

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

26/19

PRESENT: MR. JUSTICE FAISAL ARAB
MR. JUSTICE IJAZ UL AHSAN

AFR
S-1 **CIVIL PETITIONS NO.478 TO 481/2019**
(Against the judgment dated 19.12.2018 of
the Lahore High Court, Bahawalpur, passed
in Writ Petitions No.7689 to 7692 of 2016)

Fareed ud Din Masood

Appellant

VERSUS

Additional District Judge Bahawalpur and others

Respondent

For the Appellant(s):

Syed Iftikhar Hussain Shah, ASC
(in all cases)

For the Respondent(s):

N.R.
(in all cases)

Date of Hearing:

22.02.2019

JUDGMENT

IJAZ UL AHSAN, J.- The brief facts of this case are that respondents No.3 and 4 filed an eviction petition under the Punjab Rented Premises Act, 2009 ("**Act**") against respondent No.5. The petitioner filed an application under Order I Rule 10 of the Code of Civil Procedure, 1908 ("**CPC**") which was allowed and he was arrayed as a party in the said eviction petition. Thereafter, the petitioner and respondent No.5 filed independent applications for leave to contest which were dismissed and the eviction petition was allowed *vide* judgment dated 29.01.2016. The petitioner and respondent No.5 challenged such order through appeals before the learned Additional District Judge which were dismissed *vide* judgment dated 31.08.2016. Aggrieved, the petitioner filed a writ petition(s) against the order of the learned Appellate Court which was dismissed by the learned High Court *vide* impugned judgment(s). Hence the instant petitions.

2. The learned counsel for the petitioner contends that the petitioner is the owner of property bearing House No.B-IV-1605 situated at Mohalla Bani Garan, Circular Road, Bahawalpur by virtue of a *Tamleek Nama* dated 03.06.1981 which is the subject of a suit for declaration, etc. filed by the predecessor-in-interest of the petitioner and respondent No.3, pending adjudication before this Court in Civil Appeals No.726 and 727/2012. Learned counsel argued that it is the aforementioned property which is the subject matter of the eviction proceedings, and not the one mentioned in the impugned judgment and that this finding is against the record. In this regard he referred to the site plan and the *Tamleek Nama*. He stated that this plea has been agitated by the petitioner throughout and that being the owner of such property he ought to be put back into possession thereof. According to him, respondents No.3 and 4 have erroneously and fraudulently claimed ownership of the property in the eviction petition. Moreover, he argued that the tenant of the property has been paying the petitioner rent and in this regard he referred to paragraph No.4 of the application for impleadment. Learned counsel submitted that the petitioner was a necessary party to the eviction petition therefore his application for impleadment has been unlawfully rejected and his right to a fair trial has been denied. Furthermore, the very exercise of jurisdiction by the Courts below particularly considering that the matter is *sub judice* before this Court, in respect of that very property, is contemptuous.

3. Having heard the learned counsel for the petitioner and going through the record, we find that a *prima facie* determination has been made regarding the suit property based on the demarcation report of the revenue officer against which the learned High Court has observed that no challenge has been made by the petitioner and no documentary evidence has been produced to controvert such official record. However, the learned counsel for the petitioner stated before this Court that the petitioner had challenged such report and his suit is pending before a Court of competent jurisdiction. Be that as it may, the petitioner has no

locus standi for the purposes of the instant case. At best he may have a claim to ownership of the property in question which is the subject matter of a suit for declaration, etc. that is *sub judice*. Moreover, the application under Section 12(2) of the CPC filed by the petitioner against the judgment dated 13.05.2015 passed in a suit titled "*Nazia Sultana v Imtiaz Hussain*" is also pending adjudication. It is settled law that any dispute with regard to the title or ownership of a property subject matter of eviction proceedings has to be determined by a court of competent jurisdiction. A Rent Tribunal/Rent Controller lacks jurisdiction to determine questions of title. Therefore the petitioner cannot simply file an application for impleadment in the eviction proceedings for determination of his title to the suit property by the Rent Controller as claimed by him. Furthermore, the contesting party to the eviction proceedings is the tenant (respondent No.5) who has not agitated the matter further. Therefore to that extent the matter has attained finality. When confronted, the learned counsel for the petitioner concedes that the tenant (respondent No.5) has to be evicted pursuant to the eviction proceedings. As regards the argument that the petitioner is the landlord of the property in question and the tenant has been paying him rent, when asked to show any document or notice to the effect that the petitioner is the landlord and seeks rent from the tenant (respondent No.5) learned counsel candidly stated that there is none on the record. The fact of the matter is that no such notice or document has been produced before any of the *fora* below. When repeatedly inquired as to what relief the petitioner seeks in the instant proceedings which emanate from an eviction petition, learned counsel failed to provide the Court with a plausible and logical answer. The learned counsel for the petitioner has not been able to show us any legal, procedural or jurisdictional error, defect or flaw in the impugned judgment warranting grant of leave to appeal.

4. In light of the foregoing, these petitions are dismissed, with the observation that Civil Appeals No.726 and 727/2012 will

be decided on their own merits with all legal consequences flowing therefrom in favour of the party found entitled thereto.

ISLAMABAD

22.02.2019

Not Approved For Reporting

ZR/ *

and

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