

JUDGMENT SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**
C.P.No.S-578 of 2012

DATE JUDGMENT WITH SIGNATURE OF JUDGE

1. For Katcha Peshi
2. For hearing of MA 7595/2012.
3. For hearing of MA 7596/2012.
4. For hearing of MA 2214/2013.

Petitioner Muhammad Izharul Haq in person

Respondents Mst. Zulekhan @ Ghulam Sakina respondent No.1
through Mr. Ahsan Gul Dahri Advocate.
Nemo for other respondents.

Date of hearing: 23.09.2014.

Date of Judgment 30 .09.2014.

J U D G M E N T

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NAZAR AKBAR J:- This constitutional petition has been filed by the petitioner against concurrent findings recorded by the learned Rent Controller in Rent Application No.02/2011 as well as learned appellate court in Rent Appeal No.01/2012 by their Judgments dated 29.02.2012 and 17.05.2012 respectively whereby the petitioner was directed to handover vacant possession of the demised premises to the respondent respondents No.1 to 5 within 30 days without fail.

2. Briefly stated facts leading to this petition are that the respondents No.1 to 5 filed rent application stating that commercial two shops constructed on a skinny plot admeasuring 1050 Sq. ft situated in Ward No.2 Qaid-e-Azam road near Old National Bank Badin (hereinafter referred to as tenements) was owned by one Muhammad Saleh son of Muhammad Qasim Junejo who had rented out the same to the petitioner under written tenancy agreement dated

26.09.1969. After death of Muhammad Saleh two shops and other urban and agricultural properties owned by him were inherited by Wali Muhammad, Muhammad Ashraf and Gul Hassan. The tenements were given to Wali Muhammad in a private arrangement amongst the legal heirs of Muhammad Saleh, who became landlord and used to receive rent from the petitioner. Wali Muhammad expired in 2001 leaving behind the respondents No.1 to 5/ applicants as his legal heirs. The petitioner after the death of Wali Muhammad paid rent to respondent No.1 till 2004 when fresh tenancy agreement was executed between respondent No.1 and the petitioner, as respondents No.2 to 5 were minors. In the tenancy agreement monthly rent was enhanced to Rs.2500/-, the tenancy was for the period from 2004 to 01.01.2010 renewable with consent of both the parties by executing fresh agreement. On expiry of tenancy agreement on 01.01.2010 the petitioner /opponent refused to enter into fresh tenancy agreement and also stopped the payment of monthly rent. Despite best efforts of the respondent /applicant No.1, the petitioner /opponent neither paid rent nor executed fresh tenancy agreement with the respondents No.1 to 5, therefore, respondent No.1 served the petitioner with legal notice, meanwhile the petitioner/ opponent filed **F.C. Suit No.18 of 2011** before learned Senior Civil Judge Badin claiming to have purchased the tenement through Sale agreement. The respondents/applicants No.1 to 5 further took ground that applicant No.2 has become major and is jobless and wants to run his business in the demised shops so as to earn livelihood for himself and for his family members including aged mother, therefore, shop was bonafidely required by them for their personal need. The petitioner failed to pay rent of demised shops at the rate of Rs.2500/- per month since 01.01.2010 to 31.03.2011 as such became a willful defaulter in payment of rent. The respondents /applicants therefore, filed rent application for ejectment of the

petitioner on the ground of default as well as on personal bonafide need and respondents/applicants also contested the suit..

3. The petitioner / opponent filed his written objections and denied the claim of the respondents/applicants. He stated that Wali Muhammad sold out the same to him at the rate of Rs.100/- per square foot and he received cheque of Rs.7000/- and remaining amount of Rs.98000/- was to be received by him on the execution of the registered Sale Deed. The petitioner further stated that he constructed katcha shop on the plot and then pacca shop and the respondents /applicants were well in knowledge of the sale of plot to the petitioner. He has also denied that the shop is required by the respondents for their personal use. The petitioner further stated that he was paying monthly rent to the respondents, however, he stopped payment of rent of Rs.150/- and then the respondents pressurized him through notice dated 13.01.2011. He further stated that he has not paid monthly rent from December, 2010 to May, 2011 for about six months and he is ready to deposit the same in the court.

4. The learned Rent Controller recorded evidence of the parties and after hearing them allowed the Rent Application by Judgment dated 29.02.2012 and directed the petitioner to put the respondent /applicant into physical possession of rented premises within a period of 30 days .

6. The petitioner preferred First Rent Appeal No.01/2012 before learned District Judge, Badin, which was dismissed and the order of the Rent Controller was maintained by Judgment dated 17.05.2012. The petitioner has challenged concurrent findings through this petition.

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

8. The learned counsel for the petitioner has contended for the first time before this Court that the Rent Application has been filed under Section

12(2)(ii)(vii) of SRPO, 1979 and therefore, it was not maintainable. However, he has no answer to the question that the court is supposed to look into the contents of the application and not the section inadvertently mentioned on the application. The misprinted of word 12 instead of 15 cannot take away the jurisdiction of the Rent Controller. As far as the evidence is concerned the counsel for the petitioner has again not been able to point out any misreading and non-reading of evidence from the record. His contention that the Petitioner has purchased the property and the observation of learned courts below that the suit for specific performance of contract was dismissed was not sufficient to hold the relationship of landlord and tenant was not established is totally misconceived even if the suit had not been dismissed and it was pending even then the Rent Controller had the complete authority to entertain the Rent Application. The Petitioner under the cover of any sale agreement with the respondent/ landlord cannot deny the relationship unless the sale is completed by means of registered instrument to transfer the title of the property.

I have thoroughly examined the impugned orders and found that the Petitioner has even conceded non-payment of rent in the written statement which has been reflected in the impugned order of the Appellate Court. In para-6 of the written statement the applicant himself has admitted that he has not paid the rent from December 2010 to May 2011 about six months total amount of Rs.950/- whereas the applicant is ready to deposit the same in Court. After such admission the relationship of landlord and tenant was admitted as well as the default and the excuse of nonpayment of rent on the ground of having entered into an agreement of sale with the predecessor-in-interest of the applicant has no force. The tenant continues to be the tenant even if he is bonafidely entered into an agreement of sale and if he has acquired any right under sale agreement that can be pressed by him even after

vacating the premises once the order of ejectment passed. It is by now a settled law that the plea of agreement of sale by the tenants cannot save him from the consequences of ejectment orders. The ejectment cannot be stopped on this ground. One may with advantage refer to the judgment of Supreme Court reported in 2011 SCMR 320 the Honourable Supreme Court has held as follows:-

øWe 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.

That in view of the above facts and circumstances this constitutional petition has no merit. It is dismissed with no order as to costs. The petitioner is directed to vacate the premises within 30 days from today and in case of his default the Executing Court may issue writ of possession with police aid without further notice to the Petitioner.

JUDGE

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