

2013 M L D 209

[Lahore]

Before Shujaat Ali Khan, J

AKHTAR SALEEM---Appellant

Versus

ADDITIONAL DISTRICT JUDGE---Respondent

S.A.O. No.7 of 2010/BWP, decided on 18th October, 2012.

(a) West Pakistan Urban Rent Restriction Ordinance (VI of 1959)---

---S.13-A---Change of ownership---Notice, non-issuance of---Effect---If formal notice, as envisaged under S.13-A of West Pakistan Urban Rent Restriction Ordinance, 1959, is not issued, ejectment petition can be considered as notice for eviction.

Shah Mir and 6 others v. Ghulam Hussain 2012 YLR 148 rel.

(b) West Pakistan Urban Rent Restriction Ordinance (VI of 1959)---

---S.13---Ejectment of tenant---Establishment of relationship of landlord and tenant---Title of landlord challenged---Principle and procedure---When relationship of landlord and tenant is established, tenant cannot challenge veracity of title of landlord, rather first of all he should hand over vacant possession to landlord and then seek remedy before appropriate forum.

Anwar Khan v. Abdul Manaf 2004 SCMR 126 rel.

(c) West Pakistan Urban Rent Restriction Ordinance (VI of 1959)---

---S.13---Ejectment of tenant---Default in payment of monthly rent---Change of ownership---Tenant had been depositing rent in the name of previous owner, despite the fact that he came to know about new owner---Rent Controller and Lower Appellate Court concurrently passed eviction order against the tenant---Validity---Despite refusal of previous owner to accept monthly rent on account of change of ownership, tenant deposited monthly rent in the name of previous owner---Deposit of rent by tenant in the name of previous owner did not absolve him from the liability to pay rent to landlord as deposit of rent in the name of previous owner could not be considered as due payment---High Court declined to differ with concurrent conclusions arrived at by two courts below and maintained eviction order---Appeal was dismissed in circumstances.

Karam Rasool v. Town Committee, Zafarwal and others 2006 SCMR 1061; Umar Hayat and another v. Madhu Lal Hussain and others 2006 SCMR 1064; Umar Hayat Khan v. Inayatullah Butt and others 1994 SCMR 572; Mst. Parveen Bibi v. Shahan Masih and 2 others 2007 CLC 1106; Suleman Mashkoor v. Abdul Ghafoor and others 2002 CLC 143; Muhammad Amin v. Gulzar Muhammad 1994 MLD 2162 and Qasim Rasool Qadri and another v. Rent Controller and others 1988 CLC 1856 distinguished.

Malik Abdul Aziz Awan and another v. Rana Maqbool Ahmad Khan and others 2012 SCMR 91 and Bazurg Jamil and another v. Haji Abdul Bari others PLD 2003 SC 477 rel.

Sikandar Hayat v. Hasina Sheikh PLD 2010 SC 19; Arshad Ali v. Mst. Zubaidah Bibi and 2 others 2008 SCMR 1457; Amin and others v. Hafiz Ghulam Muhammad and others PLD 2006 SC 549; Messrs Habib Bank Limited v. Sultan Ahmad and another 2001 SCMR 679; Malik Safdar Hussain

v. Lutuf Ahmad Khan and others 1997 SCMR 567; Abdul Malik v. Mrs. Qaisar Jehan 1995 SCMR 204; Major (R) Muhammad Yousaf v. Mehraj-ud-Din and others 1986 SCMR 751; Syed Azhar Imam Rizvi v. Mst. Salma Khatoon 1985 SCMR 24; Hakam Din v. Muhammad Irshad PLD 1979 SC 887; Mst. Bushra Bibi and 2 others v. Muhammad Sharif and 23 others 2002 CLC 587; Muhammad Usman and another v. Kausar Begum 2000 CLC 1656; Auqaf Department Punjab, Lahore through Chief Administrator and another v. Saeed Ahmad and another 1996 MLD 1074; Iftikhar Ahmad Shaikh v. Ch. Muhammad Din and 2 others PLD 1990 Lah. 461; Gulzar Begum and others v. Masud Akhtar Khan and others 1988 MLD 938; Muhammad Iqbal v. Hajira Begum and others 1988 MLD 1502; Nawab Din v. Basharat Ali 1986 MLD 692; Suleman Khan and 2 others v. Nazar Khan and another 1983 CLC 1502; Mubarak v. Phullan and 7 others 1980 CLC 485; Syed Sharif Hussain Shah v. Mst. Samina Tauseef through Attorney and 2 others 2010 CLC 637; Mst. Aisha and another v. Mrs. Samar Afroze 2008 YLR 24; Muhammad Saleem v. Messrs Symphony (Pvt.) Ltd. through Salim Motiwala and 2 others 2007 YLR 420; Khan Ghulam Hassan Khan v. Dr. Rashid Ahmad PLD 1967 Kar. 35; Sardar Iftikhar Ahmad Khan v. Sabir Ahmad (Yousaf and Sons) and others PLD 2007 Quetta 104; Bahauddin Bootwala v. Muhammad Afzal 2000 YLR 2716 and Muhammad Iqbal v. Muhammad Afzal and others 2011 CLC 546 ref.

