

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 25062 of 2020

Abdul Rehman

versus

Additional District Judge and 2 Others

JUDGMENT

<i>Date of hearing</i>	22-05-2023
<i>Petitioner by</i>	<i>Ms. Kashwer Naheed, Advocate</i>
<i>Respondent(s) by</i>	<i>Mr. Shehzada Mazhar, Advocate for respondent No. 3.</i>

SULTAN TANVIR AHMAD, J:– Through this judgment, present petition as well as constitutional petitions No. 25057 of 2020, 25053 of 2020, 25060 of 2020, 25047 of 2020, 25055 of 2020 and 25050 of 2020, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, shall be decided. These petitions are argued before this Court on the same grounds. The judgments as well as orders assailed in the said petitions are similar. The questions of law and facts raised are also identical. For the sake of convenience and clarity, dates and facts as well as names or number of witnesses of the captioned petition shall be referred in this judgment.

2. The petitioner has assailed judgment dated 02.03.2020 passed by learned Additional District Judge, Jhang, whereby, appeal against order dated 16.10.2019 passed by

learned Civil Judge 1st Class, Jhang / Rent Tribunal has been dismissed.

3. Facts, necessary for the disposal of the present petition, are that on 26.07.2014 petitioner filed ejectment petition against respondent No. 3 with the averments that Ghulam Qasim, who was owner of some property in khata No. 396, khasra No. 148 situated in Lakkar Mandi, Jhang, as further described in the ejectment petition (the '*premises*'), rented out the *premises* to respondent No. 3; that respondent No. 3 was told by the said Ghulam Qasim that he sold out the *premises* to the petitioner and in future respondent No. 3 should pay rent to the petitioner, who allegedly admitted the same and paid monthly rent at the rate of Rs.2000/- per month to the petitioner for the months of July & August, 2012 but after that respondent No. 3 committed default in payment of the rent amount(s). Respondent No. 3 filed leave to appear and defend the case on 09.10.2014. The learned Special Judge Rent, Jhang allowed the application of leave to appear and defend the case *vide* order dated 20.10.2014. The parties led their evidence. On 16.10.2019 the learned rent tribunal gave issue-wise findings and dismissed the ejectment petition. Being dissatisfied from this order of the learned rent tribunal, the petitioner filed civil appeal No. 12 / 13 of 2020 on 07.11.2019, which was dismissed by the learned Additional District Judge, Jhang *vide* judgment dated 02.03.2020. Aggrieved from the same, present petitions have been filed.

4. Ms. Kashwer Naheed, learned counsel for the petitioner, has submitted that learned two Courts below have ignored section 2 (d) of the Punjab Rented Premises Act, 2009 (the '*Act*') which recognizes that any person having ownership of the premises or part thereof or share in joint khata can file ejectment petition. She claims that petitioner, being owner of

the *premises* on the strength of sale deed / Exh.A2 (the ‘*sale deed*’) and mutation No. 41674 / Exh. A6, has rightly contacted the learned rent tribunal. It is submitted that respondent No. 3 paid rent for two months i.e. July and August, 2012 at the rate of Rs.2000/- per month then went into default; that prior to this respondent No. 3 was paying rent to Ghulam Qasim who was owner on the strength of Exh.A7. She submits that respondent No. 3 after the execution of the *sale deed*, acknowledged that the petitioner will be entitled to receive rent as new owner instead of Ghulam Qasim. It is the stance of the learned counsel for the petitioner that any person who is owner in joint khata can seek eviction of tenant in the given khata as per law laid down in cases titled “Mst. Badarun Nisa Versus Dr. Abdul Rehman and Others” (PLJ 2017 SC 457) and “Mohammad Akram Bhatti Versus Additional District Judge, Attock and 3 Others” (2021 CLC 1405).

5. On the other hand, Mr. Shahzada Mazhar-learned counsel for respondent No. 3, has supported the order as well as judgment passed by learned two Courts below and he has submitted that no ground requiring interference, in constitutional jurisdiction, is made out. Learned counsel for respondent No. 3 has also relied upon the contradictions in evidence led by the petitioner. He has submitted that no relationship of landlord and tenant could be established between the parties concerned.

