

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.4165 of 2014

Farooq Basheer.

Versus

Arif Basheer and others.

Petitioners By : Malik Ghulam Mustafa Kandwal, Advocate
and Ms. Sidra Gulzar, Advocate.

Respondents By : Mr. Rizwan Akhtar Awan, Advocate Mr.
Intezar Hussain, Advocate and
Muhammad Arbab Alam Abbasi,
Advocate.
Mr. Awais Haider Malik, State Counsel.
M. Arif, ASI.

Date of Hearing : 05.03.2020.

AAMER FAROOQ, J. - The petitioner, in the instant petition, has assailed order dated 16.09.2014 whereby, the appeal preferred by the petitioner was dismissed.

2. The facts, in brief, are that respondents No.1 and 2 filed an eviction application against respondent No.6 with respect to Plot No. 59-G, situated in Street No.7, Sector I-10/3, Industrial Area, Islamabad **(the Property)**. During the course of proceedings, the petitioner moved an application under Order I Rule 10 C.P.C. alleging that he is the owner of the said property and respondents No.1 and 2 alongwith Mst. Hajara Begum (mother of the petitioner) are benamidars. The said application under Order I Rule 10 C.P.C. was dismissed by the learned Rent Controller and the referred order was not assailed further. The eviction application was ultimately allowed in favour of respondents No.1 and 2

by the learned Rent Controller, vide order dated 04.07.2014. The petitioner preferred appeal against the referred order before the learned District Judge (West), Islamabad (respondent No.7), which was dismissed, vide the impugned judgment dated 16.09.2014.

3. Learned counsel for the petitioner, *inter-alia*, contended that the petitioner is the owner of property, in question and in this behalf civil litigation is pending before the Court of competent jurisdiction. It was submitted that since the petitioner is owner of the property, he was a proper and necessary party. It was further contended that in his status as the owner the petitioner had every right to file an appeal as it is trite law that even a stranger to the proceedings can also file an appeal. Learned counsel contended that even otherwise and without prejudice to his arguments the petitioner has inherited the share from his mother Mst. Hajara Begum in the property, in question, hence being a co-owner he also was entitled to be impleaded as a proper and necessary party and could also file an appeal against the order.

4. Learned counsel for the respondents, *inter-alia*, contended that the civil litigation between the parties is pending with respect to the claim of the petitioner that he is owner of the property. It was submitted that it is an established principle that the co-owner can institute eviction proceedings against the tenant without impleading all the co-owners. It was also pointed out that the petitioner is not prejudiced in any way by the eviction order passed by learned Rent Controller.

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. The factual background, leading to filing of the instant petition, is mentioned herein-above, therefore, need not be reproduced.

7. The petitioner claims to be the owner of the property and in this behalf civil litigation between the parties is pending. In this view of the matter, his application under Order I Rule 10 C.P.C. was rightly dismissed by the learned Rent Controller. Undoubtedly, under the law a stranger to the proceedings can file an appeal however, he has to seek permission before doing so in light of the case law reported as "*Sahib Dad Vs. Province of Punjab and others*" (**2009 SCMR 385**). Even otherwise, a stranger has to establish as to what prejudice the impugned order has caused. The petitioner has not yet established his claim regarding the ownership, hence no prejudice has been caused to him by the eviction order.

8. Even, if the petitioner alleges his right as a co-owner, it is trite law that anyone co-owner can institute eviction proceedings against the tenant without impleading the other co-owners. Reliance is placed on cases reported as "*Abdul Ghani Vs. Abrar Hussain*" (**1999 SCMR 348**) and "*Bahadar Khan Vs. Abdul Khaliq and 2 others*" (**2018 MLD 298**). The petitioner if wishes to obtain possession of the property may do so by instituting appropriate proceedings for possession through partition, in case he is co-owner of the property.

9. In view of the above facts and circumstances as well as law, the judgment impugned in the instant petition does not suffer from any error of law or jurisdiction warranting interference.

10. For what has been stated above, the instant petition is without merit and is accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

Announced in Open Court this 15th day of April, 2020.

JUDGE