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JUDGMENT SHEET
IN THE LAHORE HIGH COURT AT LAHORE

JUDICIAL DEPARTMENT

S.A.O.No.191 of 2007

J U D G M E N T

<u>Date of hearing</u>	<u>10-05-2012</u>
<u>Appellant by</u>	<u>S.M.Masud, Advocate</u>
<u>Respondent by</u>	<u>Mr. Riaz Hussain,</u> <u>Advocate</u>

NASIR SAEED SHEIKH, J: Through the instant consolidated judgment S.A.Os.No.191 and 192 of 2007 are being disposed of as common questions of law and facts are involved in both the rent appeals.

2. Respondents in both the rent appeals are Muhammad Saleem s/o Talib Hussain and Zulfiqar s/o. Ch. Fazal. S.A.O.No.191 of 2007 has been instituted by Saleem ur Rehman whereas S.A.O.No.192 of 2007 has been instituted by Zulqarnain both of whom are the real brothers. An Ejectment petition was instituted by Saleem ur Rehman in respect of Property No.135/C(I) Peoples Colony No.-1 Faisalabad in respect of which S.A.O.No.191/2007 has arisen whereas the Ejectment Petition subject matter of S.A.O.No.192 of 2007 was instituted by Zulqarnain in respect of property No.135/C Peoples Colony No.1 Faisalabad. The Ejectment petitions were instituted by the ejectment petitioners before the learned Rent Controller Faisalabad. The 3/4th of the property No.135 Peoples Colony No.1 Faisalabad is constructed in the form of a bungalow. The respondents No.1 & 2 were stated to have hired 3/4th portion of Property No.135 Peoples Colony, Faisalabad from both the ejectment petitioners Saleem ur Rehman and Zulqarnain and their 3rd brother Javed Aslam through a

written rent agreement dated 24.4.1993 for a period commencing from 1.6.1993 to 31.5.1999 @ Rs.32,000/- per month. This rent agreement is an admitted document between the parties as the respondents No.1 & 2 separately admitted this rent agreement through their respective written statements. The 3/4th portion forming the subject property has been described in the rough site plan annexed with the ejectment petitions. As per contents of the rent agreement the rate of rent was further increased in June 1996 with 25% enhancement and it became Rs.40,000/-per month and in 1999 it became Rs.50,000/-per month and from 01.6.2002 the rent rate became Rs.62,500/-per month. The 1/4th portion of the property bearing No.135-C/III is separately owned by Sarfraz Pervaiz Rehman the other brother of the ejectment petitioners.

3. On 31.03.2003 the two ejectment petitions were instituted by the appellants before the Rent Controller Faisalabad against the respondents on the basis of willful default since April 2000 onwards, un-authorized subletting, material damage to the property and for good faith *bonafide* needs of the ejectment petitioners for residential purposes of the subject properties. The respondent No.1 Muhammad Saleem submitted a written statement by raising a number of preliminary objections one of which was the denial of relationship of landlord and tenant between the parties which was pleaded to have **ceased to exist**. It was contended by the respondent No.1 in his preliminary objection No.1 of the written statement that 1/4th share of the suit property bearing No.136-C Peoples Colony Faisalabad has been purchased by the respondent No.1 alongwith Mst. Salma Hanif, Abdul Kareem and Gulab Din through a registered agreement to sell for a sum of Rs.35,00,000/-on 28.1.1997 from Javed Aslam co-owner, the brother of the ejectment petitioners. It was also pleaded that the respondent No.1 alongwith the vendees of the

registered agreement to sell had obtained a judgment and decree dated 28.1.1997 passed by the learned Civil Judge Faisalabad declaring the respondent No.1 and other purchasers as co-owners in the subject properties of the ejectment petitions. It was also contended by the respondent No.1 that the respondent No.2 Muhammad Zulfiqar has been unnecessarily impleaded in the ejectment petitions as he is out of possession having surrendered his possession in favour of the respondent No.1 and other purchasers of the 1/4th share of the property. The respondent No.2 in his written statement dated 12.5.2003 submitted before the learned Rent Controller Faisalabad admitted the rate of rent and the rent agreement. He also admitted that the rent was being deposited with the learned Rent Controller Faisalabad and when the earlier ejectment petitions were withdrawn with permission to file fresh ones by the ejectment petitioners the deposit of rent was stopped.

4. The learned Rent Controller Faisalabad accordingly framed the following preliminary issues in both the ejectment petitions which were being tried together:-

1. Whether there exists relationship of landlord and tenant between the parties, if so, its effect?OPP
2. Relief

5. The ejectment petitioners produced oral evidence of AW1 Muhammad Asfhaq who is a Record Keeper, Punjab Housing and Physical Town Planning Faisalabad, Muhammad Arif, AW2 who is Assistant Accountant, District Accounts Office Faisalabad, AW3 Muhammad Afzal, Naib Nazir of Civil Courts Faisalabad and the ejectment petitioners respectively appeared as AW4 in each of the ejectment petitions. The ejectment petitioners also produced documents Exh.A1 to A16 in their evidence. The respondents No.1 & 2 did not elect to appear in their evidence and produced only one RW1

Sakhawat Ali s/o Gulab Din. It is very surprising and important to note that this Sakhawat Ali even did not claim to be the attorney of any of the respondents nor did he produce any power of attorney on behalf of the respondents while appearing as RW1. This RW1 produced an affidavit RW1/I which was treated as his examination-in-chief. The learned counsel for the respondents got confronted the documents Ex. R1 to R8 in the cross examination to AWs and the three documents Exh.R9 to R11 were produced in the statement of the learned counsel recorded at the closure of the production of evidence by the respondents.

