ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.154 of 2019
Zahid Shafi
Versus
Muhammad Akhtar Bajwa and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	19.10.2020	**Mr. Mehar Jabir Abbas, Advocate for the petitioner** **Mr. Khurram Mahmood Qureshi, Advocate for respondent No.1** **Mr. Tahir Mehmood Abbasi, Advocate for the applicant in C.M.No.2234/2020**

C.M.No.2234 of 2020

Through this application, the applicant, Mir Wa'iz Khan Tareen, sought his impleadment as a respondent in this petition. The ground taken in the said application was that the applicant had become the owner of the House No.743, Ibn-e-Sina Road, Sector G-11/2, Islamabad **("the rented premises")** on the basis of the agreement to sell dated 25.08.2009.

The applicant had moved an application before the learned Rent Controller for his impleadment as a respondent in the eviction petition. The said application was contested by the petitioner (Zahid Shafi). Vide order dated 30.05.2018, the said application was dismissed.

Since the application for the impleadment of Mir Wa'iz Khan Tareen has been filed before this Court at highly belated stage, the instant application is dismissed.

MAIN CASE

Through the instant writ petition, the petitioner, Zahid Shafi, impugns the order and decree dated 17.12.2018 passed by the Court of the learned Additional District Judge, Islamabad, whereby respondent No.1's appeal against the orders dated 30.06.2018 and 05.09.2018 passed by the Court of the learned Rent Controller, Islamabad, was allowed; and the said orders dated 30.06.2018 and 05.09.2018 were set-aside and the

matter was remanded to the learned Rent Controller to decide the petitioner's eviction petition on merits. In the eviction petition filed under Section 17 of the Islamabad Rent Restriction Ordinance, 2001 ("IRRO"), the petitioner had sought respondent No.1's eviction from the rented premises.

2. The record shows that on 03.03.2015, a rent agreement was executed between the petitioner (landlord) and respondent No.1 (tenant) whereby the rented premises were leased for a period of five years. Clause 4 of the said agreement shows that the rent agreement was executed for the *"complete house."*

3. On 30.11.2015, respondent No.1 filed an application before the learned Rent Controller praying for permission for the deposit of rent to the Court. In the said application, it was pleaded *inter alia* that the rented premises had been taken on lease by respondent No.1 from the petitioner through his attorney, Muhammad Shafi, and that the rent for the rented premises was Rs.1,35,000/- per month. Vide order dated 15.12.2015, the said application was disposed of with the direction for the deposit of the rent in advance before the 15th of every month. In the said order, it has been mentioned that the petitioner had tendered appearance through his attorney and submitted that an ejectment petition had been filed against respondent No.1.

4. On 14.11.2015, the petitioner had filed an eviction petition against respondent No.1 on the ground that the latter had subjected the rented premises to a non-conforming use i.e. a school had been established in the rented premises. After respondent No.1 was proceeded against *ex-parte,* the learned Rent Controller vide order dated 13.02.2016 dismissed the eviction petition as not maintainable.

5. On 23.10.2017, the petitioner filed another eviction petition against respondent No.1 on the ground that respondent No.1 had defaulted in the payment of rent. The said eviction petition was filed by petitioner through his attorney, Muhammad Yousaf. Respondent No.1 contested the said eviction petition by filing a written reply. In the said reply, the position taken by respondent No.1 is that relationship of landlord and tenant does not exist between the petitioner and respondent No.1; and that the petitioner was in possession of the ground floor of the rented premises on the basis of rent agreement dated 07.03.2018 executed between respondent No.1 and Mir Wa'iz Khan Tareen, who was in possession of the first floor of the rented premises.

6. Vide order dated 30.05.2018, the learned Rent Controller dismissed application under Order I, Rule 10 of the Code of Civil Procedure, 1908 ("C.P.C.") filed by the petitioner for the impleadment of Mir Wa'iz Khan Tareen as a respondent in the eviction petition. The said application had been contested by respondent No.1. In his reply to the said application, he had pleaded that Mir Wa'iz Khan Tareen had no concern with the rented premises.

