

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.844 of 2018

Akbar Ali

Versus

Additional District Judge-V, Islamabad-West and others

| S. No. of order / proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
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16.01.2020

Ch. Abdul Rehman Hur Bajwa, Advocate for the petitioner,
Syed Tanvir Sohail Shah, Advocate for respondents No.2 to 5.

Through the instant writ petition, the petitioner, Akbar Ali, impugns the judgment dated 14.02.2018 passed by the Court of the learned Additional District Judge, Islamabad, whereby respondents No.2 to 5's appeal against the order dated 27.10.2016 passed by the learned Rent Controller, was allowed and the matter was remanded to the learned Rent Controller with the direction to decide respondents No.2 to 5's eviction petition afresh bearing in mind the observations made in the said judgment dated 14.02.2018. Vide order dated 27.10.2016, the learned Rent Controller dismissed respondents No.2 to 5's eviction petition on the ground that no relationship of landlord and tenant existed between respondents No.2 to 5 and the petitioner, respectively.

2. Learned counsel for the petitioner submitted that the petitioner had denied the relationship of landlord and tenant with respondents No.2 to 5; that the sole issue framed by the learned Rent Controller was whether there existed a relationship of landlord and tenant between the petitioner and respondents No.2 to 5; that the petitioner was the owner of land measuring 04 *kanals*, 10 *marlas*, in *Khewat*

Nos.238, 239 and 241, in *Khasra* Nos.1569, 1570, 2407, 2411 and 2414, in *Mouza* Maira Jaffar, Tehsil and District Islamabad (“the premises in question”) on the basis of *iqrarnama* agreement to sell dated 23.02.2015 (Exh.R3); that the petitioner had purchased the premises in question from one Asad Ali who in turn had purchased the said premises from respondents No.2 to 5’s predecessor, namely Muhammad Sadiq; that no evidentiary value could have been given to the affidavit-in-evidence produced by AW-1 (Sabir Hussain) since he had refused to be cross examined; that the averments made by respondents No.2 to 5 in their eviction petition had not been proved; that the learned Rent Controller had correctly dismissed respondents No.2 to 5’s eviction petition by holding that there did not exist a relationship of landlord and tenant between the contesting parties to the eviction petition; that the premises in question had been acquired by the Capital Development Authority (“C.D.A.”); and that the petitioner’s claim was only with respect to the possessory rights in the premises in question. Learned counsel for the petitioner prayed for the writ petition to be allowed and for the impugned judgment dated 14.02.2018 to be set-aside.

3. On the other hand, learned counsel for respondents No.2 to 5 submitted that on 21.04.2010, a rent agreement was executed between the petitioner and Muhammad Sadiq (the predecessor of respondents No.2 to 5); that the said rent agreement had expired on 31.12.2011; that the petitioner was claiming to be the owner of the premises in question on the basis of an *iqrarnama* agreement to sell dated 23.02.2015; that an agreement to sell does not vest a party

claiming to have purchased the property with a title in such property; that the petitioner had filed a suit for “*declaration, permanent and mandatory injunction*” against respondents No.2 to 5 as well as Asad Ali before the Court of the learned Civil Judge, Islamabad; that in the said suit, the petitioner had prayed that he should not be dispossessed from the premises in question; that the said suit was still pending adjudication; that the petitioner claims to have purchased the premises in question from Asad Ali who is said to have purchased the same from respondents No.2 to 5’s predecessor; that respondents No.2 to 5’s predecessor had not sold the premises in question either to Asad Ali or the petitioner; that the predecessor of respondents No.2 to 5 had not been paid any compensation for the acquisition of the premises in question, and therefore, for all intents and purposes, respondents No.2 to 5 were the owners of the premises in question; and that the impugned judgment dated 14.02.2018 did not suffer from any legal infirmity. Learned counsel for respondents No.2 to 5 prayed for the writ petition to be dismissed.

