

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
C.P. No.S-473 of 2021

Date	Order with Signature of Judge
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<i>Anwer Shamoon</i> <i>Petitioner</i>
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Versus

<i>Javed Paloo @ Master and another.....</i>	<i>Respondents</i>
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Date of hearing :15.05.2025

Date of judgment : 15.05.2025

Mr. Muhammad Shahid Malik, Advocate for the Petitioner.
Mr. Abdullah azzam Naqvi, Advocate for the Respondent.

JUDGEMENT

MUHAMMAD JAFFER RAZA.J; - Through instant petition, the Petitioner has impugned the judgment dated 27.04.2021 passed in FRA No.32/2021. The said FRA emanated from the judgment of the IIIrd Rent Controller, Karachi South, dated 13.09.2018 passed in Rent Case No.906/2018. Brief facts of the case are that the Petitioner preferred the above-mentioned Rent Case and the same was allowed by the learned Rent Controller, vide order dated 13.09.2018. The said order was impugned in the above noted FRA, the same was allowed and rent case filed by the Petitioner was dismissed. Learned counsel for the Petitioner has impugned the conflicting findings of the Courts below.

2. Learned counsel for the Petitioner has argued that the determination on point No.1 i.e. the relationship between the landlord and tenant has been incorrectly made by the Appellate Court. He has further stated that he is the owner of the tenement in question and his failure to produce the rent agreement or the rent receipt does not disentitle him from the ejectment of the Respondent. He has further stated that the Respondent has produced no document of ownership before the learned Rent Controller, and hence in that respect is liable for ejectment from the tenement in question. He has further relied upon his Affidavit-in-

Evidence and pointed out certain paragraphs, more particularly, paragraph No.3 to which he has stated that the Respondent failed to conduct a thorough cross examination, therefore, his case of ownership as well as relationship between the respective parties stood proved. He has lastly averred that the order of the learned Rent Controller required no interference of the Appellate Court and instant petition be allowed by setting aside the order of the learned Appellate Court.

3. Conversely, learned counsel for the Respondent has categorically argued that he is not a tenant of the tenement in question. He has stated at the very outset that the relationship between the parties ought to be determined and only then point No.2, pertaining to default, will merit any consideration. He has contended that even if the Petitioner establishes ownership rights over the said property, which according to learned counsel, he has not, the Respondent cannot be classified as a tenant under Section 2(j) of the Sindh Rented Premises Ordinance, 1979 (“SRPO”). He has very categorically and vehemently argued that no receipt or agreement was exhibited during the examination of the Petitioner, therefore, the burden of proof to prove the relationship was entirely on the Petitioner, who has failed to discharge the same. He has lastly averred that in cases of oral agreement as alleged by the learned counsel for the Petitioner, the threshold and burden of proof is very high and entirely upon the landlord. He has relied upon the following judgments: -

- *Shaikh Muhammad Afzal vs. Virbai through Legal heirs*¹
- *Ahmed Saeed and another vs. Mst. Maqsooda Begum*²
- *Afzal Ahmad Qureshi vs. Mursaleem*³
- *Hafeezuddin and 2 others vs. Badaruddin and 2 others*⁴
- *Syed Mehboob Hussain vs. Raza Shah and 2 others*⁵
- *Haji Muhammad Anwar vs. Muhammad Ahmed and others*⁶

¹ 1993 CLC 1702

² 1995 MLD 1387

³ 2001 SCMR 1434

⁴ PLJ 2003 Karachi 134

⁵ 2006 CLC 629

⁶ 2007 SMR 1961

4. I have heard both the learned counsels for the parties and perused the record. I have more specifically examined the judgments of the Courts below. It is evident that the Rent Controller while passing the judgment dated 13.09.2018 has placed the burden of issue No.1 on the Respondent. It is held that the burden was incorrectly placed on the said Respondent as the burden to establish the relationship fell squarely on the Petitioner/landlord. Further, the failure of the Petitioner to produce any tenancy agreement or rent receipt did not help his cause. Reliance in this regard can be placed on the case of **Afzal Ahmad Qureshi** (supra) wherein it was held that: -

“It hardly needs any elaboration that the requirement of the relevant law is that the learned Rent Controller cannot decide the question of relationship of landlord and tenant against the tenant when the landlord has not established his position as landlord beyond reasonable doubt. The petitioner has neither produced any tenancy agreement nor any evidence in writing showing that rent was being paid to him. No counterfoil of any receipt, any letter from tenant, any notice or any other document could be produced and in our considered opinion the oral version of landlord is not sufficient to hold that relationship of landlord and tenant existed between the parties.”

5. Elaborating on the contention above I agree with the argument of the learned counsel for the Respondent and his reliance on the case of **Hafeezuddin** (supra), wherein, it was held as under: -

“With the above observations, I am of the view that the following conclusion can be drawn from the judgments of the Hon’ble Supreme Court cited at bar:-

- (i) The sale Agreement per se does not confer any title in the property and merely confer the right to enforce the specific performance of the contract;*
- (ii) mere ownership of the building by one person and the possession thereof by other person does not create the relationship of landlord and tenant between the parties, as envisaged under Sindh Rented Premises Ordinance 1979;*
- (iv) there can be verbal/oral tenancy also but in order to establish such tenancy an evidence of every high standard is required, from which the facts of tenancy is established on the principle of preponderance of probabilities;*
- (vii) in case the statutory or contractual tenancy is not established, creating relationship of landlord and tenant between the owner and occupier of the property, the Rent Controller has no jurisdiction and the parties may have recourse to the Civil Court for resolving the dispute/seeking relief.”*

6. It is evident from the judgments cited above that even if the Petitioner is able to establish the case of ownership it is not an inevitable conclusion that the that the relationship between the parties can be classified as “landlord and tenant” within the meaning assigned to the same under the SRPO. The learned Appellate Court has correctly held that the reliance of the Rent Controller on Form PT-1 and the sale agreement does not establish ownership of the property in question. Reliance in this regard can be placed on the case of **Sheikh Muhammad Afzal** (supra) wherein a single judge of this court was pleased to hold as under: -

“The respondent in this regal had placed reliance mainly upon the lease agreement and Form P.T.1, but Form P.T. 1 cannot be relied upon as a conclusive evidence in respect of the ownership.”

7. In the light of above, instant petition being devoid of any merits does not warrant any interference by this Court. The same is hereby dismissed along with all listed applications with no orders as to cost.

Judge

Nadeem