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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W. P. No. 20915 / 2023

Qari Muhammad Qasim

VERSUS

Mirza Rehmat Ullah and 02 others

JUDGMENT

Date of Hearing	12.09.2023
Petitioner by:	Mr. Atif Ashraf, Advocate
Respondent No. 1 by:	Rana Riaz Hanif, Advocate.

ABID HUSSAIN CHATTHA, J. This constitutional Petition seeks modification in the impugned Order & Memo of Cost dated 21.01.2023 passed by Special Judge Rent, Lahore and Judgment & Memo of Cost dated 07.03.2023 passed by Additional District Judge, Lahore to the extent of conditions imposed upon the Petitioner while allowing his Ejectment Petition.

2. The brief facts of this case are that the Petitioner instituted an Ejectment Petition against Respondent No. 1 (the “**Respondent**”) seeking his eviction from the upper portion of house measuring 3-Marlas bearing *Khata* No. 3, *Khatuni* Nos. 5 to 6 situated at Jallo, Tehsil Cantonment, District Lahore acquired by the Petitioner through registered sale deed bearing document No. 1894, *Bahi* No. 1, *Jild* No. 853 dated 08.03.2011 registered with the Sub Registrar, Wahga Town, Lahore (the “**rented premises**”). It was asserted that the rented premises was leased out to the Respondent in the year 2014 through an oral tenancy agreement against the monthly rent of Rs. 4,000/- which was paid for the first two years but thereafter, the Respondent defaulted since 2017 and an amount of Rs. 192,000/- is outstanding towards him.

3. The Respondent contested the Ejectment Petition by filing his leave to contest in which initial relationship between the landlord and the tenant was admitted. It was claimed that the Respondent obtained the rented premises on rent in 2014 from the Petitioner but purchased the same through an oral agreement to sell in 2016. As such, he is not liable to vacate the rented premises or pay the rent from 2017.

4. The Rent Tribunal vide Order dated 20.07.2022 appointed a Court representative to ascertain possession over the rented premises. The Court representative visited the rented premises and confirmed possession of the Respondent over the same.

5. Thereafter, one Ashfaq Ahmad Mian filed an Application under Order I, Rule 10 of the Code of Civil Procedure, 1908 (the “CPC”) for becoming a party to the Ejectment Petition and seeking appointment of local commission to ascertain his possession over the rented premises. He claimed that he was in possession over the rented premises on the strength of registered sale deed No. 7183 dated 10.05.2022. The Rent Tribunal dismissed the said Application vide Order dated 12.12.2022 by holding that it is not ascertainable from the sale deed that the claimant is in possession of the rented premises, the possession of the Respondent over the rented premises has already been established in the report of local commission and the jurisdiction of the Rent Tribunal does not extend to determination of title but is confined to disputes qua rented premises. The said Ashfaq Ahmad Mian assailed the Order dated 12.12.2022 before the Appellate Court, however, the Appeal was dismissed vide Order dated 31.01.2023 as being not maintainable having been preferred against an interlocutory order.

6. The Rent Tribunal allowed the Ejectment Petition of the Petitioner vide impugned Order dated 21.01.2023 in the following terms:-

“27. Sequel of above discussion is that the application for leave to contest filed by the respondent does not disclose sufficient ground for production of oral evidence. Hence, application for leave to contest filed by the respondent is dismissed.

28. Affidavits of Petitioner’s witnesses are available on file, therefore, while relying upon the affidavits, the instant ejectment petition is allowed. Although, Rent Tribunal shall adopt any kind of equitable principle to reach the efficacious decisions. Reliance in this regard is

placed on “Muhammad Tariq Khan Vs. Khawaja Muhammad Jawad Asami” reported as (2007 SCMR 813). Hence, keeping in view the above mentioned principle referred, this ejectment petition is conditionally decreed. The condition requires as to be fulfilled by the petitioner are given as under.-

1. That the ejectment petitioner shall approach the Revenue Officer for the purpose of demarcation of the suit property as mentioned in his registered sale deed. This decree will be executable only when Revenue Officer will authenticate that the subject property of this petition falls under Khewat and Khatooni numbers as mentioned in his registered sale deed/in this petition.
2. If the Revenue Officer reports that subject property is undivided piece of land then petitioner will approach the concerned forum for the purpose of partition and the possession will be delivered in pursuance of this decree in conjugation of the decree of the partition.
3. Ejectment petitioner will also produce building plan from LDA/Municipal Corporation Authority or District Council, Lahore so that it can be presumed that infrastructure of the plot was build in accordance with law.