6. Heard. The documents available on the record have been perused.

7. In order to prove the issue as to the existence of landlord and tenant relationship, the petitioner has adopted the stance that respondent No. 3 has acquired possession of the *premises* from Ghulam Qasim, the purported previous owner, who has sold the *premises* to the petitioner through the *sale*

deed and Ghulam Qasim at the time of sale told respondent No. 3 that from there onwards he would be tenant of the petitioner, who acknowledged the same. In the entire ejectment petition no name of witness is mentioned in the presence of whom the alleged statements were made by Ghulam Qasim or respondent No. 3. Nevertheless, he later introduced two witnesses of the said fact, namely Mehmood (AW-2) and Fazal-ur-Rehman (AW-3). Both the witnesses tendered their affidavits but Fazal-ur-Rehman / AW-3 has contradicted various parts of the statement of the petitioner / AW-1. Fazal-ur-Rehman / AW-3 failed to answer most of the important questions and kept stating that he had no knowledge as to those questions or facts. He stated that respondent No. 3 has acknowledged as to the tenancy or payment of the future rent to petitioner but contradicted the statement of petitioner / AW-1 as to the time of this alleged oral acknowledgement as well as number of persons present at that time. The following contradictions, besides several other, are important:-

AW-3 / Fazal-Ur-Rehman	AW-1 – Petitioner
دوکان متدعو یہ پر ایک دفعہ گیا ہوں۔ میں مورخہ 01.06.2012 کو گیا تھا۔ اُس وقت میرے چچا بھی ساتھ تھے۔ ہم شام کے وقت اپنے کام سے فارغ ہو کر آئے تھے۔	ظہر کی نماز کے بعد کا وقت تھا۔ میں نے دعویٰ میں گواہان مذکورہ اور وقت کی بابت کوئی ذکر نہ کیا ہے
اب مجھے یاد نہ ہے کہ عشاء سے پہلے گئے تھے یا بعد میں گئے تھے۔ اس دن میں اور چچا گئے تھے۔ اور کوئی نہ تھا۔	زبانی کرایہ تاریخ 01.06.2012 کو ہوا تھا۔ اور جگہ کوٹ روڈ مسجد کے سامنے عابد حسین کی دوکان پر اُس وقت فضل الرحمان، حاجی محمود اور قاسم موجود تھے۔

8. Not just the petitioner failed to mention names of witnesses of oral tenancy / acknowledgment by respondent No. 3 in his leave and he led evidence beyond his pleadings but

at the same time the only witness produced by the petitioner has contradicted him, causing further damage to his case. The said witness further admitted that he is nephew of the petitioner. He gave clear impression that he has stated only on account of this relationship.

9. One Mehmood is also stated to be present at the material time but the said person was not produced for cross-examination, claiming that respondent-side won him over. It is alleged by the petitioner that rent of two months of July and August, 2012 was paid by respondent No. 3 but he miserably failed to prove it through, oral or documentary, evidence. The falsehood to the extent of oral tenancy between petitioner and respondent No. 3 or any acknowledgment of respondent No. 3 in this regard is amply clear.

10. Now coming to the argument of Ms. Kashwer Naheed-learned counsel for the petitioner, regarding landlord and tenant relationship between Ghulam Qasim and respondent No. 3. It is claim of respondent No. 3 that he is tenant of Sh. Pervaiz Ahmad on the strength of an agreement in writing, drawn on stamp paper and registered with rent registrar on 14.05.2015, which is brought on record as Exh. R8. This registered document carries presumption of correctness, which is further supported by cogent and confidence inspiring evidence of RW-1 and RW-2. Conversely, there is nothing available on record to establish that Ghulam Qasim and respondent No. 3 had landlord and tenant relationship. Oral tenancy between the two is pleaded, to make out the case that the petitioner has stepped into shoes of Ghulam Qasim. This oral tenancy could not be proved by producing any receipt or leading independent evidence. The evidence as to alleged acknowledgment of respondent No. 3 in the year 2012 is already discussed which is found to be highly contradictory and

undependable.

11. The last argument of Ms. Kishwar Naheed-learned counsel for the petitioner is based on section 2 (d) of the Act and she has submitted that in order to maintain a successful ejectment petition, without establishing anything else, it is sufficient that the petitioner is co-owner of joint khata where the premises is situated. She has relied on “Mst. Badarun Nisa” case (*supra*). Here, it will be advantageous to reproduce the relevant sections of the Act:-

2 (d) “**landlord**” means the owner of a premises and includes a person for the time being entitled or authorized to receive rent in respect of the premises;

- 2 (e) xxx
- 2 (f) xxx
- 2 (g) xxx
- 2 (h) xxx
- 2 (i) xxx
- 2 (j) xxx
- 2 (k) xxx

2 (l) “**tenant**” means a person who undertakes or is bound to pay rent as consideration for the occupation of a premises by him or by any other person on his behalf and includes;

- (i). a person who continues to be in occupation of the premises after the termination of his tenancy for the purpose of a proceeding under this Act;
- (ii). Legal heirs of a tenant in the event of death of the tenant who continue to be in occupation of the premises; and
- (iii). a sub-tenant who is in possession of the premises or part thereof with the written consent of the landlord; and”

