

2024 C L C 2052

[Balochistan]

Before Gul Hassan Tareen, J

NAIMAT ALI SHAH---Appellant

Versus

ANJUM SHAGUFTA and another---Respondents

F.A.O. No.54 of 2022, decided on 2nd September, 2024.

(a) Balochistan Urban Rent Restriction Ordinance (VI of 1959)---

----Ss.13(1) & 13(3)(a)(i)(a)---Qanun-e-Shahadat (10 of 1984), Arts.115 & 125---Eviction order---Default in payment of rent---Personal bona fide need---Denial of relationship of landlord and tenant---Burden of proof---Non-mentioning of details as to purchase of property in dispute---Entering into a contract of tenancy and admission as to payment of rent---Denial of currency of tenancy---When the existence of relationship of landlord and tenant is proved or it has been shown that they have been acting as landlord and tenant, its continuance is presumed and the burden of proving the contrary lies upon the person who denies such legal relationship---Tenant in his written statement had pleaded that he had been paying the rent to the landlady and later, landlady had sold out the subject house to him---Tenant had admitted his induction in the subject house as tenant of the landlady, thus, the burden of proof was on the tenant by establishing that he had ceased to stand in the relationship of landlord and tenant---Tenant in his written statement had not pleaded the price against which he had purchased the subject house and he could not bring on record any document in proof of the pleaded sale transaction---Tenant could not produce proof of payment of the price to the landlady or to anyone else, on her behalf---Oral assertion of the tenant was found baseless and his denial of relationship of landlord and tenant was contumacious---At the beginning of tenancy, tenant came into possession of the subject house and then he, by entering into the contract of tenancy and by payment of rent, had acknowledged the title of the landlady on the subject house---Where tenant denies the title of his landlord and it is established that the landlord has inducted him in possession of the tenement, he will forfeit his tenancy and be liable to ejectment forthwith---Appeal was dismissed accordingly.

Muhammad Zubair v. Lala Rukh 2019 YLR 2121 and Muhammad Zakria Kansi v. Bashir Ahmed PLD 2001 Quetta 40 ref.

Muhammad Imran v. Muhammad Afzal 2022 CLC 1354; Muhammad Nadeem v. Anjuman-E-Nasir-Ul-Aza 2020 CLC 526; Erick v. Pethres PLD 2020 Balochistan 83; Abdul Ellah Rehmani v. Muhammad Khan 2020 YLR 2882; Muhammad Akram v. Muhammad Khalid 2020 CLC 1542; Dawood Khan v. Sultan Muhammad PLD 2019 Bal. 113 and Ahmed Ali v. Nasar-ud-Din PLD 2009 SC 453 rel.

(b) Transfer of Property Act (IV of 1882)---

----S.100---Word 'charge'---Meaning and connotation---Creation of 'charge' on the subject house---Non-mentioning of anything in written statement about 'charge'---Divergent pleadings of the tenant---Effect---'Once a tenant is always tenant', principle of---Scope---Charge on an immovable property is created to secure payment of money---In a charge, there is no transfer of any interest in favour of the charge holder, however, he is only entitled to recover his money from the property--- Under S.100 of Transfer of Property Act, 1882, it is expedient that there must be a clear intention to make a particular property a security for the payment of a debt--- Where the property is not intended to serve as a security, there can be neither a mortgage nor a charge---Tenant had not pleaded that he paid the amount to the landlady as a debt and in exchange, the landlady had created a charge on the subject house to secure repayment of the money---Tenant had pleaded contradictory stances of purchase and charge and also admitted title of the respondent and payment of rent, thus, he was neither purchaser of the subject house nor charge holder and was a tenant on the principle that, 'once

a tenant is always a tenant'---Appeal was dismissed accordingly.

Sher Shah Kasi for Appellant.

Hafiz Sharifullah for Respondent No.1.

Date of hearing: 30th August, 2024.

JUDGMENT

GUL HASSAN TAREEN, J.---This first appeal from order assails eviction order dated 17 September 2022 passed by the learned Civil Judge/Rent Controller, Sariab, Quetta whereby, Eviction Application 01/2022 filed by the respondent 1 ('respondent') against the appellant was allowed.

2. In her eviction application, respondent had pleaded that she is the lawful owner and landlord of a house, described in para 1 of the eviction application which was rented out to the appellant vide contract dated 08 September 2020 for two years on monthly rental of Rs.1000/- for, the appellant spent Rs.550,000/- on the renovation of the house. However, appellant had failed to pay the rent of the subject house since inception of the tenancy. Respondent had also pleaded that she requires the subject house for her bona fide need.

In prayer clause, respondent sought eviction of the appellant and recovery of outstanding rent, i.e, Rs. 18,000/-.

3. Appellant submitted written statement. On the pleadings, the learned Rent Controller framed following issues:

- '1. Whether there still exists any relationship of landlord and tenant between the applicant and respondent No. 1?
2. Whether the applicant is entitled for the relief claimed for?
3. Relief?'

Respondent examined two oral witnesses and also appeared on oath. In rebuttal, appellant examined two oral witnesses and appeared as his own witness. On completion of evidence and after hearing arguments, the learned Rent Controller vide impugned order dated 17 September 2022 allowed the eviction application and directed the appellant to handover peaceful possession of the subject house to the respondent and to pay the outstanding rent i.e. Rs.18,000/-.