29. If above mentioned conditions are not fulfilled, ejectment Petitioner is at liberty to seek alternate remedy against the respondent before appropriate forum. Subject to fulfillment of the above mentioned conditions, ejectment petitioner can file execution after 45 days is given to the respondent namely Mirza Rehmat Ullah to quit the demised property where-after, the respondent shall be bound to vacate the house without any further delay otherwise the petitioner/landlord shall be entitled to adopt due course of law for execution of this order. The petitioner has claimed default in payment of rent since the year 2017 but there is no reasonable explanation available on record as to why the petitioner failed to agitate his grievance for such a long time. Therefore, the claim of the petitioner for default in amount of outstanding rent since the year 2017 is rejected. However, the petitioner is held entitled to receive monthly rent from filing of this ejectment petition till his eviction alongwith settled annual increment. If the respondent produced any rent receipts during pendency of this petition then the same shall be liable to waived off to the respondent. It is made clear that this final order is not tantamount to declaration of ownership in favour of any party to this petition; moreover, no public department shall made change in record of ownership on the basis of this final order. Execution be filed after verification of fine receipt by Muhammad Umair Ahlmad. In case of fine receipt is reported to be fake, then this order shall deemed to be vacated. Memo of costs be prepared accordingly. File be consigned to record room after its due completion and compilation by Ahlmad Muhammad Umair till 5th February-2023.”

7. The Petitioner preferred an Appeal against decision of the Rent Tribunal to the extent of conditions imposed upon him while allowing his

Ejectment Petition. The said Ashfaq Ahmad Mian also preferred his separate Appeal. The Appellate Court dismissed both the Appeals vide its separate Judgments dated 07.03.2023. The Appeal of the Petitioner was dismissed in the following terms:-

“17. Although respondent while filing application for leave to contest submitted that he got the demised property on rent from the appellant/ejectment petitioner in the year 2014 and thereafter he purchased the same from appellant in the year 2016 through oral agreement, yet it is obvious from the record that one Ashfaq Ahmed Mian submitted application u/o 1 Rule 10 CPC for impleading him as party to the ejectment petition while claiming him to be in possession thereof as owner on the basis of registered sale deed No.7183 dated 10.05.2022 and even he also annexed copy of registered sale deed with his application in order to establish his stance. Moreover, said Ashfaq Ahmad Mian has also questioned the validity of impugned order through independent appeal, which is fixed for today before this court, record whereof reflects that said Ashfaq Ahmad Mian has annexed attested copy of report of local commission appointed in the suit titled, “Ashfaq Ahmad Mian Vs. Mirza Rehmat Ullah etc” and according to said report Ashfaq Ahmad Mian was found to be in possession of demised property. However, sale deed in favour of Ashfaq Ahmad Mian as well as sale deed in favour of Qari Muhammad Qasim i.e. ejectment petitioner bear different Khewat Number and both of them claim to be owners of demised property on the basis of sale deeds existing in their favour and in like situation learned Special Judge Rent rightly passed the impugned order subject to fulfillment of following conditions:

- i. That the ejectment petitioner shall approach the Revenue Officer for the purpose of demarcation of the suit property as mentioned in his registered sale deed. This decree will be executable only when Revenue Officer will authenticate that the subject property of this petition falls under the Khewat and Khatooni numbers as mentioned in his registered sale deed in this petition.*
- ii. If the Revenue Officer reports that subject property is undivided piece of land then petitioner will approach the concerned forum for the purpose of partition and the possession will be delivered in pursuance of this decree in conjugation of the decree of the partition.*
- iii. Ejectment petitioner will also produce building plan from Learned A.D Legal for FIA/Municipal Corporation Authority or District Council, Lahore so that it can be presumed that superstructure of the plot was build in accordance with law.*

Thus in case, it is found during demarcation proceedings that demised property bears the particulars in accordance with the sale deed existing in favour of appellant, then he shall definitely be entitled to get

possession of said property on the basis of impugned order. Being so, there exists no illegality or infirmity in the impugned order. Consequently appeal in hand is dismissed with cost. Memo of cost be prepared. Copy of this judgment alongwith record of ejectment petition be sent back to the learned Trial Court for information, whereas file of appeal be consigned to the record room after its due completion.”

