

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
(JUDICIAL DEPARTMENT)

C.R. No.365/2019

Syed Yousaf Mubashir

versus

Riaz Khan

Petitioner by: Mr. Haroon-ur-Rashid, Advocate along with petitioner.

Respondent by: Mr. Shams Iqbal Khattak, Advocate along with respondent.

Date of Decision: 10.02.2020.

MOHSIN AKHTAR KAYANI, J: Through the captioned civil revision petition the petitioner has called in question concurrent findings of the Courts below whereby the learned District Judge (West), Islamabad, vide order dated 19.07.2019, dismissed the appeal of the petitioner filed against ex-parte judgment and decree dated 29.06.2019, passed by learned Civil Judge 1st Class (West), Islamabad.

2. Brief facts referred in the instant civil revision petition are that the petitioner is owner of Hotel R. White, Unit No.7 & 8, VIP Plaza, 2nd & 3rd Floors, Plot No.5-C, Sector F-10 Markaz, Islamabad (*hereinafter referred to as "suit property"*), upon which Syed Yousaf Mubashir (*petitioner*) employed Riaz Kahn (*respondent*) as Caretaker/Servant to look after the suit property, however the petitioner on his return from USA learnt that the respondent is running a brothel house and narcotics centre in the said suit property, whereupon the petitioner dismissed the respondent from service. On 12.11.2014, the respondent filed a suit for permanent injunction against the petitioner on the basis of fake lease agreement dated 15.09.2014, upon which petitioner filed application under Order VII Rule 11 CPC, the said suit of the respondent was rejected vide order dated 13.11.2018. Likewise, the petitioner filed a suit for declaration, recovery of possession U/S 8 of Specific Relief Act, 1877, permanent injunction and recovery

of mesne profit to the tune of Rs.12,895,320/- against the respondent on 26.03.2019, in which the respondent failed to put appearance despite publication of proclamation in a newspaper i.e. "Daily Dunya" on 21.05.2019, where-after when the case was fixed for ex-parte evidence of the petitioner, the petitioner by reiterating his version of plaint, produce documentary evidence and eventually, the learned trial Court vide impugned judgment and decree dated 29.06.2019 dismissed the suit of petitioner on the ground that he has failed to establish his exclusive ownership over the suit property. Feeling aggrieved thereof, the petitioner preferred an appeal under Section 96 read with Section 151 of CPC, which was dismissed vide impugned order dated 19.07.2019 on the same ground that of the learned trial Court. Hence, the instant civil revision.

3. Learned counsel for petitioner contended that petitioner is in possession of the original Transfer Letter of allotment of suit property and ready to produce the same before the Court in evidence; that the ownership of the petitioner is very much proved by the rent agreements executed by him with a Chinese Company, British Franchise, Silk Bank and Dubai Bank, who are regularly paying rentals to the petitioner for the last more than 10 years; that both the Courts below have opted for wrong *modus operandi* to decide the matter, which is against the true spirit of dispensation of justice; that the documentary evidence produced by the petitioner has not been properly appreciated by both the Courts below, which are sufficient to establish that petitioner is the owner of suit property; that the impugned judgment and decree as well as the impugned order of both the Courts below are suffering from misreading and non-reading of evidence, which are liable to be set-aside and the suit filed by the petitioner may be decreed as prayed for.

4. Conversely, learned counsel for respondent in support of impugned judgment and decree as well as of the impugned order contended that both the Courts below have rightly appreciated the evidence and dismissed the suit filed by the petitioner, and as such, the said findings of both the Courts below suffer from no illegality, which are liable to be maintained and the instant civil revision petition may be dismissed.

5. The respondent Riaz Khan was also directed to appear before this Court in person for recording of his statement in terms of Order X Rule 2 CPC vide order dated 20.12.2019 for resolution of the issue. Today i.e. on 10.02.2020 respondent put appearance and took a categorical stance that he was tenant in the suit property which was leased out by the petitioner against the monthly rent of Rs.60,000/- per month in the year 2010 and he had paid an amount of Rs.25,00,000/- as advance rent to the petitioner at the end of year 2014, however, he has not used the suit property which was locked by him; that number of criminal cases have been got registered by the petitioner against him and petitioner has not yet filed any eviction petition against him in terms of IRRO, 2001 till date, when confronted he has also conceded that he has not paid any amount after payment of advance rent in the year 2014 and petitioner is the owner of leased premises.

