

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

JUSTICE YAHYA AFRIDI, CJ
JUSTICE MUHAMMAD SHAFI SIDDIQUI
JUSTICE MIANGUL HASSAN AURANGZEB

CPLA NO.5516 OF 2024

(Against the order dated 01.10.2024 of the Lahore High Court, Rawalpindi Bench, Rawalpindi passed in W.P. No.2014 of 2021)

Mst. Shaista Hussain

...Petitioner

Versus

Farzana Naheed and others

...Respondents

For the Petitioner: Sh. Muhammad Sulaman, ASC along with Syed Rifaqat Husain Shah, AOR.

For Respondents: Ms. Farzana Naheed / respondent No.1 in-person.

Mr. Farooq Siddiqui in-person.
(Impleaded vide order dated 01.07.2025)

Date of Hearing: 02.09.2025

JUDGMENT

MIANGUL HASSAN AURANGZEB, J.- Through the instant petition, the petitioner Mst. Shaista Hussain, assails order dated 01.10.2024 passed by the Lahore High Court, whereby writ petition No.2014/2021 filed by her against the concurrent orders / judgments dated 26.08.2020 and 26.02.2021 passed by the court of the Rent Controller and the appellate court, respectively, was dismissed.

2. This case has a long-chequered history. Farzana Naheed and Farooq Siddiqui got married on 04.04.2004. As per column No.13 of the *nikahnama*, the dower was Rs.200,000/- which was stated to have been paid through cheque No.B-6658428 at the time of the *nikah*.

3. Farooq Siddiqui had purchased House No.12-C, Ali Town, Iqbal Street, Chungi No.20, Adyala Road, Rawalpindi (**"demised**

premises") through registered sale deed No.2352, dated 22.03.2003. On 23.04.2008, the petitioner filed a suit for specific performance, possession and permanent injunction against respondent No.1 before the civil court at Rawalpindi. In the said suit, the petitioner asserted that she agreed to purchase the demised premises from respondent No.1 through agreement to sell dated 07.02.2005 for a total sale consideration of Rs.40,00,000/- out of which Rs.10,00,000/- was paid in advance and the remaining was to be paid at the time of the registration of the sale deed and the handing over of possession of the said premises to the petitioner. One of the recitals of the said agreement to sell is that the demised premises were given by Farooq Siddiqui to respondent No.1 through column No.17 of the *nikahnama* dated 04.04.2004. It is pertinent to reproduce herein below column No.17 of the *nikahnama*:-

”10 دس ہزار روپیہ ماہوار برائے گھریلو خرچہ بمعہ مکان بصورت آبادی“

4. Subsequently, the petitioner and respondent No.1 entered into agreements to sell dated 12.08.2006 and 12.04.2008 under which a further amount of Rs.20,00,000/- was paid by the petitioner. These agreements were in continuation of the earlier agreement dated 07.02.2005. It is on the basis of the above entries in column No.17 of the *nikahnama* that respondent No.1 was treated by the petitioner as the owner of the demised premises.

5. It was for the specific performance of the said agreement to sell dated 07.02.2005 that the petitioner, on 23.04.2008, instituted a suit before the civil court at Rawalpindi. Vide judgment & decree dated 25.09.2008, the said suit was decreed. The said judgment makes an interesting read. During the pendency of the suit, the petitioner and respondent No.1 entered into a compromise. The compromise deed dated 21.05.2008 (Exh.C1) was produced before

the court, according to which respondent No.1 expressed her readiness to execute a sale deed with respect to the demised premises in favour of the petitioner. Farooq Siddiqui had been impleaded as defendant No.2 in the suit but could not be served with summons on account of being out of country. Although column No.17 of the *nikahnama* does not give a precise description of a house but since the original sale deed with respect to the demised premises (executed in favour of Farooq Siddiqui) had been produced by the special attorney of the petitioner, the court deduced that this was the very same property with respect to which the agreement to sell had been executed between the petitioner and respondent No.1. As respondent No.1 had conceded to the claim made by the petitioner, the latter's suit was decreed. On the basis of the said decree, the registered sale deed No.22104, dated 24.12.2008 was executed in favour of the petitioner.