8. Learned counsel for the Petitioner submitted that although the Ejectment Petition of the Petitioner has been concurrently allowed but the Courts below went beyond their jurisdiction vested under the Punjab Rented Premises Act, 2009 (the “Act”) to impose conditions with respect to the rented premises in terms of demarcation, partition and sanctioning of building plan. This is especially so when the Rent Tribunal had only framed two issues regarding relationship of landlord and tenant; and default in payment of rent which were decided in favour of the Petitioner. Hence, it was completely uncalled on the part of the Courts below to give the aforesaid directions regarding the rented premises. Moreso, the Application and Appeal of said Ashfaq Ahmad Mian had been dismissed and as such, he was not a party to the Ejectment Petition. The sale deed of said Ashfaq Ahmad Mian bears no nexus with the rented premises and as such, the Courts below went beyond their jurisdiction under the Act to conditionally allow the Ejectment Petition. Hence, the impugned Order & Judgment are liable to be modified by removing the conditions imposed upon the Petitioner with respect to the rented premises.

9. Conversely, learned counsel for the Respondent submitted that although the Respondent initially obtained the rented premises from the Petitioner on rent in the year 2014 yet he became an owner after purchasing it in 2016 through an oral agreement to sell, therefore, the Respondent is entitled to continue his possession over the rented premises. The claims of the Petitioner, the Respondent and Ashfaq Ahmed Mian in essence pertain to determination of title qua the rented premises and as such, the conditions imposed by the Courts below are equitable in nature.

10. Arguments heard. Record perused.

11. The record depicts that the Petitioner instituted an Ejectment Petition contending therein that he leased out upper portion of the rented premises to

the Respondent in the year 2014 through an oral rent agreement against monthly rent of Rs. 4,000/- which was paid for the first two years but thereafter, the Respondent defaulted since 2017 and an amount of Rs. 192,000/- is outstanding towards him. The Petitioner made repeated requests to the Respondent to vacate the rented premises and pay the arrears of rent but he consistently refused to do so which necessitated the filing of the Ejectment Petition. The Respondent, in his leave to contest, admitted that he obtained the rented premises on lease from the Petitioner in the year 2014 but claimed that he had purchased the same in 2016 through an oral agreement to sell and as such, he was not liable to vacate the rented premises or pay the arrears of rent.

12. There is no doubt that the Petitioner had claimed eviction of the Respondent from the rented premises on the basis of an oral tenancy agreement. As a normal rule, where oral tenancy is denied, leave to contest is allowed to determine the relationship of landlord and tenant along with ancillary disputed questions of law and fact through recording of evidence. However, in the instant case, since the Respondent had admitted that he had initially obtained the rented premises on rent from the Petitioner, therefore, the relationship of landlord and tenant stood established. Similarly, the Respondent had admitted non-payment of rent since 2017 by proclaiming ownership of the rented premises on the basis of an oral agreement to sell. The Respondent had also acknowledged his possession over the rented premises. The Petitioner had produced his title documents regarding the rented premises. In contrast, the Respondent did not produce any title document to claim his ownership over the rented premises. The claim of the Respondent regarding his ownership over the rented premises was based upon an oral agreement to sell regarding which he had an adequate remedy before the Court of competent jurisdiction for determination of title qua the rented premises.

13. The said Ashfaq Ahmad Mian had entered into the pending Ejectment Petition by filing an Application under Order I, Rule 10 of the CPC seeking to become a party thereto claiming his possession over the rented premises on the strength of sale deed No. 7183 dated 10.05.2022. He also requested that a

local commission may also be appointed to verify his possession. The said Application was concurrently dismissed by the Courts below. The Appellate Court while dismissing the Appeal of Ashfaq Ahmed Mian undertook a detailed comparison of sale deeds of the Petitioner and the said Ashfaq Ahmed Mian. In this behalf, Paragraph No. 7 is reproduced below:-