4. Mr. Sher Shah Kasi, learned counsel for the appellant states that the evidence produced by the respondent is completely silent in relation to the pleaded default in payment of rent and personal bona fide use. He next states that respondent had admitted receipt of Rs.550,000/- and unless the said 'charge' on the subject house had not been paid, respondent could not have sought eviction. He finally states that since respondent had failed to establish her ownership on the subject house, thus, she could not have sought eviction of the appellant on the ground of personal need. He placed reliance on the following case laws:

Muhammad Zubair v. Lala Rukh 2019 YLR 2121 and Muhammad Zakria Kansi v. Bashir Ahmed PLD 2001 Quetta 40.

5. Mr. Hafiz Sharifullah, learned counsel for the respondent states that appellant, in the legal objections, had denied the relationship of landlord and tenant while, in parawise reply, admitted his status in the subject house as tenant of respondent. He further states that respondent had proved the issue 1 and the denial of the appellant was contumacious. Learned counsel placed reliance on the following case laws:

Muhammad Imran v. Muhammad Afzal 2022 CLC 1354, Muhammad Nadeem v. Anjuman-E-Nasir-Ul-Aza 2020 CLC 526, Erick v. Pethres PLD 2020 Balochistan 83, Abdul Ellah Rehmani v. Muhammad Khan 2020 YLR 2882, Muhammad Akram v. Muhammad

6. Heard and have gone through the record and the case laws.

7. Under Article 125, the Qanun-e-Shahadat Order 10, 1984 ('Q.S.O') 'when the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it'.

When the existence of relationship of landlord and tenant is proved or it has been shown that they have been acting as landlord and tenant, its continuance is presumed and the burden of proving the contrary lies upon the person who denies such legal relationship.

8. In para. 2 of his written statement, appellant had pleaded that he would pay the rent to the respondent and later, respondent had sold out the subject house to him. Appellant had admitted his induction in the subject house as tenant of the respondent. Thus, the burden of proof was on the appellant by establishing that he has ceased to stand to the respondent in the pleaded relationship of landlord and tenant. Appellant in his written statement had not pleaded the price against which he had purchased the subject house. He could not bring on record any mutation, sale deed or contract of sale in proof of the pleaded sale transaction. He could not produce proof of payment of the price to the respondent or to any other, on her behalf. The oral assertion of the appellant was baseless and his denial of relationship of landlord and tenant was contumacious. Under Article 115, the Q.S.O 'No tenant of immovable property or person claiming through such tenant, shall, during the continuance of the tenancy, be permitted to deny that the landlord of such tenant had, at the beginning of the tenancy, a title to such immovable property ...'.

At the beginning of tenancy, appellant came into possession of the subject house as tenant of the respondent and at then, he, by entering into the contract of tenancy and by payment of rent, had acknowledged the title of the respondent on the subject house. In his affidavit, appellant stated that, 'he was tenant of the respondent in the subject house'. Hence, appellant's learned counsel contention that respondent was not the owner of the subject house is not correct.

9. So far as issue of wilful default and personal bona fide need is concerned, appellant had denied the relationship of landlord and tenant between himself and the respondent. Where tenant denies the title of his landlord and it is established that the landlord had inducted him in possession of the tenement, he would forfeit his tenancy and liable to ejectment forthwith. Admittedly, appellant had deliberately failed to pay the rent of the subject house to the respondent. Appellant denial was therefore contumacious. Reliance is placed on the case reported as Ahmed Ali v. Nasar-ud-Din (PLD 2009 Supreme Court 453). Relevant therein reads:

'10. In the case in hand, we from perusal of record, keeping in view all facts and statements of the witnesses, find that relationship of landlord and tenant existed between the parties. Application of landlord for ejectment of tenant having been based on default, and the required relationship of landlord and tenant having been denied by the tenant, he was liable to be ejected straightaway when the required relationship has been proved in affirmative. Reliance in this respect can be placed on Rab Nawaz v. Haji Muhammad Iqbal (2003 SCMR 1476), Abdul Hamid and 3 others v. Syed Abdul Qadir and others (PLD 2001 SC 49).

10. As far as contention of appellant's learned counsel regarding 'charge' on the subject house is concerned, I have gone through the written statement of the appellant. In his written statement, appellant had not pleaded 'charge'. The term 'Charge' is defined in section 100, the Transfer of Property Act, 1882 'where immovable property of one person is by act of parties or operation of law made security for the payment of money to another, and the transaction does not amount to a mortgage, the latter person is said to have a charge on the property; and all the provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to such charge'.

Charge on an immovable property is created to secure payment of money. In a charge, there is no transfer of any interest in favour of the charge holder, however, he is only entitled to recover his money from the property. Under section 100, the Act, 1882, it is expedient that there must be a clear intention to make a particular property security for the payment of a debt. Where the property is not intended to serve as a security, there can be neither a mortgage nor a charge.

The appellant had not pleaded that he paid Rs.550,000/- to the respondent as a debt and in exchange, the respondent in exchange had created a charge on the subject house to secure repayment of the money. Thus, appellant learned counsel contention is incorrect rather contradictory. Appellant had pleaded purchase whereas on the other hand, has claimed that he was charge holder of the subject house. As hereinabove held, appellant had admitted the title of the respondent and paid the rent. Thus, he is neither purchaser of the subject house nor charge holder thereof. He was tenant on the principle that, 'once a tenant is always a tenant'.

Case laws cited by appellant's learned counsel, are distinguishable.

11. For the forgoing reasons, no case is made out for interference with the impugned eviction order of the learned Rent Controller. The jurisdiction exercised by the learned Rent Controller does not call for any interference and the appeal is dismissed, but with no order as to costs. The appellant is however granted sixty days for handing over vacant and unencumbered possession of the subject house to the respondent.

SA/78/Bal.

Appeal dismissed.