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

5. On 25.01.2016, respondents No.2 to 5 filed a petition for the eviction of the petitioner from the premises in question before the learned Rent Controller. The petitioner contested the said eviction petition by filing a written reply. The position taken by the petitioner was that he was the owner of the premises in question having purchased the same from Asad Ali, vide *iqrarnama* agreement to sell dated 23.02.2015, and that Asad Ali had purchased the premises in

question from respondents No.2 to 5's predecessor through *iqrarnama* agreement to sell dated 20.03.2011. The petitioner admits that his interest is only to the extent of possessory rights over the premises in question since the same has been acquired by the C.D.A.

6. The sole issue framed by the learned Rent Controller, vide order dated 21.03.2016 was whether a relationship of landlord and tenant exists between the petitioner and respondents No.2 to 5. As mentioned above, vide order dated 27.10.2016, the learned Rent Controller dismissed the eviction petition on the sole ground that respondents No.2 to 5 had not been able to prove their relationship of landlord and tenant with the petitioner.

7. Now, the petitioner claims to be the owner of the premises in question on the basis of *iqrarnama* agreement to sell dated 23.02.2015. He claims to have purchased the premises in question from Asad Ali, who is alleged to have purchased the premises in question from respondents No.2 to 5's predecessor, Muhammad Sadiq through *iqrarnama* agreement to sell dated 20.03.2011. It is well settled that an agreement to sell does not create any legal title in a property which is subject matter of such an agreement, but only creates a right to obtain a sale deed which creates a legal character. It has also been consistently held that ownership in property does not stand transferred to a vendee on the basis of a mere agreement to sell. Such an agreement confers only a right for the enforcement of a promise. An agreement to sell is undoubtedly not a document of title and cannot form the basis for a grant of a declaration under Section 42 of the Specific Relief Act, 1877. Reference in this regard

may be made to law laid down in the cases titled as Mst. Rasheeda Begum Vs. Muhammad Yousaf (2002 SCMR 1089), Muhammad Ibrahim Vs. Fateh Ali (2005 SCMR 1061) and Shah Muhammad Vs. Atta Muhammad (2005 SCMR 969). In the case of Muhammad Yousuf Vs. Munawar Hussain (2000 SCMR 204), it was held as follows:-

“The agreement to sell by itself cannot confer any title on the vendee because the same is not a title deed and such agreement does not confer any propriety right, and thus, it is obvious that the declaratory decree as envisaged by section 42 of the Specific Relief Act, cannot be awarded because declaration can only be given in respect of a legal right or character. The only right arising out of an agreement to sell is to seek its specific performance and in case the vendee has been put in possession, the same is protected under section 53-A of the Act”.

8. Learned counsel for respondents No.2 to 5 had brought on record a copy of the suit for declaration, permanent and mandatory injunction instituted by the petitioner against respondents No.2 to 5 as well as Asad Ali before the Court of the learned Civil Judge, Islamabad. In the said suit, it was pleaded *inter alia* that the petitioner had purchased the premises in question. The said suit is still pending adjudication, and a decree in the petitioner’s favour has not been passed as yet. Unless and until the civil suit instituted by the petitioner is decreed by the learned Civil Court, he cannot claim to have become an owner of the rented premises. It is trite law that a person cannot remain in occupation of rented premises simply because he claims to have become an owner of such premises and had instituted a civil suit for declaration or specific performance in this regard. Reference to case law at this stage would be apposite:-

(i) In the case of Iqbal Vs. Rabia Bibi, reported as PLD 1991 SC 242, it has been held at page 245 of the report as follows:-