6. On 24.12.2013, Farooq Siddiqui filed an application under section 12(2) of the Code of Civil Procedure, 1908 ("**CPC**") seeking the setting aside of the decree dated 25.09.2008. In the said application, it was pleaded *inter alia* that Farooq Siddiqui had no knowledge as to the institution of the suit by the petitioner. Furthermore, it was pleaded that he had sold the demised premises to one, Patrick Nasim Khokhar through sale deed No.19402, dated 03.06.2006, and that Farooq Siddiqui was residing in a portion of the demised premises as Patrick Nasim Khokhar's tenant ever since 2006. It was also asserted that respondent No.1 had taken possession of a portion of the demised premises which had caused Patrick Nasim Khokhar to institute a suit for recovery of possession and damages against her. Apparently, respondent No.1 had contested the said suit and this, according to Farooq Siddiqui, showed that respondent No.1 had

knowledge as to the execution of sale deed dated 03.06.2006 in favour of Patrick Nasim Khokhar. Despite this, respondent No.1 entered into a compromise with the petitioner so that a collusive decree with respect to the demised premises could be issued in favour of the petitioner. Reference was also made to the entry in column No.17 of the *nikahnama* which did not specify any house.

7. On 24.05.2013, Patrick Nasim Khokhar had also filed an application under section 12(2) CPC against the order and decree dated 25.09.2008. The pleadings in the said application are consistent with those in Farooq Siddiqui's application. Both these applications were consolidated and allowed vide order dated 25.02.2016. Consequently, the order and decree dated 25.09.2008 were set-aside. Furthermore, the registered sale deed No.22104, dated 24.12.2008 executed in favour of the petitioner on the basis of the said order and decree dated 25.09.2008 was cancelled.

8. Apparently, the petitioner had filed an application (not on the record) for the setting aside of the said order dated 25.02.2016 by taking the ground that she had not been served in the proceedings pursuant to the applications filed by Farooq Siddiqui and Patrick Nasim Khokhar under section 12(2) CPC. Vide judgment dated 26.08.2020, this application was allowed and consequently the order dated 25.02.2016 was set-aside. This would have the consequence of Farooq Siddiqui and Patrick Nasim Khokhar's application under section 12(2) CPC being pending. It would also have the consequence of the decree dated 25.09.2008 as well as registered sale deed No.22104, dated 24.12.2008 (executed in favour of the petitioner on the basis of the decree dated 25.09.2008) being revived.

9. Learned counsel for the petitioner has brought on record the order sheet of the proceedings on two applications under section 12(2) CPC. The last order dated 21.07.2025 shows that the matter is still pending and orders of the revisional court against some order are awaited.

10. Bearing in mind the documents on the record, the position presently prevailing is that on the basis of the decree dated 25.09.2008 and registered sale deed No.22104, dated 24.12.2008, the petitioner is the owner of the demised premises. It is not for this court to comment on the legality of the decree dated 25.09.2008 and / or the strength and weaknesses in the petitioner's claim of owning the demised premises lest they may prejudice the pending proceedings in Farooq Siddiqui and Patrick Nasim Khokhar's applications under section 12(2) CPC.

