of 2009 against some other persons namely Ziauddin and others (who have no nexus to the subject *lis*) in which the Petitioner claiming to be the owner of Plot No. A-124, Block-2, Gulshan-e-Iqbal, Karachi, admeasuring 240 square yards, sought the eviction of those persons from the property and which Rent Case had been dismissed by the Rent Controller vide an order dated 11 October 2010. The matter was contested before all appellate forums up to the Supreme Court of Pakistan each of whom maintained the Rent Controller's order as against the Petitioner.

6. Against the factual background, the applications were heard by the VIth Rent Controller Karachi (East) and who dismissed both of them by an order dated 2 February 2023 passed in Rent Case No. 1 of 2021 on the grounds that as the Petitioner was seeking an adjudication in respect of his title to the Said Tenement, the same could not be adjudicated in the jurisdiction of the Rent Controller under the provisions of the Sindh Rented Premises Ordinance, 1979.

7. Against the order dated 2 February 2023 passed by the VIth Rent Controller Karachi (East) the Petitioner preferred FRA No. 56 of 2022 before the XIIIth Additional District Judge Karachi (East), who after hearing the matter was pleased to dismiss the Appeal on the grounds that:

- (i) the Petitioner had failed to establish his right as a landlord in Rent Case No. 174 of 2009 and as such the application under Rule 10 of Order 1 of the Code of Civil Procedure, 1908 was not maintainable; and
- (ii) the order dated 14 March 2022 having merged into the order dated 30 August 2022 passed by this Court in C. P. No. S-496 of 2022 the correct forum is maintaining the Application under Sub-section (2) of Section 12 of the Code of Civil Procedure, 1908 was the High Court and held that the application under Order I Rule 10 of the Code of Civil Procedure, 1908 was also not sustainable.

8. I have heard the learned counsel for the Petitioner, who had contended that as his title to Plot No. A-124, Block-2, Gulshan-e-Iqbal, Karachi, admeasuring 240 square yards is based upon a registered sale deed he has every right to appear before the Rent Controller to challenge the relationship of landlord and tenant as between the Respondent No. 1 and the Respondent No. 5. He then under cover of a statement filed an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 in this petition at the time of hearing and which was taken on record. He relied on no citation to support his contentions.

9. Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 states that:

“ ... Where a person challenges the validity of a judgment, decree or order on the plea of fraud, misrepresentation or want of jurisdiction, he shall seek his remedy by making an application to the Court which passed the final judgment, decree or order and not by a separate suit.”

10. The sole ground that has been taken by the Petitioner to set aside the Judgment and Decree dated 14 March 2022 passed by the VIth Rent Controller Karachi (East) in Rent Case No. 1 of 2021 is that the Respondent No. 1 is fraudulently representing herself as the owner of the Said Tenement and as he is the owner of the Said Tenement by virtue of a registered Sale Deed which, if adjudicated upon, would non suit the Respondent No. 2 from maintaining Rent Case No. 1 of 2021.

11. The proper forum for maintaining an application under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 was considered by the Supreme Court of Pakistan in **Nasrullah Khan and others vs. Mukhtar ul Hassan and others**¹ wherein it was held that:²

“ ... Final decree/order of the last court in the series, even if such decree was of affirmation, should be considered and treated to be final judgment/decreed/order in terms of S 12 (2), C.P.C for approaching the relevant forum. Where the decree/order of a forum below has been affirmed by the high forum on merits, both on points of fact and law, it should be such decree/order (of higher forum) which attained the status of final decree/ order within the purview of S 12 (2), C.P.C. Where a decree order has been modified or reversed by the Appellate or Revisional Court, it shall be such decree/order of Appellate or Revisional Court, which will final in nature for the purpose of S. 12 (2) C.P.C. and accordingly application could only be initiated before such forum which had altered the verdict.”