“Be that as it may, in some recent judgments this court has taken the view that in cases like the present one, where the sale agreement or any other transaction relied upon by a tenant is seriously and bona fide disputed by the landlord, the appellant/tenant cannot be allowed to retain the possession during the litigation where he continues to deny the ownership of the landlord who had inducted him as a tenant, without any condition and/or reservation. It has been ruled that in such cases although the tenant has a right to adduce evidence and take a short time for that purpose to remain in occupation despite having set up a hostile title which is denied by the landlord, but on the well-known bar of estoppel in this behalf, he (the tenant) cannot be permitted to remain in occupation and right the litigation for long time--even for decades. In this case it is more than a decade that the appellants have been able to keep the possession on a claim which the landlord asserts is false. Accordingly, as held in those cases in fairness to both sides, while the tenant is at liberty to prosecute the litigation, wherein he should try to establish his claim but it should not be at the cost of landlord/owner. It should be at the cost of himself and he must vacate--though of course he would be entitled to an easy and free entry as soon as he finally succeeds in establishing his title against his own landlord. See Makhan Bano V, Haji Abdul Ghani (PLD 1984 Supreme Court 17), Allah Yar and others v. Additional District Judge and others (1984 SCMR v. Mufti Abdul Ghani (PLD 1985 SC 1).”

(ii) In the case of Jumma Khan Vs. Zarin Khan, reported as PLD 1999 SC 1101, the relationship of landlord and tenant was denied by the tenant on the ground that the landlord had executed an agreement to sell the rented premises to the tenant, and that a substantial amount had been paid to the landlord, and that a civil suit for specific performance was pending adjudication against the landlord. The landlord had unequivocally refuted the execution of any agreement for sale. The Hon'ble Supreme Court

of Pakistan dismissed the tenant's petition in the following terms:-

“7. On the basis of dictum laid in aforequoted reports we unhesitatingly hold that petitioner cannot legitimately resist maintainability of ejectment proceedings pending against him on the ground of sale-agreement. Suffice it to observe that genuineness or otherwise of such agreement and its consequential effort will be independently determined by the Civil Court. However, in the instant case we are satisfied that issue regarding relationship of tenancy and personal bona fide requirement of respondent-landlord has been correctly decided by the Courts below. There does not appear any material defect or legal infirmity with regard to conclusions drawn in the impugned judgments. Accordingly the petition having no merit is dismissed and leave to appeal is refused.”

(iii) In case of Barkat Masih Vs. Manzoor Ahmad, reported as 2006 SCMR 1068, it was held that if a tenant denies the relationship of the landlord and tenant he should first vacate the premises in his possession and then contest his proprietary rights.

(iv) In the case of Abdul Rasheed Vs. Maqbool Ahmed, reported as 2011 SCMR 320, the petitioner/tenant had denied the relationship of landlord and tenant between parties. The petitioner had claimed that he had purchased demised premises subsequently through a sale agreement. The Hon'ble Supreme Court of Pakistan dismissed the petition by holding as follows:-

“5. ... It is settled law that where in a case filed for eviction of the tenant by the landlord, the former takes up a position that he has purchased the property and hence is no more a tenant then he has to vacate the property and file a suit for specific performance of the sale agreement whereafter he would be given easy access to the premises in case he prevails. In this regard reference can be made to Shameem Akhtar v. Muhammad Rashid (PLD 1989 SC 575), Mst. Azeemun Nisar Begum v. Mst. Rabia Bibi (PLD 1991 SC 242), Muhammad Rafique v. Messrs Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bor Bibi v. Abdul Qadir (1996 SCMR 877).

In so far as determination of the relationship of landlord and tenant is concerned, such enquiry by the Rent Controller is of a summary nature. Undoubtedly the premises were taken by the petitioner on rent from the respondent and according to the former he later on purchased the same which was denied by the latter. Consequently, the relationship in so far as the jurisdiction of the Rent Controller is concerned stood established because per settled law the question of title to the property could never be decided by the Rent Controller.”

(v) In the case of Gohar Ali Shah Vs. Shahzada Alam, reported as 2000 MLD 82, the appellant was seeking to avoid eviction from the rented premises by claiming that he had purchased the rented premises. The Hon'ble High Court of Sindh struck off the tenant's defence and directed him to vacate the premises subject to refund by the landlord of the amount of consideration paid towards the price of the premises in question to the tenant after adjustment of rent till the delivery of possession. Furthermore, it was held as follows:-

“Mere agreement to sell would not absolve the appellant to pay rent only because he was proposed purchaser of the premises when there has been no term that appellant would not pay rent on this executing such agreement of sale when such agreement of sale would not create any right title or interest in or over the property in favour of appellant the proposed purchaser until and unless the said relationship of landlord or tenant is determined by an agreement.”

(vi) In the case of Muhammad Akmal Vs. Faisal Saeed Mirza, reported as 2004 CLC 862, the tenant had denied the existence of relationship of landlord and tenant between the parties alleging that predecessor-in-interest of the landlord had entered into agreement to sell the premises in question in favour of the tenant. The tenant had also stated that he had filed a suit for specific performance of the agreement to sell. The said assertions of the tenant did not find favour with

the Hon'ble Lahore High Court, and in paragraph 8 of the said report, it was held as follows:-

“8. ... It may be pointed out here that learned Rent Controller has not to decide the fact of sale and purchase allegedly made between the appellant and predecessor-in-interest of the respondents. The Civil Court, seized of the matter, is competent to decide such dispute and if appellant turns successful in that suit he would have the chance for the recovery of possession, in case of his ejectment. Till the decision of the civil suit proceedings of this case (ejectment petition) cannot be stayed or stalled as held in Iqbal and 6 others v. Mst. Rabia Bibi and another PLD 1991 SC 242. The intention of suit for specific performance of contract cannot furnish a ground to the appellant to get the proceedings before the Rent Controller stayed as held in Muhammad Amjad v. Mst. Rehana Kausar 2001 YLR 939.”

(vii) In the case of Muhammad Parvez Vs. Additional Rent Controller, Lahore, reported as 2013 YLR 1881, an applicant, claiming to be the purchaser of the rented premises, had filed an application under Order I, Rule 10 C.P.C. for impleadment in the eviction petition before the Rent Controller. The landlord's writ petition against the order of the Rent Controller allowing the application for impleadment was allowed by the Hon'ble Lahore High Court, holding as follows:-

“6. ...By applying above said principles in the instant case the inescapable conclusion is that a tenant remains a tenant, he cannot prolong his occupation by exercising his right of being subsequent purchaser unless so held by the court of competent jurisdiction. The reasons behind is that he has no status to justify his possession and if he denies the relationship of landlord and tenant he will be known to be an illegal occupant. The rent proceedings are between the land owner and tenant and entry or interference by the third party is to be jealously guarded. In this view of the matter, the impugned order is set aside and the writ petition is allowed. Resultantly application under Order 1 Rule 10, C.P.C. filed by respondents Nos.2 and 3 is dismissed.”

(viii) In the case of Refhat Hamidee Vs. Abdul Aziz, reported as 2013 YLR 1898, it has been held by the Hon'ble High Court of Sindh that unless and until a registered sale deed existed between the parties, the relationship of landlord and tenant existed between the parties, the tenant could not get the benefit of a 'sale agreement' to avoid payment of rent. The eviction of the tenant from the rented premises was held to be justified.

(ix) In the case of Muhammad Rafique Vs. Farida Khan (2016 CLC 1451), I have had the occasion to hold as follows:-

"It has become commonplace for unscrupulous tenants/litigants to avoid eviction proceedings by contending that the rented premises had been sold to them. Unless and until the petitioner was able to establish his claim for specific performance on the basis of the alleged sale agreement through a judgment (not an interim order) in his favour passed by a Court of competent jurisdiction, respondent No.1 would continue to enjoy the status of being the owner and landlord of the rented premises. Pendency of a civil suit does not give a license to the tenant to remain in occupation of the rented premises. There is a catena of case law in support of the proposition that ejectment proceedings could not be stayed or stalled on the plea that tenants in possession were holding an agreement to sell. Mere pendency of a suit for declaration or specific performance of an agreement is no ground to avoid eviction of tenants, who claim to have purchased the rented premises."

9. In view of the above, I do not find any jurisdictional infirmity in the impugned judgment dated 14.02.2018 passed by the learned Appellate Court so as to interfere in the same in the Constitutional jurisdiction of this Court. Consequently, the instant writ petition is dismissed with no order as to costs.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**