The reproduced definition of landlord admits two categories of persons (i) the owner, and (ii) a person who is authorized or entitled to receive rent provided any of the following grounds, given in section 15 of the Act, is available:-

“15. **Grounds for eviction.** A landlord may seek eviction of the tenant if:

- (a) the period of tenancy has expired;

- (b) the tenant has failed to pay or tender the rent within a period of thirty days after the expiry of the period stipulated in section 7;*
- (c) the tenant has committed breach of a term or condition of the tenancy agreement;*
- (d) the tenant has committed a violation of an obligation under section 13;*
- (e) the tenant has used the premises for a purpose which is different from the purpose for which it has been let out; or*
- (f) the tenant has sub-let the premises without the prior written consent of the landlord.”*

12. Combined reading of sections 13 and 15 of the *Act* as well as definitions of landlord and tenant reflects that remedy of eviction under the *Act* is available only when the landlord of the given premises can first establish that one sought to be evicted has a relationship of tenant with such landlord. This eviction petition can be maintained upon expiry of tenancy, failure of payment of rent, breach of terms and conditions of tenancy agreement, violation by tenant of obligation under section 13 of the *Act* and unauthorized use of premises or sub-letting without written consent. All the grounds given in section 15 of the *Act* require some violation by the tenant. If a person is not a tenant of the ejectment petitioner that means no ground is available to such person to seek eviction of tenant.

13. The jurisdiction of rent tribunals is provided to regulate the relationships of landlords and tenants, to provide a mechanism for settlement of their disputes in an expeditious and cost effective manner and for the matters connected thereto. This jurisdiction is not available as an alternate to other jurisdictions provided in law or claims of possession through partition or disputed title or for that matter other claims that are required to be resolved by the civil Courts.

14. As far as reliance of learned counsel for the petitioner on “Mst. Badarun Nisa” case (*supra*) is concerned, the same is distinguishable from the facts of the present case. In

case titled “Ch. Abdul Waheed through L.Rs. Versus Zahida Parveen alias Nagina and 5 Others” (2021 YLR 1973) this Court has already observed as follows:-

“Perusal of both the terms clearly depicts the receiving of rent and payment of rent are sine qua non for establishing the relationship of tenancy between the parties and in a case where the relationship itself is under question then, it becomes further necessary and imperative to prove the existence of relationship between the parties through evidence and for the very purpose the factum of payment of rent by the tenant to landlord is pivotal to prove or disprove the claim of tenancy and relief sought. In the case of “Muhammad Ibrahim V. Niaz, Muhammad”(2016 CLC 609), same principle was laid down as under:-

“It is an established principle that once a tenant is always a tenant, but in the described circumstances the initial burden was on the respondent (applicant) to establish his status either as of owner or of landlord of the house in question, to enable him to seek for eviction of the appellant. There was no document which could describe his (respondent’s) status as of owner of the house in question. There was even no specific oral evidence stating payment of rent to the respondent by the appellant, or any other act on part of the appellant which determined his status as of tenant of the respondent.

Learned Special Judge (Rent) is not concerned with the ownership of the premises in question. This ejectment petition was filed under the Punjab Rented Premises Act, 2009, and even its all provisions are very specific and clear.”

15. The petitioner has set-up the grounds of eviction in paragraph No. 6 of his eviction-petition. This paragraph reads as follows:-

"نمبر-6 - یہ کہ مسئول علیہ بوجوہات ذیل مستوجب بید غلی ہے۔

(i)- بوجہ ہونے نا وہند کراہیہ از ستمبر 2012 تا جولائی 2014 مبلغ -/44000

(ii) - کرایہ مطابق قانون ادا نہ کرنے کی صورت میں۔

(iii) - ذاتی ضرورت

(iv) - مسئول علیہ نے مطابق قانون کرایہ نامہ بحق سائل تحریر و تکمیل کر کے نہ دیا ہے۔

The ground (iii) above i.e. requirement of property for personal use is not available in the *Act*. The grounds (i), (ii), and (iv) above, are dependent on the relationship of landlord and tenant. As already discussed, the petitioner miserably failed to establish this relationship between himself and respondent No. 3. The petitioner alleged that respondent No. 3 was tenant of previous owner (Ghulam Qasim) but he could not prove this either by leading dependable evidence.

16. I am of the considered opinion that the learned two Courts below have properly appreciated the evidence led by the parties and correctly applied the law to facts of the case. No case requiring any interference, through constitutional jurisdiction of this Court, is made out. Consequently, these petitions are ***dismissed***. No order as to costs.

(Sultan Tanvir Ahmad)
Judge

Approved for Reporting

Judge