(d) West Pakistan Urban Rent Restriction Ordinance (VI of 1959)---

---S. 13---Ejectment of tenant---Default in payment of rent---Principle---When default is established on the part of tenant, he has no right to retain possession of rented premises.

Ahmad Ali alias Ali Ahmad v. Nasar-ud-Din and another PLD 2009 SC 453 rel.

(e) Civil Procedure Code (V of 1908)---

---O.XX, R.5---Issue not pressed---Effect---When a party confines its submissions regarding a particular issue and leaves findings of lower court on rest of the issues, such person is not obliged to open the matter as a whole while approaching the higher forum.

Ghulam Haider and others v. Muhammad Hussain and others 2005 SCMR 975 and Qazi Muhammad Saqib Khan v. Ghulam Abbas and 2 others 2003 MLD 131 rel.

Raja Muhammad Sohail Iftikahr for Appellant.

Muhammad Farooq Warind and Ahmad Mansoor Chishti for Respondents Nos. 3 and 4.

ORDER

SHUJAAT ALI KHAN, J.---Through this appeal the appellant has called in question the vires of judgment dated 28-9-2009 passed by the learned Special Judge (Rent), Rahim Yar Khan as well as that of the learned Additional District Judge, Rahim Yar Khan passed on 20-4-2010.

2. Precisely, respondents Nos. 3 and 4 filed an ejectment petition against the appellant qua the shop mentioned in body of the petition. Learned Special Judge (Rent), Rahim Yar Khan out of the divergent pleadings of the parties framed following Issues:--

(i) Whether the applicant is the landlord of the impugned property? OPA.

(ii) Whether respondent is wilful defaulter of the payment of the monthly rent? OPA.

(iii) Whether the impugned property is required by the applicants for their personal bona fide need? OPA.

(iv) Whether the application in hand is liable to be accepted? OPA.

(v) Whether the applicants have come into court with unclean hands? OPR

(vi) Whether applicants have no cause of action? OPR.

(vii) Whether respondent is entitled to recover his security amount of Rs.2,80,000 in case he is evicted? OPR.

(viii) Relief.

In support of their claim, respondents Nos. 3 and 4 themselves appeared as AW-1 and AW-4 and submitted affidavits in evidence (Exh. A-1 and A-3). They also examined, Syed Javed Aslam Gillani, previous owner of the premises as AW-2. Respondents No. 3 and 4 also tendered in evidence receipts regarding payment of charges for transferring of ownership (Exh.A-5), copy of letter dated 19-9-2007 (Exh. A-4) and rent deed executed by the previous owner with Akhtar Saleem (Exh.A-6).

3. On the other hand, appellant himself appeared as RW-1 and examined Iqbal Masih as RW-2. He also tendered in evidence receipts regarding payment of monthly rent in the court (Exh. R-1 to R-27). After thrashing evidence of the parties, learned Special Judge (Rent) Rahim Yar Khan accepted the application and directed the appellant to vacate the premises till 29-10-2009. Aggrieved by the said order, the appellant preferred an appeal before the learned District Judge, R.Y.Khan, which was dismissed by the learned Additional District Judge vide judgment dated 20-4-2010; hence this appeal.

