

JUDGMENT SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.  
C.P.No.S-203 of 2004

DATE	JUDGMENT WITH SIGNATURE OF JUDGE
	1. For hearing of MA 7753/2012. 2. For Regular hearing.
Petitioner	Muhammad Farooq s/o Muhammad Yaseen Through Mr. Saeeduddin Siddiqui, Advocate.
Respondent No.1	Muhammad Azam s/o Noor Hassan Through Mr. Muhammad Yousif Leghari, Advocate.
Date of hearing:	02.09.2014.
Date of Judgment	<u>.09.2014.</u>

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**NAZAR AKBAR J:-** The petitioner through this constitutional petition has impugned order dated 21.05.2004 in F.R.A.No.08/2002 passed by 1<sup>st</sup> Additional District Judge, Nawabshah setting aside the order dated 17.07.2002 passed by the learned Rent Controller in Rent Application No.14/2000 whereby the respondent No.1 was directed to vacate the property in question and handover its possession to the petitioner within 119 days.

2. Briefly stated the facts leading to this petition are that the petitioner filed rent application U/S 15 of Sindh Rented Premises Ordinance 1979 (hereinafter SRPO, 1979) against the respondent No.1 / tenant for his ejectment from a residential house constructed on portions of two plots bearing plot Nos C.S.No.1916 and C.S.No.1917 measuring 324 Sq.ft and 252-2 Sq. total area admeasuring 576-00 Sq. Ft situated in Ward öBö Nawabshah (hereinafter the tenement). The petitioner case as set out in Rent Application was that he has purchased the tenement from its owner

**Mst. Khursheed** and others through their General Attorney Mukhtiar Hussain Qureshi through registered Sale Deed dated 06.02.1999 and the same was duly mutated in the name of the petitioner in City Survey record vide entry dated 10.06.1999. The petitioner after purchase of the property approached respondent No.1 for payment of rent and to vacate the same on the ground that the property in question was required by him for his personal bonafide use but respondent did not respond. Thereafter petitioner sent notice dated **28.01.2000** in writing requesting respondent No.1 to vacate the premises and tender rent but same was returned with endorsement that respondent No.1 was not available there. It is further pleaded that respondent No.1 challenged the sale deed of Petitioner through F.C.Suit No.68/2000 before learned Senior Civil judge, Nawabshah for specific performance of contract, cancellation of sale deed and injunction against the petitioner and others through his mother and attorney Mst. Parveen Akhtar. According to the petitioner, the relationship of landlord and tenant between him and respondent No.1 started from the date of purchase of the disputed house but the respondent No.1 neither replied the notice nor made payment of rent since March, 1999 and thus committed willful default in payment of rent. The petitioner also claimed that the premises was required by him for his personal bonafide need.

3. Respondent No.1 in his written objections to the rent application denied the relationship of landlord and tenant between the parties on the basis of an agreement of sale in respect of the tenement. He pleaded that he was the tenant of previous owner / landlord **Bisharat** to whom he was paying the rent but once he purchased the tenement from the said Bisharat purporting to be attorney of Khursheed Begum and others by sale agreement dated **16.09.1995**, he ceased to be the tenant and became owner.

4. The learned Rent Controller after recording evidence of the parties allowed the Rent Application by deciding all the following points for determination in favour of Petitioner.

- i. Whether there exists the relationship of Landlord and tenant between the parties?
- ii. Whether the statutory notice U/S 18 of the S.R.P.O. R.1979 regarding the change of ownership served on the opponent?
- iii. Whether opponent has committed default in payment of rent of demises premises?
- iv. Whether the applicant requires the disputed house in good faith for his own use and occupation?
- v. What should the order ?

5. The respondent No.1 preferred First Rent Appeal No.08/2002 before learned District Judge, Nawabshah (now Shaheed Benazirabad), and after hearing the parties, learned appellate court allowed the appeal by the impugned order, set aside the ejectment order dated 17.7.2002 by holding that the relationship of tenant and landlord was not established, therefore, the Rent Controller had no jurisdiction to entertain the rent application.

6. I have heard learned counsel for the parties and perused the record.

7. Learned counsel for the Petitioner has contended that the Appellate Court has reversed the finding of relationship of landlord and tenant by mis-interpreting the evidence and giving preference to mere sale agreement on the basis of which the respondent No.1 claims to have been in possession as owner as against the registered sale deed dated 6.3.1999 duly executed by the real owners of the property in favour of the petitioners / landlord. He has pointed out that respondent No.1 was claiming ownership on the basis of sale agreement and the learned Appellate Court failed to appreciate that in terms of **Section 54** of the Transfer of Property, 1882 mere contract for sale does not confer any title / right or interest in the

immovable property. He has also pointed out that even the suit filed by respondent No.1 for specific performance of the contract and cancellation of Petitioner's sale deed in respect of the tenement bearing F.C. Suit No. 68 of 2000 (New No. 731 of 2004) was dismissed on **30.3.2007** and the copy of judgment was placed on record.

