

Form No: HCJD/C-121  
**ORDER SHEET**

**IN THE LAHORE HIGH COURT LAHORE  
JUDICIAL DEPARTMENT**

Writ Petition No.38170 of 2023

Sajid Iqbal Sheikh

**Versus**

ADJ, Lahore, etc.

| S. No. of order/<br>Proceeding | Date of order/<br>Proceeding | Order with signature of Judge, and that of<br>parties or counsel, where necessary |
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07.06.2023     Sheikh Imran Zulfiqar, Advocate for the petitioner.

The petitioner has invoked the constitutional jurisdiction of this Court to challenge the judgment dated 19.05.2023 passed by the Additional District Judge, Lahore whereby on appeal filed by respondent No.3, order dated 24.06.2022 of the Special Judge (Rent), Lahore was set aside and eviction petition was accepted.

2.     Brief facts of the case are that respondent No.3 filed an eviction petition with the averments that the petitioner obtained the disputed premises from him on monthly rent of Rs.20,000/- vide oral agreement dated 01.01.2015, which was to expire on 30.11.2015 but after the expiry of the said agreement he neither vacated the disputed premises nor paid the rent. The petitioner/respondent appeared and filed an application for leave to defend the petition on the ground that relationship of landlord and tenant did not exist between him and respondent No.3/ejectment petitioner inasmuch as he had purchased the disputed premises from father of respondent No.3 vide agreement to sell dated 26.03.2015 against the consideration of Rs.10,400,000/- out of which Rs.8,400,000/- was paid and possession was obtained. Said application of the petitioner was

allowed and out of the divergent pleadings of the parties, issues were framed. After recording of evidence of the parties, the Special Judge (Rent), Lahore vide order dated 24.06.2022 dismissed the eviction petition. Feeling aggrieved, respondent No.3 preferred appeal before the Additional District Judge, Lahore, which was allowed and petitioner was directed to vacate demised premises within a period of 60 days vide judgment impugned herein.

3. Learned counsel for the petitioner contends that the impugned judgment suffers from misreading and non-reading of evidence inasmuch as it only discusses the evidence of RWs and states nothing about the evidence of AWs. Maintains that the Appellate Court while passing the impugned judgment failed to consider that there was no written tenancy agreement rather oral agreement was alleged without mentioning its essential detail including the names of the witnesses, hence, the same has no sanctity in the eye of law. In this regard, he has placed reliance on the case of Muhammad Nawaz through L.Rs. vs. Haji Muhammad Baran Khan through L.Rs. and others (2013 SCMR 1300). Further contends that respondent No.3 has not been able to establish the relationship of landlord and tenant between the parties and suit for specific performance of the agreement filed by the petitioner is also subjudice before the Civil Court, therefore, impugned judgment is not sustainable in law.

4. Heard.

5. The petitioner claims to be in possession of the disputed premises on the basis of an agreement to sell, which has been denied by respondent No.3. Although a suit for specific performance of the said

agreement has been filed by the petitioner, which is subjudice before the Civil Court wherein claim of the petitioner is yet to be proved. However, title of respondent No.3 over the premises in question is not disputed and as the plea in rebuttal raised by the petitioner is yet to be established, the owner of the property by virtue of his title would be presumed to be the landlord and the person in possession of the same would be construed as tenant. Moreover, the tenancy agreement is not necessarily required to be in writing rather it may be oral and implied. Reliance in this regard is placed on the case of Shajar Islam vs. Muhammad Siddique and 2 others (PLD 2007 Supreme Court 45).

6. Even otherwise, eviction petition was filed on 09.03.2016 whereas suit for specific performance of contract was subsequently instituted on 18.03.2016. Section 10 of the Punjab Rented Premises Act, 2009 adequately deals with any agreement executed between the landlord and tenant after the tenancy agreement, which is reproduced as under: -

***“10. Effect of other agreement.- An agreement to sell or any other agreement entered into between the landlord and the tenant, after the execution of a tenancy agreement, in respect of premises and for a matter other than a matter provided under the tenancy agreement, shall not affect the relationship of landlord and tenant unless the tenancy is revoked through a written agreement entered before the Rent Registrar in accordance with provisions of section 5.”***

The above provision of law clear indicates that any other agreement between the landlord and tenant does not affect their relationship *inter se* unless the tenancy agreement is revoked. However, there is nothing on record to suggest that the oral tenancy agreement between the parties was revoked prior to execution of

agreement to sell alleged by the petitioner. In the same situation the Supreme Court of Pakistan in the case of Muhammad Nisar vs. Izahar Ahmad Sheikh and others

(PLD 2014 Supreme Court 347) has held as under: -

*“----- when the tenant put up a plea in an ejectment application that he had purchased the property then he had to file a suit for his remedies and vacate the premises and thereafter if he succeeded, he would be entitled to take possession of the premises again.”*

Since the suit for specific performance of agreement to sell filed by the petitioner is pending, he has to vacate the disputed premises and thereafter if he succeeds, he will be entitled to take possession of the same again. The case law relied upon by the learned counsel for the petitioner is quite distinguishable for two reasons, firstly the same pertains to a suit for specific performance of an agreement pending before the Civil Court whereas the instant matter is an eviction petition, and secondly as observed supra, in the absence of contrary evidence with regard to title of the disputed premises the owner of the premises is to be presumed as landlord and the person in its possession is supposed to be tenant.

7. In view of the foregoing reasons, the Appellate Court has rightly accepted the eviction petition of respondent No.3 and I do not find any justifiable reason to interfere with the same in exercise of writ jurisdiction. This constitutional petition being devoid of any merit is dismissed in *limine*.

**(RAHEEL KAMRAN)**  
**JUDGE**

**APPROVED FOR REPORTING**

**JUDGE**