4. The resume of the arguments advanced by the learned counsel for the appellant is that both the courts below failed to appreciate that the appellant never defaulted in payment of rent as is evident from the receipts got exhibited by the appellant; that no notice under section 13-A of the West Pakistan Urban Rent Restriction Ordinance, 1959 (hereinafter to be referred as the Ordinance) was given by the respondents; that no relationship of landlord and tenant was established inter se the parties; that entries in the record of Excise and Taxation Department are not conclusive proof of the title rather for claiming title, the parties concerned should approach the Civil Court; that when the title of respondents Nos. 3 and 4 qua the rented premises was not established, the ejectment petition on their behalf was not competent; that as no document qua the ownership of the premises in question, registered under section 17 of the Registration Act, was in possession of respondents Nos. 3 and 4, they could not claim ownership of the suit premises; that both the courts below failed to appreciate that mere execution of the agreement to sell does not confer any right in favour of any party. In support of his contentions learned counsel has referred to the cases of Karam Rasool v. Town Committee, Zafarwal and others (2006 SCMR 1061), Umar Hayat and another v. Madhu Lal Hussain and others (2006 SCMR 1064), Umar Hayat Khan v. Inayatullah Butt and others (1994 SCMR 572), Mst. Parveen Bibi v. Shahar Masih and 2 others (2007 CLC 1106), Suleman Mashkoor v. Abdul Ghafoor and others (2002 CLC 143), Muhammad Amin v. Gulzar Muhammad (1994 MLD 2162), and Qasim Rasool Qadri and another v. Rent Controller and others (1988 CLC 1856).

5. Conversely, learned counsel appearing on behalf of respondents Nos. 3 and 4 while defending the impugned order, as well as judgment, submit that respondents Nos. 3 and 4 established the ownership of landlord and tenant between the parties; that the appellant was aware of the transfer of ownership in the name of the respondents; that possession was handed over to the respondents on the basis of agreement to sell dated 4-5-2007, therefore, they were entitled to receive the rent from the appellant; that the points which were not agitated before the lower forums could not be taken up before this court; that since the appellant has only challenged the findings of the learned Special Judge (Rent) qua issue No.1 only, therefore, the findings of the lower forums on rest of the issues stand admitted; that mere filing of affidavit by the counsel to the effect that he wants to press all the issues is not sufficient; that the tenant cannot refuse payment of rent while calling in question the title of the owner; that no notice under section 13-A of the Ordinance was required rather mere knowledge regarding change of ownership was sufficient; that even filing of eviction petition is sufficient to convey the transfer of title; that the appellant admitted in his cross-examination that he had the knowledge about the transfer of the possession; that the petition was filed before the expiry of tenancy period; that admission on the part of the appellant regarding default in payment of rent justifies the impugned order; that the appellant did not deposit the monthly rent after adding 25% increase as per law; that the appellant could not retain the possession of the property after expiry of the tenancy; that the requisite court fee has not been affixed on the appeal, therefore, the memo of the appeal is nothing but a piece of paper; that concurrent findings of facts have been rendered in favour of the respondents Nos. 3 and 4 and the same cannot be upset lightly and that no illegality has been pointed out by the learned counsel for the appellant in the verdicts of the courts below. In support of his contentions learned counsel has referred to the cases of Malik Abdul Aziz Awan and another v. Rana Maqbool Ahmad Khan and others (2012 SCMR 91), Sikandar Hayat v. Hasina Sheikh (PLD 2010 SC 19), Arshad Ali v. Mst. Zubaidah Bibi and 2 others (2008 SCMR 1457), Amin and others v. Hafiz Ghulam Muhammad and others (PLD 2006 SC 549), Ghulam Haider and others v. Muhammad Hussain and others (2005 SCMR 975), Messrs Habib Bank Limited v. Sultan Ahmad and another (2001 SCMR 679), Malik Safdar Hussain v. Lutuf Ahmad Khan and others (1997 SCMR 567), Abdul Malik v. Mrs. Qaisar Jehan (1995 SCMR 204), Major (R) Muhammad Yousaf v. Mehraj-ud-Din and others (1986 SCMR 751), Syed Azhar Imam Rizvi v. Mst. Salma Khatoon (1985 SCMR 24), Hakam Din v. Muhammad Irshad (PLD 1979 SC 887), Qazi Muhammad Saqib Khan v. Ghulam Abbas and 2 others (2003 MLD 131), Mst. Bushra Bibi and 2 others v. Muhammad Sharif and 23 others (2002 CLC 587), Muhammad Usman and another v. Kausar Begum (2000 CLC 1656), Auqaf Department Punjab, Lahore through Chief Administrator and another v. Saeed Ahmad and another (1996 MLD 1074), Iftikhar Ahmad Shaikh v. Ch. Muhammad Din and 2 others (PLD 1990 Lahore 461), Gulzar Begum and others v. Masud Akhtar Khan and others (1988 MLD 938), Muhammad Iqbal v. Hajira Begum and others (1988 MLD 1502), Nawab Din v. Basharat Ali (1986 MLD 692), Suleman Khan and 2 others v. Nazar Khan and another (1983 CLC 1502), Mubarak v. Phullan and 7 others (1980 CLC 485), Syed Sharif Hussain Shah v. Mst. Samina Tauseef through Attorney and 2 others (2010 CLC 637), Mst. Aisha and another v. Mrs. Samar Afroze (2008 YLR 24), Muhammad Saleem v. Messrs Symphony (Pvt.) Ltd. through Salim Motiwala and 2 others (2007 YLR 420), Khan Ghulam Hassan Khan v. Dr. Rashid Ahmad (PLD 1967 Karachi 35), Sardar Iftikhar Ahmad Khan v. Sabir Ahmad (Yousaf and Sons) and others (PLD 2007 Quetta 104) and Bahauddin Bootwala v. Muhammad Afzal (2000 YLR 2716).