7. Vide order dated 30.06.2018, the learned Rent Controller fixed the tentative rent at the rate of Rs.1,57,464/- per month from October 2017 to March 2018 and Rs.1,70,061/- from April 2018 onwards. Respondent No.1 was directed to deposit the tentative rent by 24.07.2018. The said order was passed under Section 17(8) of the IRRO. Vide order dated 05.09.2018, respondent No.1's review application against the said order dated 30.06.2018 was dismissed by the learned Rent Controller. Vide order dated 05.09.2018, the learned Rent Controller struck off respondent No.1's defence by invoking the provisions of Section 17(9) of the

IRRO and allowed the petitioner's eviction petition. Respondent No.1 was directed to forthwith hand over vacant possession of the rented premises to the petitioner. The said orders dated 30.06.2018 and 05.09.2018 were assailed by respondent No.1 in an appeal. As mentioned above, vide order dated 17.12.2018, the said appeal was allowed and the matter was remanded to the learned Rent Controller with the direction to decide the eviction petition on merits. The said order dated 17.12.2018 has been assailed by the petitioner in the instant writ petition.

8. On 14.01.2020, respondent No.1 gave an undertaking to this Court that he would vacate the ground floor of the rented premises and deliver its possession to the petitioner on 17.08.2020. It is an admitted position that possession of the ground floor of the rented premises has been handed over to the petitioner.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that respondent No.1 had sublet the first floor of the rented premises to Mir Wa'iz Khan Tareen; that there had been an admitted default in the payment of rent from June 2016 onwards; that respondent No.1 and Mir Wa'iz Khan Tareen were in collaboration with each other so as to deprive the petitioner of his right to gain possession of the entire rented premises; that Mir Wa'iz Khan Tareen had instituted a suit for specific performance of the agreement to sell dated 25.08.2009; that unless and until the said suit is decreed, Mir Wa'iz Khan Tareen cannot claim to be the owner of the rented premises; that possession of the first floor of the rented premises had not been handed over to Mir Wa'iz Khan Tareen pursuant to the agreement to sell dated 25.08.2009 since admittedly on 03.03.2015 (when the

rent agreement executed between the petitioner and respondent No.1), Mir Wa'iz Khan Tareen was not in possession of any portion of the rented premises; that the tentative rent order dated 30.06.2018 and the order dated 05.09.2018 whereby the learned Rent Controller closed respondent No.1's right of defence and allowed the eviction petition do not suffer from any legal infirmity; that the findings of the learned appellate Court apart from being perverse are contrary to the law and facts of the case; and that the learned appellate Court by giving credence to the rent agreement dated 07.03.2018 allegedly executed between respondent No.1 and Mir Wa'iz Khan Tareen has virtually declared Mir Wa'iz Khan Tareen as the owner. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of the relief sought therein.

10. On the other hand, learned counsel for respondent No.1 submitted that since respondent No.1 had already handed over possession of the ground floor of the rented premises to the petitioner and since respondent No.1 was not in possession of the first floor of the rented premises, the petitioner was left with no cause of action against respondent No.1; that on 01.04.2017, an *"agreement to vacate premises"* was executed between the petitioner's attorney (Muhammad Shafi) and respondent No.1 under which it was agreed that the rented premises would be vacated by 30.09.2017; that in the said agreement, it was mentioned that the rented premises had been sold to Mir Wa'iz Khan Tareen and that a new lease agreement would be executed with the consent of the new owner of the rented premises; that respondent No.1 had handed over possession of the first floor of the rented premises to the petitioner's attorney (Muhammad Shafi) who in turn handed over its possession to Mir Wa'iz Khan Tareen on 05.03.2018; that

Mir Wa'iz Khan Tareen had also filed a suit for specific performance of the agreement to sell dated 25.08.2009 before the learned Civil Court; that in the proceedings before the learned Civil Court, respondent No.1's attorney (Muhammad Shafi, who was also the petitioner's father) had acknowledged that vide agreement to sell dated 25.08.2009, the rented premises had been sold to Mir Wa'iz Khan Tareen and that the petitioner had transferred the rented premises in his own name through fraud; that Muhammad Shafi had also filed a suit for declaration praying for the cancellation of the transfer of the rented premises to the petitioner; that the rented premises had been transferred to the petitioner through allotment letter dated 08.10.2010; and that the impugned order dated 17.12.2018 passed by the learned appellate Court does not suffer from any jurisdictional infirmity. Learned counsel for respondent No.1 prayed for the writ petition to be dismissed.

11. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 8 above and need not be recapitulated.

12. Proceeding on the assumption that Mir Wa'iz Khan Tareen is in possession of the first floor of the rented premises, the vital question that needs to be determined whether the learned Rent Controller could have directed that possession of the entire rented premises be handed over to the petitioner. It is not disputed that Mir Wa'iz Khan Tareen has filed a suit for specific performance of the agreement to sell dated 25.08.2009 whereby the petitioner's father allegedly agreed to sell the rented premises to Mir Wa'iz Khan Tareen. The said suit was filed on 04.07.2016.

13. The rent agreement dated 03.03.2015 was not signed by Muhammad Shafi as the owner of the rented premises but as the attorney of his son i.e. the petitioner. It was by virtue of the said agreement that respondent No.1 came into possession of the rented premises. The said agreement was for the entire rented premises and not for any portion. Whether Mir Wa'iz Khan Tareen is the owner of the rented premises is yet to be determined by the learned Civil Court.

14. Bearing in mind that respondent No.1 had filed the application for the deposit of rent in the Court against the petitioner, it does not appeal to reason as to why respondent No.1 executed the *"agreement to vacate premises"* dated 01.04.2017 regarding handing over of possession of the rented premises with Muhammad Shafi. Additionally, the application for the withdrawal of the rent deposited in the Court was filed by the petitioner through his attorney (Tahir Wajahat Chaudhary) on 03.08.2016. Respondent No.1 knew or ought to have known that the petitioner's attorney was Tahir Wajahat Chaudhary. After having knowledge of this fact, it is inexplicable as to why respondent No.1 preferred to enter into the *"agreement to vacate premises"* with Muhammad Shafi. The record does not explain as to why the suit for specific performance was filed with a delay of more than six years. If it is to be accepted that Muhammad Shafi had sold the rented premises to Mir Wa'iz Khan Tareen and had stood by that sale, why is it that on 03.03.2015, Muhammad Shafi had signed the lease agreement with respondent No.1 as the petitioner's attorney. All this remained unexplained and consequently gave strength to the petitioner's case.

15. Be that as it may, the suit for specific performance of the agreement to sell dated 25.08.2009 has not been decreed as yet. Now, it is well settled that an agreement

to sell of immovable property would neither create nor purport to create any right or interest in such property nor would ownership stand transferred to the vendee. It confers only a right of enforcement of the promise. An agreement to sell is not a title document and has never been treated as an alienation. 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). Hence, unless and until the suit for specific performance instituted by Mir Wa'iz Khan Tareen is decreed by the learned Civil Court, he cannot claim to have become an owner of the rented premises simply on the basis of an agreement to sell.

16. As mentioned above, it is not disputed that on 04.07.2016, Mir Wa'iz Khan Tareen instituted a suit for specific performance of the agreement to sell dated 25.08.2009 against the petitioner's father (Muhammad Shafi) before the Court of the learned Civil Judge, Islamabad. The petitioner is contesting the said suit after being impleaded as a defendant therein. The said suit is still pending adjudication. Whether or not Mir Wa'iz Khan Tareen has purchased the rented premises is for the learned Civil Court to determine. Presently, there is no decree with respect to the ownership of the rented premises in favour of Mir Wa'iz Khan Tareen. 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 specific performance or declaration 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 ride 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."***

17. In view of the above, the instant writ petition is dismissed. Nothing observed herein shall prejudice Mir Wa'iz Khan Tareen in the proceedings before the learned Civil Court.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Qamar Khan*

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