

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.2742/2018

Yasin Khan

Versus

Additional District Judge No.VII, Islamabad and others

Date of Hearing: 10.06.2019

Petitioner by: Sardar Anzar Iqbal Khan, Advocate

Respondent No.3 by: Mr. Muhammad Ayyaz Gondal, Advocate

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition, the petitioner, Yasin Khan, impugns the judgment and decree dated 04.06.2018, passed by the Court of the learned Additional District Judge (West), Islamabad, dismissing his appeal against the order and decree dated 30.03.2018, passed by the Court of the learned Rent Controller, Islamabad. Vide said order and decree dated 30.03.2018, the learned Rent Controller dismissed the eviction petition filed by the petitioner under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("I.R.R.O.") seeking respondent No.3's eviction from the upper portion of a double-storied house situated at *Mouza Badia Rustom Khan, Dhoke Kashmirian*, Post Office *Golra Sharif*, Tehsil and District Islamabad ("the rented premises").

2. The facts essential for the disposal of this petition are that on 13.04.2017, the petitioner filed an eviction petition against respondent No.3 before the Court of the learned Rent Controller. The grounds taken in the said eviction petition were (i) default in the payment of rent and (ii) the petitioner's *bonafide* need for the rented premises.

3. Respondent No.3 contested the said petition by filing a written reply. In the said written reply, respondent No.3 asserted *inter-alia* that he and the petitioner were co-owners of the rented premises. Vide order dated 25.05.2017, the learned Rent Controller framed the sole issue as to whether there existed a relationship of landlord and tenant between the petitioner and respondent No.3.

4. The petitioner appeared as AW.1, Fazal Muhammad as AW.2, and Gul Zaman as AW.3. Respondent No.3 gave evidence as RW.1 whereas five other witnesses were produced as RW.2 to 6. Vide

order and decree dated 30.03.2018, the learned Rent Controller dismissed the eviction petition after holding that there did not exist a relationship of landlord and tenant between the petitioner and respondent No.3. The petitioner's appeal against the said order and decree was dismissed by the learned Appellate Court, vide judgment and decree dated 04.06.2018. The said concurrent orders/judgments and decrees have been assailed by the petitioner in the instant writ petition.

5. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that the rented premises were purchased by the petitioner from one Muhammad Miskeen through *iqrarnama* dated 19.12.2011 (Exh.A/2); that the said *iqrarnama* shows that respondent No.3 was not the co-owner of the rented premises; that the petitioner/AW.1, in his cross-examination, had deposed that the rented premises had been purchased by him from Muhammad Miskeen through Exh.A/2; that respondent No.3/RW.1, in his cross-examination, also admitted that the rented premises had been purchased through Exh.A/2; and that in view of the said testimony, the learned Courts below concurrently erred by holding that there was nothing on the record to prove that the petitioner was the owner of the rented premises.

6. Learned counsel for the petitioner further submitted that an oral agreement regarding the tenancy between the petitioner and respondent No.3 had been entered into; that respondent No.3 was the petitioner's cousin as well as brother-in-law, therefore, no written lease agreement was executed between them; that respondent No.3 had committed a default in the payment of rent inasmuch as at no material stage, was any rent paid by respondent No.3 to the petitioner; that the petitioner's requests to vacate the rented premises were ignored by respondent No.3; and that respondent No.3 has not produced any evidence to show that he is the co-owner of the rented premises. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the concurrent orders/judgments and decrees passed by the learned Courts below to be set-aside. In making his submissions, learned counsel for the petitioner placed reliance on the judgments in the

cases of Shaukat Ali Vs. Muhammad Bashir (2017 CLC 158) and Ahmed Yar Vs. Additional District Judge (2015 YLR 2476).

7. On the other hand, learned counsel for respondent No.3 submitted that the concurrent orders/judgments and decrees passed by the learned Courts below do not suffer from any jurisdictional infirmity so as to warrant interference in the Constitutional jurisdiction of this Court; that at no material stage, was any lease agreement, verbal or written, executed between the petitioner and respondent No.3 with respect to the rented premises; that there is nothing on the record to show that the petitioner had received any rent from respondent No.3; that AW.2 produced by the petitioner deposed that he had heard from the petitioner that the rented premises had been given on rent to respondent No.3 and that Rs.10,000/- had been fixed as the rent for the rented premises; that AW.2 also deposed that no discussion regarding the rent had taken place between the petitioner and respondent No.3 in AW.2's presence; that in his cross-examination, AW.3 deposed that he has no knowledge as to the execution of a tenancy agreement between the petitioner and respondent No.3; that the essential prerequisites for invoking the jurisdiction of the learned Rent Controller were lacking in the instant case; and that respondent No.3 had spent a huge amount on the construction of the rented premises as well as the water/boring for the said premises. Learned counsel for respondent No.3 prayed for the writ petition to be dismissed.

8. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

9. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 4 above, and need not be recapitulated.

