

**IN THE HIGH COURT OF SINDH  
CIRCUIT COURT, HYDERABAD**

C.P No. S-134 of 2024

Petitioner : Farhan Akhtar through Mr. Muhammad  
Noman Jaffer advocate

Respondent : Noor Ahmed and another through  
Nemo

Date of hearing  
& Order : 07.05.2024

**ORDER**

**YOUSUF ALI SAYEED, J** - The Petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution, impugning the Judgment dated 08.03.2024 passed by the learned VIIth Additional District Judge Hyderabad, dismissing Rent Appeal No. 47 of 2022 filed by him against the Judgment dated 30.7.2022 of the Rent Controller-V Hyderabad, allowing Rent Case No. 54 of 2018 filed by the Respondent No.1 so as to order the ejection of the Petitioner from a shop bearing C.S. No. A/96-1700/1/2 admeasuring 32.2 square yards situated at Hakeem Habibullah Road Tower Market Hyderabad.

2. A perusal of the record reflects that the rent proceedings were opposed by the Petitioner on the basis of a sale agreement said to have been entered into by him in respect of the aforementioned premises, with that defense failing to find favour with the *fora* below. The relevant excerpt from the Judgment of the Appellate Court, reads as follows:-

“11. Record shows that learned Rent Controller has examined and recorded the evidence of applicant and opponent side. The evidence recorded by learned Controller reveals that opponent No.1 in his evidence has made admission that he was inducted into the premises in the year 1988 as tenant by Zahoor Hussain. Opponent No. 01 in his evidence has further made admission and revealed that applicant is one of the co-sharers in the subject premises as the very defense taken by the opponents is that all the co-sharers including applicant had executed one power of attorney in favor of another co-sharer namely Zahoor Hussain who then sold the demised shop to opponent No.2 through sale agreement. Learned Rent Controller rightly observed that once the opponents have accepted applicant as one of the co-sharers and also that opponent No.1

had been inducted into the premises as tenant then irrespective of their defense regarding execution of sale agreement between one co-sharer and opponent No.2, the relationship of landlord and tenant between applicant and opponent No.1 stood proved. Record reveals that Opponent No.01 claimed that since his son (opponent No.2) had purchased the premises through sale agreement thereby the tenancy of opponent No.1 came to an end, hence, opponent No.1 was no more required to pay rent. Thus, it is admitted fact that the opponent No.1 did not pay rent to any of the co-sharers since year 2010 therefore, his act has rendered himself as defaulter in the payment of rent.”

3. On query posed to learned counsel as to whether the underlying facts and circumstances had been correctly recorded by the Appellate forum, he conceded that it was so but submitted that a Suit for specific performance had been filed, as identified in the prayer clause, and contended that the possession of the Petitioner ought to be preserved pending determination of the matter.

4. That argument is fallacious in view of the law settled by the Supreme Court as per the judgment rendered in the case reported as Abdul Rasheed v. Maqbool Ahmed and others 2011 SCMR 320, where it was held as follows:

“It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails. In this regard reference can be made to Shameem Akhtar v. Muhammad Rashid (PLD 1989 SC 575), Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi (PLD 1991 SC 242), Muhammad Rafique v. Messrs Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 877). In so far as determination of the relationship of landlord and tenant is concerned, such enquiry by the Rent Controller is of a summary nature. Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former he later on purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller. In the tentative rent order the learned Rent Controller has carried out such summary exercise and decided the relationship between the parties to exist.”

5. Furthermore, whilst it has been prayed inter alia by the Petitioner that this Court be pleased to set aside the impugned judgments passed by Courts below and to allow the Petitioner to continue his possession over the demises premises, the prayer is contrarily predicated on the decision of Civil Suit No.126/2015 said to be pending before Learned 5th Senior Civil Judge Hyderabad, whereas the body of the Petition reflects that the aforementioned Suit and Civil Appeal subsequently filed by the Petitioner have already been dismissed, and that IInd Appeal No. 22 of 2024 is now pending before this Court.

6. As such the Petition is found to be misconceived and, while granting the application for urgent hearing, the same is accordingly dismissed *in limine* along with the other pending miscellaneous applications.

JUDGE