11. On 31.10.2017, the petitioner filed a petition under section 15 of the Punjab Rented Premises Act, 2009 ("**the 2009 Act**") seeking respondent No.1's eviction from the demised premises. In the said petition, the petitioner asserted her ownership over the demised premises on the basis of registered sale deed No.22104, dated 24.12.2008. Furthermore, it was pleaded that she had rented the demised premises to respondent No.1 for a monthly rent of Rs.30,000/-, and that Mirza Fida Lateef had been collecting rent on the petitioner's behalf. Mirza Fida Lateef was the person to whom the petitioner is said to have sold the demised premises through registered deed No.578, dated 24.12.2015. For the purposes of clarity, paragraph-4 of the said application is reproduced herein below:-

"4. That the petitioner being resident of United Kingdom, was not herself residing in the said ho[u]se and therefore she has rented out the said house to respondent on Rs.30,000/- per month. Later on the petitioner bonafidely entered into agreement to sell the said property to Mirza Fida Lateef son of Abdul Lateef and her general attorney Ch. Ziafat Ali executed special attorney in favor of the

purchaser Mr. Fida Lateef son of Abdul lateef registered at No. 578, dated 14-12-2015 and said Mirza fida Lateef was collecting rent from respondent on petitioner's behalf."

12. The petitioner sought respondent No.1's eviction on account of default in the payment of rent since April, 2016. The eviction petition was filed on the strength of an oral lease agreement being asserted by the petitioner. Respondent No.1, in her reply to the eviction petition denied the relationship of landlord and tenant with the petitioner. Respondent No.1 asserted ownership over the demised premises on the basis of entries in her *nikahnama*. She also referred to the decree dated 25.09.2008 as well as the registered sale deed No.22104, dated 24.12.2008 being set-aside and cancelled on the basis of the subsequent judgment dated 25.02.2016, whereby Farooq Siddiqui and Patrick Nasim Khokhar's applications under section 12(2) CPC were allowed.

13. One of the issues framed by the Rent Controller was whether there existed a relationship of landlord and tenant between the petitioner and respondent No.1. The onus to prove this issue was placed on the petitioner. Vide order and decree dated 26.08.2020, the petitioner's eviction petition was dismissed by the Rent Controller on account of the petitioner's failure to prove that respondent No.1 was her tenant. The Rent Controller held *inter alia* that the petitioner had not been able to prove the existence of an oral tenancy agreement or that respondent No.1 had paid rent to her. Furthermore, she had also not been able to prove that respondent No.1 had been put in possession of the demised premises pursuant to the terms of an oral tenancy agreement. The petitioner's appeal against the said order and decree dated 26.08.2020 was dismissed by the appellate court vide judgment and decree dated 26.02.2021, and the high court vide impugned order dated 01.10.2024 dismissed the petitioner's writ petition

No.2014/2021 against the concurrent orders / judgments and decrees dated 26.08.2020 and 26.02.2021 passed by the Rent Controller and the appellate court, respectively. These concurrent orders / judgments have been assailed by the petitioner in the instant petition.

14. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that since the judgment and decree dated 25.09.2008 as well as the registered sale deed No.22104, dated 24.12.2008 executed on the basis of the said decree, are still in the field, the petitioner is clearly the owner of the demised premises; that although applications under section 12(2) CPC against the said judgment and decree dated 25.09.2008 are still pending, but such pendency cannot deprive the petitioner from her ownership over the demised premises; that even though the petitioner was not able to prove the execution of an oral rent agreement or the payment of rent by respondent No.1, she was well within her rights to have filed an eviction petition before the court of the Rent Controller as she was the owner of the demised premises; that the three concurrent judgments / orders of the Rent Controller, appellate court and high court suffer from jurisdictional irregularities and therefore, the same warrant setting aside by this court.

15. Respondent No.1 appeared in person and submitted that she had never met the petitioner in her life.

16. Farooq Siddiqui also appeared in person and submitted that the three concurrent orders / judgments assailed in the instant petition do not suffer from any legal or jurisdictional infirmity.

17. We have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance. The facts leading to the filing of the instant petition have been

narrated in sufficient detail in paragraphs 2 to 13 above and need not be recapitulated.

