

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

C.P.No.S-266 of 2023

Petitioner: Abdul Jabbar Shaikh s/o Late Muhammad Shaikh
Through Mr. Shakeel Ahmed Abro, Advocate

Respondent No.1: Iqbal Nabi son of Nabi Bux Soomro
Through Mr. Sarfaraz A. Akhund, Advocate

Date of hearing: 11.12.2024

Date of decision: 11.12.2024

ORDER

SHAMSUDDIN ABBASI, J.:- Through this petition, petitioner Abdul Jabbar Shaikh has impugned the Judgment dated 22.09.2023, passed by learned District Judge, Shikarpur in Rent Appeal No.01/2023 (The Appellate Court), whereby the learned Appellate Court maintained Order dated 03.04.2023, passed by learned 1st Rent Controller, Shikarpur (The trial Court) in Rent Application No.02/2020, whereby the petitioner was directed to vacate the rented premises within one month.

2. It is the case of respondent No.1 that he filed application under section 15 of the Sindh Rented Premises Ordinance, 1979 (SRPO) on the ground of default and personal bonafide need. The petitioner filed written statement, wherein he had taken plea that father of respondent No.1 had sold the property bearing No.59 & 61/1, admeasuring 629-0 square yards, Tenure Grant-B, situated near PTCL Office, Lakhidar Shikarpur (the demised premises) to the petitioner in year 1981 through oral agreement and denied the relationship as tenant. Learned trial Court formulated the following points for determination:

- a). Is there any rent agreement executed between applicant and opponent as per S.5 of Sindh Rented Premises Ordinance, 1979 or admission as relation of landlord and tenant is sufficient to presume the existence of such relation?
- b). Whether applicant is/was required disputed premises for his personal use, if yes, then, whether he has sole disputed property in same vicinity or number of properties?
- c). Whether applicant is sole owner of rented premises or any other co-sharer has any right in the same property, if yet, then, being in status of co-sharer applicant is entitled to claim rented premises for his personal bonafide use?

- d). Whether opponent's brother has purchased rented premises from the father of applicant as per oral agreement, if yes, then, whether this Court is competent to determine such disputed title or otherwise?
- e). Whether opponent is liable to pay rent arrears since last 13 months before filing instant application?
- f). What should the order be?

Both the parties led their evidence through affidavit-in-evidence and the learned trial Court allowed the ejectment application with direction to the petitioner to vacate the premises within one month's time. The petitioner preferred appeal and the learned Appellate Court maintained the order passed by the trial Court vide Judgment dated 22.09.2023.

3. Learned counsel for the petitioner submits that the judgments of both the Courts below are based on misreading and non reading and both the Courts have not decided the point of relationship between the parties through oral agreement. He further submits that after filing of rent application, the petitioner filed suit for specific performance and permanent injunction and the plaint was rejected in limine and appeal was also dismissed and now the petitioner has impugned the order passed by the courts below in Civil Revision Application No.39/2023. He then submits that there is no written agreement between the parties, therefore, rent application is not maintainable under the law and the landlord has miserably failed to prove his case on the point of default as well as personal bonafide need; that both the courts below have not properly decided the relationship of the landlord and tenant and there is violation of sections 5 & 14 of the SRPO. He finally prayed that the impugned judgments passed by both the courts below may be set aside.

4. On the other hand learned counsel for respondent No.1 submits that there are concurrent findings against the petitioner and both the courts below have passed the order/Judgment in accordance with law and there is no question of misreading or non reading. The civil suit filed by the petitioner was rejected by the learned trial court in *limine* and the said order was maintained by the learned Appellate Court. He further submits that civil revision application filed against these two orders was also dismissed for non prosecution; hence prayed that instant petition may be dismissed.

5. Heard learned counsel for the petitioner, learned counsel for respondent No.1 and perused the material available on record.

6. It is the case of respondent No.1 that he inherited property (demised premises) and he filed rent application under section 15 of the SRPO on the point of default and personal bonafide need. The plea taken by the petitioner that he has purchased the rented premises from father of respondent No.1 through oral agreement, therefore, he is not bound to pay any rent. It is well settled proposition of law that the controversy in respect of ownership can only be decided by the Civil Court. Learned counsel for the petitioner admits that after filing rent case, the petitioner filed suit for specific performance and permanent injunction, which was rejected by the learned trial Court in *limine*. The petitioner preferred appeal against the said order, which too was dismissed by the learned Appellate Court; hence he preferred Civil Revision. The scope of writ jurisdiction is very limited. The Hon'ble Supreme Court in a case reported as **Mst. Mahmooda Begum and another v. Taj Din (1992 SCMR 809)** has held as under:

“In normal circumstances, the High Court is not supposed to interfere with a finding of fact recorded by a tribunal of special jurisdiction in respect of matters exclusively within its competence, unless there has been a serious misreading or mis-appreciation of the evidence on the part of the said tribunal, or there has been failure on its part to take into consideration material facts or to apply the statutory law or any principle or rule of law as laid down by the superior Courts.”

In another case, similar view was followed by this Court in the case of **Muhammad Iqbal v. Mst. Zahidan and 2 others (2013 CLC 1780)** observing as follows:

“It is settled proposition of law that Courts below, in its original and appellate jurisdiction are competent to draw interference, while delivering the judgment and it is not open to interference in Constitutional jurisdiction, unless and until miscarriage of justice is established by the party in the Constitutional petition, thus, High Court would not normally interfere in judgment and decree passed by court of competent jurisdiction for the reason that it was within their exclusive jurisdiction, to believe and disbelieve the evidence, it is worth to add that no Constitutional petition lies when evidence in the case has been properly appreciated and analyzed.”

7. I have carefully gone through the order/judgment passed by the learned trial Court as well as Appellate Court and do not find any illegality, irregularity and question of misreading or non-reading. Accordingly, instant petition is dismissed.

Judge