6. Arguments heard, record perused.

7. Perusal of record reveals that petitioner claims to be the owner of Hotel R. White, Unit No.7 & 8, VIP Plaza, 2nd & 3rd floors, Plot No.5-C, F-10 Markaz, Islamabad (suit property) and as per his contention he hired the services of respondent being caretaker of the said suit property as he was leaving for USA. After coming back from USA, he was surprised to see that his property was misused by respondent and using the same for illegal purposes. The petitioner has filed suit for declaration, recovery of possession U/S 8 of Specific Relief Act, 1877, permanent injunction, recovery of rent and mesne profit on 26.03.2019 and also claimed the amount of compensation and rent which was received by respondent. The petitioner has also referred different criminal cases registered on his complaint against the respondent. The respondent has not put appearance and he was proceeded *ex-parte*, where-after *ex-parte* evidence was recorded, whereas the petitioner put his appearance in witness box as PW-1 and reiterated the stance referred in the complaint in which he has claimed that he is owner of the suit property, however, he has failed to submit any title documents of suit

property as a result of the said position his right to claim relief of recovery in terms of Section 8 of Specific Relief Act, 1877 was denied. The trial Court although has referred the photocopy of transfer letter as Mark E but refused to acknowledge the same as the same could not be considered admissible in terms of *Qanun-e-Shahadat* Order, 1984. The judgment & decree was further assailed in RFA, which was dismissed in limine vide judgment & decree dated 19.07.2019, however, at this stage, learned counsel for the petitioner contends that he has filed a CM for submission of additional documents and record in which he has heavily relied upon the suit title *Syed Yousaf Mubashir Vs. Riaz Khan* regarding declaration, cancellation of lease agreement dated 15.09.2014, possession and recovery of mesne profit, judgment dated 28.06.2018, passed in case title *the State Vs. Riaz Khan* in case FIR No.31/2015, U/S 420, 468, 471 PPC, P.S. Kohsar, Islamabad, whereby accused Riaz Khan was acquitted from the said charges and title document of suit property i.e. transfer letter dated 13.04.1992 (lease of commercial Plot No.5-C) issued by Estate Management Directorate of CDA and copy of suit titled *Riaz Khan Vs. Syed Yousaf Mubashir*, whereby respondent claims that he was tenant of Syed Yousaf Mubashir. All these documents except the lease hold right document are judicial record, whereby the question of ownership of the petitioner is admitted but this record has not been considered by the Courts below.

8. The respondent Riaz Khan alongwith his counsel has put appearance today before the Court in compliance of order passed by this Court on 20.12.2019 and recorded his statement U/O X Rule 2 CPC and acknowledges the ownership of Syed Mubashir Yousaf/petitioner, therefore, the question which was made basis of the judgments & decrees passed by the Courts below have been answered.

9. I have gone through the provision of Section 8 of Specific Relief Act, 1877, whereby recovery of immovable property could be sought by a person entitled to

possession of specific immovable property, who was owner in possession of the same and was dispossessed. As such the requirement of law has to be seen in the light of judgments reported as 2019 SCMR 84 (Taj Wali Shah Vs. Bakhti Zaman) and PLD 2014 SC 380 (Hazratullah and others Vs. Rahim Gul and others). The documents appended with the record as well as proceedings of different Courts alongwith statement of Riaz Khan in terms of Order X Rule 2 CPC clearly spells out that the petitioner is owner of the suit property and he has handed over the same to the respondent Riaz Khan, who has taken the plea that he was tenant in the suit property, although the petitioner has denied the relationship of landlord and tenant as no formal lease agreement has been placed on record.

10. In view of above position, the learned trial Court as well as learned Appellate Court has not appreciated the judicial record and plea taken by respondent before different forms in which he has acknowledged the stance of petitioner. Such mistake is rectifiable in the revisional stage in terms of Section 115 CPC as this Court is equipped with the jurisdiction to correct the illegality or irregularity committed by the Courts below despite the fact that findings are concurrent.

11. In view of above, instant Civil Revision is allowed and concurrent findings recorded by the Courts below in shape of judgments & decrees dated 29.06.2019 & 19.07.2019 are hereby set aside, matter is remanded to learned trial Court to decide the same afresh within period of 02 months after considering the plea of respondent in accordance with law, who has not yet filed written statement. The civil suit shall be deemed to be pending and parties are directed to appear before the trial Court on 20.02.2020.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid.