

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mrs. Justice Ayesha A. Malik

Mr. Justice Syed Hasan Azhar Rizvi

(AFR)

CIVIL PETITION NO. 2885 OF 2022

(Against the order dated 20.06.2022 passed by the
Islamabad High Court, Islamabad in W.P No. 2086 of 2022)

Nasir Khan

...Petitioner(s)

Versus

Nadia Ali Butt and others

...Respondent(s)

For the Petitioner(s):

Mr. Imtiaz Ahmed Kayani, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s):

N.R.

Date of Hearing:

08.11.2023.

JUDGMENT

SYED HASAN AZHAR RIZVI, J.- Through this petition for leave to appeal, the petitioner has assailed the order dated 20.06.2022 passed by the Islamabad High Court, Islamabad, whereby his writ petition was dismissed.

2. Succinctly, facts of the case leading to filing of the instant petition are that the respondent, Mst. Nadia Ali Butt, being owner/landlady of House No.257, Street No.8, Phase-IV, Bahria Town, Islamabad (*demised premises*) through one Mr. Imran entered into a tenancy agreement with the petitioner, Nasir Khan, on 06.08.2019 regarding lease of demised premises against a monthly rent of Rs. 1,08,333/-. The petitioner failed to pay the monthly rent from 06.04.2020 till the filing of ejectment petition.

3. It reflects from the record that the demised premises were originally owned by late Mst. Shazia Athar Bhutta (*deceased owner*) who died unmarried on 03.07.2019 and the respondent along with another, namely, Mst. Munazza Qasim, were the real sisters of the deceased owner. The respondent along with Mst. Munazza Qasim had been declared as the legal heirs of the deceased owner by a court of competent jurisdiction at Sialkot *vide* Judgment and decree dated 17.10.2020. Apart from this, Akram Bhutta (*paternal uncle*) was also declared as the legal heir of the deceased owner *vide* judgment and decree dated 02.06.2021.

4. On 22.04.2021, the respondent filed an ejectment petition before the learned Rent Controller (East) Islamabad against the petitioner on the grounds of willful default, expiry of lease agreement and breach of terms and conditions of the agreement. On the same day, notices were directed to be issued for procuring the attendance of the petitioner on 30.04.2021, however, none entered appearance on behalf of the petitioner despite service upon the petitioner through his brother.

5. In order to provide a fair opportunity of hearing to the petitioner, learned Rent Controller (East) Islamabad besides ordinary service also adopted alternate mode i.e. through affixation and by publication in the daily newspaper and fixed the rent case for 07.05.2021.

6. Before passing an ex-parte order against the petitioner, the learned Rent Controller adjourned the case on five consecutive dates i.e. 07.05.2021, 25.05.2021, 03.06.2021, 09.06.2021 and 16.06.2021 but the petitioner failed to ensure his appearance. On 21.06.2021, ex-parte proceedings were initiated whereby the evidence produced by the respondent was recorded.

7. On 10.07.2021, the petitioner filed an application for setting aside ex-parte proceedings and the same were duly contested by the respondent. The application filed by the petitioner was dismissed by the learned Rent Controller and the eviction petition was allowed ex-parte and the order dated 31.07.2021 was passed for ejection of the petitioner from the demised premises forthwith.

8. Being aggrieved with the ex-parte order, the petitioner preferred an appeal before the Additional District Judge (East) Islamabad that was dismissed *vide* judgment dated 19.04.2021. The petitioner approached the Islamabad High Court by filing a writ petition which too met with the fate of dismissal *vide* order dated 20.06.2022, impugned herein.

9. Learned counsel for the petitioner contends that the relationship of landlord and tenant does not exist between the parties; that the respondent is not the real owner of demised premises, whereas the real owner of the same is one Akram Bhutta from whom the petitioner has purchased the demised premises *vide* agreement to sell dated 04.12.2020 against a sale consideration of Rs.35,000,000/-; that the petitioner filed a suit for specific performance against Akram Bhutta on 05.05.2021; that the impugned order is suffering from surmises and conjectures, assumptions and presumptions, thus not tenable in the eyes of law.

10. We have heard the learned counsel for the petitioner at a considerable length and scanned the material available on the record with his able assistance.

11. It is a well settled principle of law that a landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties. However, in the normal

circumstances, in the absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered as a tenant under the law. The tenancy may not be necessarily created by a written instrument in express terms, rather may also be oral and implied. At the time of filing of ejectment petition on 22.04.2021 against the petitioner, the respondent was the 'landlord' within the meaning of Section 2(g) of the Islamabad Rent Restriction Ordinance, 2001 (*the Ordinance*), because court of competent jurisdiction had declared her to be the legal heir of the deceased. On perusal of the record, it transpired that the respondent and Mst. Munazza Qasim were declared as the legal heirs of the deceased owner by the court of competent jurisdiction at Sialkot through judgment dated 17.10.2020, whereas one Akram Bhutta (*paternal uncle of deceased owner*) had also obtained judgment and decree dated 02.06.2021 in respect of legal heirship of deceased owner. It is interesting to note that Akram Bhutta obtained judgment and decree dated 02.06.2021 thereby declaring him as the legal heir of the deceased owner whereas he entered into an agreement to sell with the petitioner solely and exclusively in respect of the demised premises on 04.12.2020. The suit for the specific performance filed by the petitioner against Akram Bhutta on 05.05.2021 was later in time than the rent case filed by the respondent.

12. In the case reported as Muhammad Nisar versus Izhar Ahmed Shaikh and others (PLD 2014 SC 347), it has been held that:-

" . . . Per settled law in such circumstances when the tenant puts up a plea in an ejectment application that he had purchased the property then he has to file a suit for his remedies (which has been done) and vacate the premises and

thereafter if he succeeds he would be entitled to take possession of the premises again . . . ”

Similarly, in the case reported as Rehmatullah versus Ali Muhammad and another (1983 SCMR 1064) it has been held that:-

“ . . . It is settled principle of law that if a tenant denies the propriety rights of the landlord then he is bound to first of all deliver the possession of the premises in question and then to contest his propriety rights in the property and if ultimately he succeeds in getting relief from the court and decree is passed in his favour then he can enforce the same according to law with all its consequences . . . ”

By applying the 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 are that the tenant 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.

13. It is trite law that a person cannot remain in occupation of rented premises simply because he asserts to be the owner of the rented premises and has instituted a suit for declaration in this regard.

14. Section 25(3) of the Ordinance requires the learned Rent Controller to finally dispose of an application as expeditiously as possible, but not later than four months of the date of the first hearing after the service of summons on the respondent.

15. The eviction petition was instituted on 22.04.2021 and summons were issued to the petitioner for appearance on 30.04.2021, however, despite receipt thereof by the petitioner's

brother, besides that the petitioner was duly served through alternate mode by way of publication in the newspaper and its affixation. Despite of that the petitioner has failed to appear before the learned Rent Controller. It is noteworthy to mention here that, before passing ex-parte order, proceedings were adjourned on five consecutive dates, as mentioned above.

16. After recording of the evidence, the petitioner made an application before the learned Rent Controller for setting aside ex-parte proceedings, however, he was unable to justify that why he failed to contest the rent case and how he got knowledge if the summons were not duly served upon him. The deliberate disappearance by the petitioner in the rent case, *prima facie*, speaks volumes about his intention to prolong/delay the rent proceedings. Thus, in our opinion, the learned Rent Controller was fully justified in allowing the ejectment petition and directing the petitioner to handover peaceful and vacant possession of the demised premises to the respondent. The judgment of the learned Rent Controller was legally and carefully maintained by the appellate Court *vide* judgment dated 19.04.2022.

17. Normally, this Court does not interfere in the concurrent findings unless those are perverse, arbitrary, fanciful or capricious which, in our candid view, is not the position in the instant *lis*. The judgments/orders passed by the *fora* below being well reasoned and based on proper appreciation of evidence on the record, we are in complete agreement with them. Neither any misreading and non-reading nor any infirmity or illegality has been noticed on the record which could make a basis to take a contra view. Learned counsel for the petitioner has failed to make out a case for interference.

18. For what has been discussed above, the petition being bereft of merit is dismissed. Leave to appeal is declined.

JUDGE

JUDGE

Islamabad, the

8th November, 2023

~~Not~~ approved for reporting

Ghulam Raza/*