18. What this court needs to determine is whether the court of the Rent Controller, the appellate court and the high court were correct in holding that the petitioner had not been able to prove that there existed a relationship of landlord and tenant between her and respondent No.1. The eviction petition was filed by the petitioner by asserting the existence of an oral tenancy agreement with respondent No.1. The Rent Controller as well as the appellate court and the high court concurrently held that neither had the petitioner been able to prove the existence of such an agreement, nor the payment of rent at any material stage by respondent No.1 to her. We do not find such conclusion drawn by three courts below to be suffering from misreading or non-reading of evidence and therefore warrants no interference.

19. The 2009 Act proceeds on the assumption that there is a relationship of landlord and tenant between the parties in an eviction petition. The object behind the enactment of the 2009 Act is set out in its preamble, viz., *"to regulate the relationship of landlord and tenant, to provide a mechanism for settlement of their disputes in an expeditious and cost effective manner and for connected matters."* Where there is no relationship of landlord and tenant between the parties before the Rent Controller, he would have no jurisdiction to proceed with the matter. In the case of Mian Umar Ikram-ul-Haque Vs. Dr. Shahida Hasnain (2016 SCMR 2186), this court held that *"[i]f the respondent in a rent matter denied the relationship of tenancy, a question of jurisdictional fact would arise. The doctrine of jurisdictional fact connotes that the jurisdiction of an adjudication forum is dependent upon the*

ascertainment and determination of certain facts." Furthermore, it was held as follows:-

"The jurisdictional fact in this context would be whether the relationship of landlord and tenant existed between the parties. If the Rent Controller positively ascertained such a relationship through factual enquiry, he would assume jurisdiction, otherwise the petition had to fail because the Rent Controller in that situation would not have any jurisdiction over the parties and consequently the matter before him."

20. It is a well settled proposition of law that the onus to prove the existence of a relationship of landlord and tenant between the parties is on the landlord who seeks the eviction of a tenant. The term "tenant" has been defined in section 2(l) of the 2009 Act as follows:-

"2.(l) "tenant" means a person who undertakes or is bound to pay rent as consideration for the occupation of a premises by him or by any other person on his behalf and includes:-

- (i) a person who continues to be in occupation of the premises after the termination of his tenancy for the purpose of a proceeding under this Act;*
- (ii) legal heirs of a tenant in the event of death of the tenant who continue to be in occupation of the premises; and*
- (iii) a sub-tenant who is in possession of the premises or part thereof with the written consent of the landlord."*

21. Eviction could not be sought before the Rent Controller without establishing the relationship of landlord and tenant. The relationship of landlord and tenant comes into existence as a result of a tenancy agreement. One of the most important circumstances from which inference as to the existence of such relationship may be drawn is payment of rent. The fact that no rent was paid by the person in possession of the premises would negate the existence of such relationship. Payment of rent is not just a normal incidence of tenancy but a *sine qua non* for the relationship of landlord and tenant. To show that respondent No.1 was the petitioner's tenant, the latter had to prove that respondent No.1 either undertook or was bound to pay rent as consideration for the possession or occupation of the demised premises. This

could have been done through the production of rent receipts or witnesses deposing as to the payment of rent in their presence to respondent No.1. Although the petitioner produced Mirza Fida Lateef as AW-1 as her prime witness, he, in his cross-examination admitted that no rent receipt had been produced. He also deposed that no notice had been issued to respondent No.1 as to the non-payment of rent. This being the position, it cannot be held that respondent No.1 had, at any material stage, paid rent to the petitioner.

22. However, the non-payment of rent in the presence of a rent agreement, oral or written, would not by itself be sufficient to hold that there does not exist such relationship. The existence of the relationship of landlord and tenant can come into existence on execution of a rent agreement. The petitioner did not produce witnesses in whose presence a tenancy agreement with respondent No.1 was created.

23. Since we have been given no reason to interfere with the three concurrent orders / judgments passed by the Rent Controller, appellate court and the high court, leave to appeal is declined and the petition is dismissed.

Announced in open Court on 11.09.2025 at Islamabad

MMI

Not approved for reporting
Ahtesham Majid

[Signature]