10. The vital question that arises for determination is whether or not learned Rent Controller had jurisdiction in the matter in controversy in this case. Ordinarily, it is for the Civil Court to determine whether and, if so, what jural relationship exists between the litigating parties. The I.R.R.O. was promulgated to control some of the terms and incidents of the relationship of

landlord and tenant. For the Rent Controller to exercise jurisdiction under the provisions of the I.R.R.O., there must be a preexisting relationship of landlord and tenant between the parties. Where there does not exist such a relationship between the parties the Rent Controller cannot assumed jurisdiction in the matter. An eviction order passed by a Rent Controller against the person in possession of the premises, who is not a tenant, would be an order without jurisdiction. If a person in possession of the premises is not a tenant, the owner of the premises would be entitled to institute a suit for ejectment in the Civil Court against him. The provisions of the I.R.R.O. are attracted only where a person in possession of the premises is a tenant.

11. The I.R.R.O. proceeds on the assumption that there is a relationship of landlord and tenant between the petitioner and the respondent, and the latter's eviction is sought. If the respondent/tenant denies such a relationship, the Rent Controller has to determine that question through an inquiry or recording of evidence as he may deem appropriate. A simple denial of the relationship cannot oust the jurisdiction of the Rent Controller under the I.R.R.O. A respondent whose eviction is sought cannot be permitted to block the proceedings under the I.R.R.O. by a simple denial of the relationship of landlord and tenant. If the Controller decides that there is no such relationship, the proceeding has to be terminated without deciding the main question in controversy namely, the question of eviction. If on the other hand, the Controller comes to the opposite conclusion and holds that the person seeking eviction was the landlord and the person in possession was the tenant, the proceedings have to go forward.

12. Now, what needs to be determined is whether the learned Courts below concurrently erred by holding that there did not exist a relationship of landlord and tenant between the petitioner and respondent No.3. It is an admitted position that at no material stage, was any written lease agreement executed between the petitioner and respondent No.3. The petitioner's case is that respondent No.3 had not paid any rent to the petitioner.

13. The petitioner claims to have purchased the rented premises from Muhammad Miskeen through *iqrarnama* dated 19.12.2011. The petitioner, while appearing as AW.1, had specifically deposed in his cross-examination that he had purchased the rented premises through Exh.A/2. Even though Exh.A/2 is neither a registered document nor has the rented premises been mutated in the petitioner's name, respondent No.3 as RW.1 had deposed in his cross-examination that the rented premises had been purchased through Exh.A/2. Respondent No.3's name has not been mentioned as one of the purchasers of the rented premises in Exh.A/2. In view of respondent No.3's said deposition, the learned Courts below ought not to have held that there was nothing on the record to prove that the petitioner was the owner of the rented premises. Be that as it may, it does not lie within the jurisdiction of the learned Rent Controller to determine disputed questions of title. Such questions are to be determined by Courts of plenary jurisdiction. Reference in this regard may be made to the law laid down in the case of Fareed ud Din Masood Vs. Additional District Judge, Bahawalpur (2019 SCMR 842), where it has been held *inter-alia* that a Rent Tribunal/Rent Controller lacks jurisdiction to determine questions of title.

14. Assuming that there was no dispute as to the petitioner's ownership of the rented premises, it needs to be determined as to whether the petitioner could have invoked the jurisdiction of the learned Rent Controller in order to seek respondent No.3's eviction from the rented premises. The petitioner, in his cross-examination, had deposed that respondent No.3 had not paid any rent at any stage to him. He had also deposed that no one else was present at the time when the petitioner called upon respondent No.3 to pay rent. Payment of rent was a *sine qua non* for the relationship of landlord and tenant. Reference in this regard may be made to the law laid down in the case of Nasira Afridi Vs. Muhammad Akbar (2015 MLD 171).

15. The petitioner failed to bring on record any evidence to prove that respondent No.3 had paid rent to him at any stage. Since it was the petitioner who had invoked the jurisdiction of the learned Rent Controller, it was obligatory upon him to have proved the existence

as to the factum of the relationship of landlord and tenant between himself and respondent No.3. The petitioner neither produced any independent witness, nor produced any rent receipts to show that such a relationship existed between the petitioner and respondent No.3. Since an eviction order can only be passed by the Rent Controller against a tenant or a person who has been put in possession of the rented premises by the tenant, it is essential for the eviction petitioner to prove that the person whose eviction is sought, is in occupation of the premises in his capacity as a tenant and none other. There are other remedies available under the law to the owner of immovable property to have an unlawful occupant or a trespasser, who is not a tenant evicted from such property.

16. The case law relied upon by the learned counsel for the petitioner is distinguishable inasmuch as in the case of Shaukat Ali Vs. Muhammad Bashir (supra), the tenant had made a bald assertion denying the relationship of landlord and tenant by disputing his signatures on the tenancy agreement. In the said case, it was held that the denial by the tenant of his status as a tenant was a sham and subterfuge. As regards in the case of Ahmad Yar Vs. Additional District Judge (supra), the tenant was held to have contumaciously denied his relationship of landlord and tenant with respect to the rented premises.

17. Since I have been given no reason to hold that the concurrent orders/judgments of the learned Courts below suffer from jurisdictional errors, the instant petition is dismissed with no order as to costs. The observations made herein shall not prejudice either party should any future litigation between the petitioner and respondent No.3 take place before a Court of plenary jurisdiction.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON ____/2019

(JUDGE)