6. I have heard the learned counsel for the parties at considerable length and have also gone through the documents appended with this petition in addition to those produced during the course of arguments as well as the case-law cited by the learned counsel for the parties in support of their respective pleas.

7. Firstly, taking up the question as to whether the appellant was aware about the sale of shop in dispute to respondents Nos.3 and 4, I have observed that the appellant, while appearing as RW-1 in his cross-examination, admitted that he was aware about the sale of shop in dispute to respondents Nos.3 and 4. He further admitted that the possession was handed over to respondents Nos.3 and 4. It is important to mention over here that in his cross-examination the appellant stated in unequivocal words that Syed Javed Aslam Gillani, previous owner, received monthly rent of the rented premises till July 2007. However, he refused to receive the rent for the month of August 2007 with the objection that he has already sold the shop. This chain of admitted facts by the appellant is sufficient to establish that he was well aware about change of ownership, therefore, the objection raised by the appellant that no notice under section 13-A of the Ordinance regarding transfer of ownership was served upon him, is hereby spurned. If any case-law is required, reliance can safely be made to the case of Habib Bank Ltd. (supra) wherein while dealing with said proposition it has been held as under:--

10. Before parting with the judgment we would also like to observe that the tenant has no right to demand title documents from the landlord on receipt of notice within the meaning of section 18 of the Ordinance because no sooner notice is served upon him or it is otherwise conveyed to him either in the judicial proceedings or by some other reliable source he is bound to accept the new owner as his landlord as held in the cases of Muhammad Ashraf v. Abdul Hameed and others (1982 SCMR 237(2) and Suleman and another v. M.A. Mallick (1988 SCMR 775). (emphasis provided).

Further, this Court in the matter reported as Muhammad Iqbal v. Muhammad Afzal and others (2011 CLC 546) has held as under:--

In the circumstances, discussed above it is crystal clear that the appellant is very much in the knowledge of the purchase of the shop in dispute by the respondents since the execution of registered sale-deed Exh.A-2 on 29-12-2005 but he has not paid rent to the respondents and is using the property without payment of any rent. The denial of the title/relationship of tenancy by the appellant is mala fide as well as contumacious and the appellant is not entitled to any leniency. The conduct of the appellant entitles him to forthwith ejectment from the shop in dispute. (emphasis provided).