“Appellant has also questioned the validity of order dated 21.01.2023, whereby ejectment petition was finally accepted, on the grounds that he is in possession of demised property as owner on the basis of registered sale deed No.7183 dated 10.05.2022 and respondent No.2 being collusive with the respondent No.3 i.e. so called tenant filed the ejectment petition in order to grab the property, which is exclusively owned and possessed by him. However, it is obvious from the contents of sale deed No.7183 dated 10.05.2022 that the same relates to property bearing Khewat No.85, Khatooni No.294 to 314 having total land measuring 246 Kanals 1 Marla, situated at Mouza Jallo, Tehsil Shalimar as per record of rights for the year 2015/2016 bounded as follows:

*East: Plot owned by other person,
West: Street 20 feet,
North: Plot owned by Ishtiaq and
South: Plot owned by other person*

whereas respondent No.1 filed the ejectment petition as to house measuring 3 Marlas bearing Khewat No.3, Khatooni No. 5 to 6 having total land measuring 202 Kanal 19 Marlas situated in Mouza Jallo, Tehsil Cantt, District, Lahore as per record of rights of the year 1996/97 and even according to version of respondent No. 2/ejectment petitioner, he purchased total land measuring 12 Marla and houses situated at Northern and Southern side of demised property are also owned by him and total land falling in all the three houses is 12 Marla. Thus it is crystal clear from the contents of sale deed in favour of appellant as well as particulars of demised property mentioned in the ejectment petition that property alleged to be owned and possessed by the appellant is entirely different from that of property mentioned in the ejectment petition and respondent No.2 being ejectment petitioner shall be entitled to have possession of property owned by him as per description mentioned in the ejectment petition, whereas he shall not be entitled to have possession of property bearing the description contained in sale deed in favour of appellant on the basis of impugned order.”

14. The Rent Tribunal had imposed conditions upon the Petitioner based upon a misconceived notion that both the sale deeds envisage alienation of rights with reference to land located in close proximity. However, the Appellate Court conclusively found that the sale deeds of the said Ashfaq Ahmed Mian and the Petitioner are not identical. It was thus obvious that the

decree of eviction was to be executed with reference to the specific bounded property as per the sale deed in favor of the Petitioner. The said Ashfaq Ahmed Mian was not a party to the Ejectment Petition since his Application for becoming a party thereto had been concurrently dismissed by the Courts below. As such, no eviction order was passed against him. The respective claims of ownership qua rented premises of the Petitioner and Ashfaq Ahmed Mian were beyond the jurisdiction of the Rent Tribunal. It is noted that the Act has been promulgated to regulate the relationship of landlord and tenant with respect to rented premises and for providing an expeditious and cost-effective mechanism for settlement of their disputes. The Rent Tribunal established under Section 16 of the Act exercises exclusive jurisdiction within the ambit and scope of the Act which is limited regarding determination of disputes between the landlord and the tenant emanating from lease agreements with respect to the rented premises. Therefore, unless the relationship of landlord and tenant is not established vis-à-vis the rented premises, the Rent Tribunal cannot assume jurisdiction to determine any other disputed question between the parties qua the rented premises such as the determination of rights and title. The limited jurisdiction extended to the Rent Tribunal under the Act is fortified by Section 10 of the Act which specifically stipulates that 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 the provisions of Section 5 of the Act. Therefore, both the Respondent and the said Ashfaq Ahmed Mian have an alternate remedy to resort to a Court of competent jurisdiction for determination of their claims of ownership regarding the rented premises. Reliance is placed on case titled, “Fareed ud Din Masood v. Additional District Judge Bahawalpur and others” (2019 SCMR 842). As such, the Courts below aptly concluded that the Respondent was not entitled for leave to contest and proceeded to allow the Ejectment Petition of the Petitioner. However, imposition of conditions mentioned in

the impugned Order & Judgment were unjustified and without any reasonable basis which had practically denied relief to the Petitioner.

15. In view of the above, this Petition is **accepted**; the conditions imposed by the Rent Tribunal upon the Petitioner and upheld by the Appellate Court are set side. The rest of the findings recorded by the Courts below regarding eviction of the Respondent and arrears of rent are maintained. Accordingly, the impugned Order, Judgment & Memo of Costs dated 21.01.2023 and 07.03.2023 stand modified in the above terms.

(Abid Hussain Chattha)
Judge

Approved for reporting.

Judge

Abu Bakker