

ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI  
F.R.A. No.48 of 2023  
[Rehman Dino v. Mst. Fehmida]

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Date	Order With Signature Of Judge
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23.12.2024.

Mr. Imtiaz Ali Shah, advocate for appellant.  
M/s. Shamsul Hadi and Abdul Jalil, advocates for respondent.

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**MUHAMMAD IQBAL KALHORO, J:-** Respondent filed a rent case before Controller of Rents, Malir Cantt, Karachi against appellant in respect of House No.520, Block-5/A, Saadi Town, KDA Scheme-33, Malir, Karachi on the ground of default and personal need stating that father of appellant, who was an Advocate and on good terms with husband of respondent, was rented out the said premises on verbal tenancy agreement dated 01.04.2009 against the rent of Rs.8000/- per month. In the year 2011 some renovation work was carried out by respondent in the tenement; hence the rent was increased from Rs.8000/- to Rs.15000/- per month till 2015, when the appellant requested for construction of two rooms and veranda on the first floor, which was obliged by the respondent and in lieu thereof the rent was increased from Rs.15000/- to Rs.20,000/-.

2. After retirement of husband of respondent in 2017, the appellant was approached for vacating the premises on personal bonafide need but he refused to oblige and stopped to pay monthly rent to respondent's husband, and filed instead a civil suit for specific performance and permanent injunction against him, which was dismissed twice. Finally, therefore, the respondent filed the rent application which has been decided by the impugned order dated 30.10.2023 in the terms whereby appellant or any person found in possession of the demised premises has been directed to handover vacant and peaceful possession to respondent within 30 days. Hence, this appeal.

3. I have heard learned counsel for the appellant. He has submitted that the respondent has failed to produce any rent agreement before the Controller of Rents and the Controller of Rents has not decided the rent application issue-wise; there are no specific findings in the impugned order insofar as relationship of tenant and landlord between the parties are concerned. He has further submitted that the appellant is residing in the premises as its owner on the basis of sale agreement executed by husband of respondent with father of appellant. He has relied upon the cases of **Afzal Ahmad Qureshi v. Mursaleen [2001 SCMR 1434]**, **Lt. General (Retd) Muhammad Afzal Najeeb v. Javed Sadiq Malik [2010 SCMR 1443]**, **Ali Noor (Pvt) Ltd. V. Trading Corporation of Pakistan (Pvt) Ltd. [PLD 2015 Sindh 451]**, **Muhammad Abid and brothers. VIIth Additional District Judge, South at Karachi and 2 others [2013 CLC 1770]**, **Haji Faqir Muhammad v. Hazratullah [1989 CLC 252]**, **Hafeezuddin and 2 others v. Badaruddin and 2 others [PLD 2003 Karachi 444]**, **QADIR KHAN v. Mst. Kishwar Begum and others [1983 CLC 613]**, **Suleman and others v. Dadoo and others [2001 YLR 764]** and **Mirza Abdul Sattar Baig and others v. Pakistan Railways and others [2016 CLC 1931]**.

4. On the other hand, learned counsel for the respondent has supported the impugned order and submits that because the parties were on good terms with each other, the rent agreement was oral and more so the suit for specific performance of contract filed by appellant has been dismissed twice by the trial Court and then by the Appellate Court and it is pending in second appeal before this Court.

5. I have considered submissions of learned counsel for the parties and perused material available on record. In order to prove her case, respondent has examined two witnesses Khair Muhammad and Mir Muhammad, who have supported her insofar as relationship between the parties of tenant and landlord are concerned. The oral tenancy

agreement is as good as an agreement in writing. Sometimes, when the parties are known to each other and are on good terms, they do not opt to get a rent agreement executed in writing because of confidence that they have on each other. Be that as it may, the factum of oral agreement between the parties has not been successfully rebutted by the appellant in these proceedings. The case of appellant being owner of the property is based on some sale agreement purportedly executed between the parties. But the learned Controller of Rents has observed in the impugned order that the stamp paper affixed on the sale agreement and the receipt presented in support thereof are found fake, fabricated and managed one, More so, the appellant has failed to produce any witness to prove execution of sale agreement or payment of so-called sale consideration to the respondent.

6. Learned counsel for the appellant during his arguments has submitted that illogically and against the law the burden has been shifted to the appellant to prove his ownership of the premises; whereas, as per relevant principles of Code of Civil Procedure, burden was upon the respondent to prove her case. It goes without saying that no doubt initial burden is always upon the applicant/complainant/plaintiff to establish his/her claim to a right in the issue but when defendant/accused/opponent takes a special plea in order to rebut the claim of the plaintiff etc. to such right, then burden is shifted to respondent etc. to prove the same. Here the appellant in order to rebut the claim of respondent/landlord to her right to have her property back has taken a special plea that by a dint of sale agreement he has become owner of the property. But then he has miserably failed to prove the same not only in the present proceedings but in the civil suit filed by him for specific performance of contract. He has lost the suit up to the appellate stage and has filed a second appeal

before this Court, which admittedly has a very limited scope and is yet to be decided.

7. Even otherwise, the pendency of second appeal will not have any adverse effect over these proceedings initiated in the rent jurisdiction before the Controller of Rents and right of respondent, otherwise established by her through positive evidence, denied. The Controller of Rents after appreciating evidence and going through the record thoroughly has discussed all the relevant points together, which is not against the law, in his order and has rightly concluded that respondent is entitled to possession of the rented premises and respondent has failed to prove his ownership of the premises. I, therefore, do not find any illegality in the impugned order and dismiss this rent appeal without any order as to costs.

HANIF

JUDGE