A

8. Even otherwise, if a formal notice, as envisaged under section 13-A of the Ordinance is not issued the ejectment petition can be considered as notice for eviction. Reliance in this regard is placed on the case reported Shah Mir and 6 others v. Ghulam Hussain (2012 YLR 148) in which while dealing with the said proposition it has inter alia been observed as under:--

Reverting to the contention of learned counsel for the appellant regarding notice under section 13-A of the Ordinance, it may be added that even if notice under section 13-A of the Ordinance was not proved to be issued, still filing of eviction application would amount to notice under section 13-A of the Ordinance and the appellants were under legal obligation to have made payment of the rent from the date, the respondent became the landlord/owner of the houses in dispute (emphasis provided)

Insofar as the case in hand is concerned, respondents Nos.3 and 4 proved that the appellant was well-aware about change of ownership and he was bound to pay the monthly rent to respondents Nos.3 and 4 but he failed to do so. Thus, the ejectment petition was rightly accepted by the learned Special Judge (Rent).

B

9. Now advertng to the most pivotal question as to whether the relationship of landlord and tenant existed between the appellant and respondent No.3, I am of the view that as respondents Nos.3 and 4 stepped into shoes of Syed Javed Aslam Gillani, the previous owner who was also examined by the respondents as AW-2, they were bound to pay rent to the respondents. Even otherwise, when the relationship of landlord and tenant is established, tenant could not challenge the veracity of the title of the landlord rather first of all he should hand over the vacant possession to the landlord and then seek remedy before the appropriate forum. Reliance in this regard is placed on Anwar Khan v. Abdul Manaf (2004 SCMR 126) wherein it has been held as under:--

*****It is worth mentioning here at this the question of title has no relevancy in the proceedings in as the pivotal point needs determination would be the relationship of landlord and tenant which would be the only determining factor because a tenant has absolutely no legal right to raise any objection regarding the partition of property or the manner in which it was so made as it would have no substantial effect on the factum of his tenancy and his status would remain as tenant .

C

11. Insofar as the default in payment of rent is concerned, according to the documents tendered by the appellant himself despite refusal by the previous owner to accept the monthly rent on account of change of ownership, the appellant deposited monthly rent in the name of the previous owner. I am of the opinion that deposit of rent by the appellant in the name of previous owner does not absolve him from the liability to pay rent to the respondents as deposit of rent in the name of previous owner cannot be considered as due payment. Reliance in this regard is placed on Bazurg Jamil and another v. Haji Abdul Bari and others (PLD 2003 SC 477) wherein the august Supreme Court of Pakistan has laid law to the following effect:--

But in the case in hand the distinct feature is that the rent has not been deposited in favour of the landlords at all because deposit of rent in the name of Civil Judge would not serve the object of law. i.e. rent is to be paid or tendered to the landlord as per the provisions of section 13(2), Explanation (ii) of the Ordinance.

Further, in the case of Abdul Malik (supra), while dealing with somewhat similar question the august Supreme Court of Pakistan has observed as follows:--

Therefore in such cases it has to be seen that while depositing the rent in Court there has been refusal or avoidance and further that the conduct of the tenant is not contumacious or with mala fide intention to harass the landlord. In the facts of the present case the

respondent had served a notice informing the appellant that the property has been gifted to her. Instead of making any inquiry about the title he started depositing rent in Court. The respondent had supplied a copy of the gift deed also and from evidence it seems that Haji Muhammad Bashir, the original owner had gifted to his nephews who had gifted to the respondent who was closely related to them. In these circumstances, the deposit of rent without replying to the notice of the respondent under section 18 of the Ordinance could not be held to be a bona fide conduct on the part of the appellant. (emphasis provided).

D

12. It is also well-established by now that when default is established on the part of the tenant, he has no right to retain the possession of the rented premises. A reference in this regard is made to the case of Ahmad Ali alias Ali Ahmad v. Nasar-ud-Din and another (PLD 2009 SC 453) wherein their lordships of the august Supreme Court of Pakistan has held as under:--

Non-payment of the rent of the property in dispute by the tenant is admitted, as such, he would be inferred as defaulter, so liable to be ejected.

E

13. Another salient feature of the instant matter is that during the course of proceedings on appeal before the Lower Appellate Court, the appellant confined his submissions to the extent of Issue No.1 alone. It is cardinal principle of civil law that when a party confines his submissions qua a particular issue and leave the findings of lower court on rest of issues he is not obliged to open the matter as a whole while approaching to the higher forum. In this regard, reference can be made to the case of Ghulam Haider and others (supra) wherein the august Supreme Court of Pakistan has held as follows:--

Which we are afraid is ill-founded since the same stands refuted by the observations made in para.9 of the appellate order of the Additional District Judge in the following terms:--

As far as the remaining issues are concerned, the appellants have only challenged the findings on issue No.4, whereas they have not challenged the findings on any other issue, therefore, placing reliance on 1982 CLC 1416 this Court cannot go beyond the grounds of appeal as raised by the appellants in their memorandum of appeal.