8. I have heard Counsel of the parties on **2.9.2014** and reserved the judgment with directions to the learned counsel to file written synopsis of their respective arguments within one week. However, only the counsel for petitioner has filed written synopsis. Along with written synopsis he has also placed on record true certified copies of judgment dated 11.5.2010 in C.A. No. 10 of 2007 against the dismissal of Suit No. 68 of 2000, and copy of judgment dated 11.9.2012 in R.A. No. 171 of 2010 whereby this Court has affirmed the concurrent findings of courts below and dismissed the Revision Application of respondent No.1. This position further confirms that the sale agreement in favor of respondent No.1 had not conferred any right even to be enforced in future, therefore, conclusion of the 1<sup>st</sup> Appellate Court that with the delivery of possession of the disputed property to respondent No.1 under the contract for sale has taken away all the rights of the owner and his right, title or interest in the disputed property (the tenement) were ceased was erroneous and farfetched. The 1<sup>st</sup> Appellate Court while holding that the agreement of sale dated 22.12.1995 has transferred the property in favour of the respondent No.1 failed to appreciate the legal status of the said agreement of sale by referring to its recitals. It was not between the actual owner of the property or their attorney and therefore, even otherwise said sale agreement was of no consequences. It is pertinent to note that, respondent No.1 has not disputed that the property belongs to Mst. Khursheed Begum and others. Respondent

No. 1 and the Petitioner were deriving their title from the same owner and the difference was that the Petitioner has purchased from them through registered sale deed and respondent No 1 who was originally tenant was claiming title on mere agreement of sale with the Landlord through their attorney. It is strange that the learned First Appellate Court has not commented on the effect of registered sale deed while declaring the relationship the relationship was not established. Such approach was not legal nor has he referred to any case law. To the contrary, the approach of 1<sup>st</sup> Appellate Court was in conflict with the several judgments on the point. In this context one may refer to the following case law:-

**PLD 1991 SC 242** (Iqbal and 6 others Vs. Rabia Bibi). In this case the Honourable Supreme Court was pleased to observe as under:-

“Be that as it may, in some recent Judgments this court has taken the view that in case like the present one, where the sale agreement or any other transaction relied upon by a tenant is seriously and bona fide disputed by the landlord, the appellant/tenant cannot be allowed to return the possession during the litigation; where he continues to deny the ownership of the landlord who had included him as a tenant, without any condition and / or reservation. It has been ruled that in such cases although the tenant has a right to adduce evidence and take a short time for that purpose to remain in occupation despite having set up a hostile title which is denied by the landlord; but on the well-known bar of estoppel in this behalf, he (the tenant) cannot be permitted to remain in occupation and fight the litigation for long time even for decades. In this case it is more than a decade that the appellants have been able to keep the possession on a claim which the landlord asserts is false. Accordingly, as held in those cases in fairness to both sides, while the tenant is at liberty to prosecute the litigation wherein he should try to establish his claim but it should not be at the cost of landlord/owner. It should be at the cost of himself and he must vacate though of course he would be entitled to an easy and free entry as soon as he finally succeeds in establishing his title against his own landlord. See *Makhan Ban V. Haji Abdul Ghani* (PLD 1984 SC 17), *Allah Yar and others V. Additional District Judge and others* (1984 SCMR 741) and *Province of Punjab Vs. Mufti Abdul Ghani* (PLD 1985 SC 1).

In **2000 SCMR 1604**, the same view was reaffirmed by the Honorable Supreme court when it held as under:-

In the case of Iqbal and 6 others V. Mst. Rabia Bibi (PLD 1991 SC 242) plea of the tenants to stay ejectment was declined and the fact that they were tenants in possession and where holding an agreement of sale and had filed a suit for specific performance of such agreement, was held to be of no consequence. Reference may also be made in this regard to Muhammad Rafique V. Messrs Habib Bank Ltd. (1994 SCMR 1012). In this case also relief under section 53-A of the Transfer of Property Act was declined to the tenant in absence of any clause in the sale agreement indicating that the relationship and the tenant had ceased to exist and the position of the tenant was that of a purchaser after execution of the sale agreement.

In the recent Judgment reported in **2011 SCMR 320** the Honorable Supreme Court once again referred to the several case laws and reiterated the that tenant's plea of having purchased the tenement by mere agreement of sale is not sufficient take away the jurisdiction of Rent Controller. The relevant part of the judgment is as follows:-

We have heard both the learned Advocates Supreme Court. It is settled law that where in a case filed of 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 where after 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.

Each and every reasoning given by the Additional District Judge, Nawabshah to upset the finding of relationship between the Petitioner and respondent No.1 was contrary to law and therefore, not sustainable. The

counsel for respondent No.1 has only contended that the constitutional petition does not lie in rent matters as the Appellate Authority had the jurisdiction to pass the impugned order. There is no dispute that the appellate authority has the power to pass order in rent appeal on the basis of evidence recorded by rent controller and the factual controversy cannot be examined in constitutional petition. However in cases of misreading of evidence, or omission to consider the material, or failure to apply the rule of law laid down by the superior courts, the High Court can interfere by invoking writ jurisdiction. As discussed above the first appellate Court misinterpreted evidence by giving preference to sale agreement over registered sale deed and failed to follow the law laid down by Honorable Supreme Court on the point of jurisdiction of Rent Controller.

9. In view of the above discussion, since the rent case was filed in 2000 and respondent No.1 has already enjoyed possession of the tenement for 14 years in the name of litigation without payment of rent to the Petitioner, he is directed to tender rent to the Petitioner as claimed by him in his notice dated 28-01-2000 at the rate of Rs.400 per month with effect from March, 1999 till the date within thirty (30) days from today. Respondent No.1 is further directed to hand over peaceful vacant possession of the tenement to the Petitioner on or before **30.10.2014** and in case of his failure to hand over possession within stipulated time herein the court of Rent Controller having jurisdiction on the tenement should issue writ of possession with police aid without further notice to respondent No.1.

The petition is allowed in the above terms with cost to be borne by the respondent No.1 throughout.

JUDGE