Admittedly, Rent Case No. 1 of 2021, had been granted in favour of the Respondent No. 1 by an order dated 14 March 2022 passed by the VIth Rent Controller Karachi (East) whereby the Respondent No. 5 had been directed to hand over possession of the Said Tenement to the Respondent

¹ PLD 2013 SC 478

² *Ibid* at pg. 482

No. 1. It is also admitted that the Respondent No. 5 had maintained FRA No. 56 of 2022 which was also dismissed and against which order, the Respondent No. 5 had thereafter preferred a petition in this Court bearing C.P. No. S-496 of 2022, which was also dismissed vide an order dated 30 October 2022. As the orders passed in Rent Case No. 1 of 2021 have merged into the order dated 30 October 2022 passed by this Court in C.P. No. S-496 of 2022, the XIIIth Additional District & Sessions Judge Karachi (East) in First Rent Appeal No. 20 of 2023 has correctly held that the application under Sub-Section (2) of Section 12 of the Code of Civil Procedure 1908 had been incorrectly presented before the VIth Rent Controller Karachi (East) in Rent Case No. 1 of 2021 and which should have been presented before this Court in C.P. No. S-496 of 2022. Similarly, the Application under Sub-Section (2) of the Section 12 of the Code of Civil Procedure, 1908 that has been presented by the Petitioner under cover of a statement in this Petition is also not maintainable as the same should have been presented in CP. No. S-496 of 2022.

12. Similarly regarding the maintainability of the application under Rule 10 of Order 1 of the Code of Civil Procedure, 1908 the issue as to whether the Petitioner is a “proper” or “necessary party” to Rent Case No. 1 of 2021 on the basis that he was conveyed Plot No. A-124, Block-2, Gulshan-e-Iqbal, Karachi, admeasuring 240 square yards (in which the Subject Tenement is located) by a Sale Deed dated 18 December 2008 which was registered at No. 955 of Book-I in the office of the Sub-Registrar Gulshan-e-Iqbal Town, Karachi can in my opinion also not be considered by the Rent Controller in his jurisdiction under the Sindh Rented Premises Ordinance, 1979. The Supreme Court of Pakistan in **Afzal Ahmad Qureshi vs. Mursaleen**³ has held that:⁴

³ 2001 SCMR 1434

⁴ *Ibid* at pg. 1436

“ ... In such view of the matter it has rightly been held that the question of title/ownership be got determined between the parties the question of disputed title or owners of the Property in dispute sot to be determined by a competent Civil Court as such controversies do not fall within the jurisdictional domain of the learned Rent Controller.”

It is not been contended by the Petitioner that the Respondent No. 1 was not the owner of Plot No. A-124, Block-2, Gulshan-e-Iqbal, Karachi, admeasuring 240 square yards. Much to the contrary, the fact that the Petitioner purchased that property from the Respondent No. 1 adds credence to the contention that the Respondent No. 1 was the owner and who is still in actual or constructive possession of the Said Tenement. It is also not denied that rent was being paid by the Respondent No. 5 to the Respondent No. 1 for the Said Tenement thereby establishing the relationship of “landlord” and “tenant” as between the Respondent No.1. and the Respondent No. 5. By contrast, the title of the Petitioner is subject to the decision of this court in Suit No. 983 of 2005 and which has as of yet not been perfected and which cannot be determined by a Rent Controller in its jurisdiction under the provisions of the Sindh Rented Premises Ordinance, 1979. In addition when the Petitioner attempted to assert his status as the owner of Plot No. A-124, Block 2, Gulshan e Iqbal Karachi in Rent Case No. 174 of 2009, the same was dismissed by the Rent Controller and all Appellate forums upto the Supreme Court of Pakistan. It is therefore clear that the Rent Controller, as correctly held by the XIIIth Additional District & Sessions Judge Karachi (East) in the order dated 4 May 2023 passed in First Rent Appeal No. 20 of 2023, does not having any jurisdiction under the provisions of the Sindh Rented Premises Ordinance, 1979 to determine the title of the Petitioner. The correct forum to resolve such a dispute is the original civil jurisdiction and which has been availed by the Petitioner who has Suit No. 983 of 2005 before the original side of this Court and hence the application under Rule 10 of Order 1 of the Code of Civil Procedure, 1908 is also not maintainable by the Petitioner.

I am therefore inclined to hold that the order dated 4 May 2023 passed by the XIIIth Additional District & Sessions Judge Karachi (East) in First Rent Appeal No. 20 of 2023 and the order dated 2 February 2023 passed by the VIth Rent Controller Karachi (East) in Rent Case No. 01 of 2021 do not suffer from any illegality or infirmity and are in consonance with law. Consequentially, the office is directed to assign a number to the application filed under Sub-Section (2) of Section 12 of the Code of Civil Procedure, 1908 by the Petitioner before this court and which along with this Petition and all listed applications are dismissed as not being maintainable with no order as to cost.

JUDGE

Nasir P.S.