3. Resultantly, the petition fails and is hereby dismissed. Leave declined.

Further, a Division Bench of this Court in the case of Qazi Muhammad Saqib Khan (supra) has laid law to the following effect:--

Therefore, trial Court was justified to ignore the said document. Issues Nos.4, 5 and 6 were not pressed at the time of arguments before the learned trial Court, therefore, appellant has no right to assail the findings on the aforesaid issues before this Court.

Since, the relationship of landlord and tenant between the parties inter se has been established, the appellant has no cheeks to grouse against the impugned judgments on the rest of the issues before this court.

14. As far as the assertion of the appellant that an amount of Rs.2,80,000 was paid to Syed Javed Aslam Gillani, the previous owner, as advance is concerned, suffice it to observe that according to the appellant himself he had been the tenant of said Syed Javed Aslam Gillani since 1960 but payment of advance in the year 2007 does not appeal to reason. If any advance money was paid by the appellant the factum of the same should have been incorporated in the previous tenancy agreements. Moreover, the appellant has not produced any evidence in support of his version thus the same cannot be taken as a gospel truth. It is interesting to note that the appellant did not put any suggestion regarding advance amount to Syed Javed Aslam Gillani (AW-2) during the course of cross-examination, thus, the said assertion of the appellant seems to be fanciful and result of some afterthought.

15. As far as the case-law cited by learned counsel for the appellant is concerned, I am of the opinion that the same is not applicable to the facts and circumstances of the present case inasmuch as in the case of Karam Rasool (supra) the matter was remanded to the civil court to determine the ownership qua the premises in dispute as in the said matter two parties were claiming ownership of the premises in dispute whereas in the case in hand Syed Javed Aslam Gillani not only executed the relevant documents in favour of respondents Nos.3 and 4 but also while appearing in the witness box as AW-3 stated in unequivocal words that after execution of agreement to sell and receipt of the amount of consideration he had nothing to do with the said premises and the possession was handed over to respondents Nos.3 and 4. Likewise, in the case of Umar Hayat Khan (supra) the matter in issue was the identity and description of the property which is not the position in the case in hand. Now coming to the case of Parveen Bibi (supra), it is observed that findings of the Appellate Court were reversed by this Court on the ground that only entries in the Excise and Taxation record were relied upon to establish the relationship of landlord and tenant but in the matter under discussion, besides record of Excise and Taxation department, the documents submitted by respondents Nos.3 and 4 before the concerned T.M.A. and the subsequent transfer of ownership in their name in addition to the statement made by the previous owner in their favour have been relied upon by both the courts below. Now coming to the case of Suleman Mashkoor (supra) it is observed that judgments of courts below were set aside on the ground that no documentary evidence was available on the record to establish the relationship of landlord and tenant but the case in hand as respondents Nos.3 and 4 having stepped into the shoes of Syed Javed Aslam Gillani on the basis of valid documents successfully proved themselves to be owners of the property and the appellant as tenant. Insofar as the case of Muhammad Amin (supra) is concerned, the same is polls apart from the case in hand for the reason that the tenant was not in the knowledge of the new landlord which is not the position in the instant case. As far as case of Qasim Rasool Qadri and another (supra) is concerned, suffice it to observe that the same is of no help to the petitioner for the reason that the apex Court of the country has held that the tenant cannot put challenge to the title of the landlord.

16. Now adverting to the appellant's plea that the learned trial Court has wrongly relied upon the record of the Excise and Taxation department, I am of the humble opinion that when otherwise the existence of landlord and tenancy relationship is proved the said objection has become immaterial.

F

17. For what has been discussed above, I see no reason to differ with the concurrent conclusions arrived at by both the courts below. Resultantly, the instant appeal fails and the same is dismissed

with a direction to the appellant to immediately hand over vacant possession of the premises to respondents Nos.3 and 4. The parties are left to bear their own costs.

MH/A-158/L Appeal dismissed.