6. The learned Civil Judge/Rent Controller Faisalabad through the judgment dated 25.3.2006 dismissed both the ejectment petitions. Two separate appeals were preferred by both the appellants which appeals came up for hearing before a learned Additional District Judge Faisalabad and have been dismissed by the learned Additional District Judge vide two separate judgments dated 7.11.2007. Both the forums below dismissed the ejectment petitions on the preliminary issue holding that the status of the respondent No.1 changed from that of tenant to a co-owner in the disputed property alongwith other vendees Mst. Salma Hanif, Abdul Karim and Gulab Din and therefore the relationship of landlord and tenant ceased to exist and the ejectment orders cannot be passed against the respondents.

7. Through the instant S.A.Os both the judgments passed by the two forums below dismissing the ejectment petitions have been assailed.

8. The respondent No.2 Muhammad Zulfiqar appeared during the hearing of the instant S.A.Os on 6.4.2012 and got recorded his statement in the presence of the learned counsel for the parties which is reproduced below:-

"States that I alongwith Muhammad Saleem respondent No.1 hired the premises 135-C Peoples Colony No.1 Faisalabad from Saleem ur Rehman s/o Ch. Abdul Rehman and his two

brothers Muhammad Zulqarnain and Muhammad Javed. I have vacated the premises in 1996. I have no live interest in the controversy pending before this Court and does not need to appear or further pursue this matter."

9. The learned counsel for the appellants relied upon the judgment reported as **Nazir Ahmad Versus Sardar Bibi and others (1989 SCMR 913)** to argue that a tenant who admittedly enters into a property as a tenant at a specified monthly rent on the basis of an admitted rent deed would not be entitled to challenge the status of the landlord qua the suit property nor existence of relationship of landlord and tenant between the parties notwithstanding the purchase by him of a certain share of the disputed property. The learned counsel also relied upon the judgment reported as **Barkat Masih Versus Manzoor Ahmad (deceased) through L.Rs. (2006 SCMR 1068)** in support of the above contention. It was also argued that the respondent No.1 deliberately and contumaciously stopped the payment of rent to the petitioners/appellants therefore the default stood proved against him and the ejectment order can be lawfully passed against the respondent No.1.

10. The learned counsel for the respondent No.1 has relied upon the judgments reported as ***(1992 SCMR 1352), (1993 MLD 937), Sh. Muhammad Hanif Versus Muhammad Nasir and 2 others (1991 CLC 99), Muhammad Hanif Versus Mst. Ahmadi Begum and others (1996 CLC 137), Mst. Sanobar Sultan and others Versus Obaidullah Khan and others (PLD 2009 SC 71)*** and **Abdul Zahir Versus Jaffar Khan (2010 SCMR 189)** to controvert the contentions of the learned counsel for the appellants and has argued that the respondent No.1 having purchased a share of the subject property, has acquired status of a co-owner therefore the respondent No.1 has legally denied the relationship of landlord and tenant which ceased to exist after the purchase of the

share in the subject property by him through agreement to sell alongwith other co vendees. The learned counsel contends that in such an eventuality the ejectment proceedings could not have been instituted or continued against the respondent No.1. It is further argued by the learned counsel for the respondent No.1 that a tenant is never estopped to question the legal defect or lack of title of the landlord if a legal change in the status of the landlord qua his ownership takes place. Thus the learned counsel for the respondent No.1 has prayed for the dismissal of the SAOs on the ground that concurrent findings have been recorded by the two courts below in this respect against the appellants.

11. I have considered the arguments of the learned counsel for the parties and have perused the record.

12. The controversy raised between the parties is restricted to the question as to whether a person who enters as a tenant into a property admittedly belonging to the other side can successfully resist the ejectment proceedings initiated against him by the admitted owner/landlord on the ground that such a tenant claims to have subsequently acquired a portion of such property as a co-owner.

13. Before advertng to this legal question there are some very important undisputed facts of the instant case which are narrated by the learned Civil Judge/Rent Controller in para-7 of the judgment dated 25.3.2006 which is reproduced:-

“7. Some of the admitted facts of this case are that property No.135/C Peoples Colony No.1, Faisalabad belongs to Saleem-ur-Rehman, Zulqarnain, Javaid Aslam and Sarfraz Pervaiz, respondent No.1 entered into premises as tenant, an alleged agreement to sell was executed between Javid Aslam and the respondent No.1, Mst. Salma Hanif, Abdul Karim and Gulab Din, there exists a decree of the court dated 28.1.1997 with regard to purchase of 1/4th portion of the

property by respondent No.1 Muhammad Saleem, Mst. Salma Hanif, Abdul Karim and Gulab Din and the said purchasers were declared owner in possession, previously some ejectment petitions were filed by the petitioner but those ejectment petitions were dismissed as withdrawn due to joint owner-ship, the petitioner Saleem-ur-Rehman alongwith his brothers Zulqarnain, Javid Aslam and Safraz Perviz obtained a partition from Department of Housing and Physical Planning.”

The appellants have produced a site plan approved by the Housing and Physical Planning Department dated 26.11.2002 of the property No.135-C Peoples Colony Faisalabad into four portions through document Exh.A1. Housing and Physical Planning Department which is over all controlling authority of the subject property has issued the ownership right of the four partitioned portion of the main property in the following manner:-

1. Property No.135-C-I in the name of Saleem ur Rehman s/o Abdul Rehman Exh.A4.
2. Property No.135-C in the name of Muhammad Zulqarnain s/o Abdul Rehman Exh.A5.
3. Property No.135-C-III in the name of Sarfraz Pervaiz Rehman s/o Abdul Rehman Exh.A6.
4. Property No.135-C-II in the name of Javed Aslam s/o. Ch. Abdul Rehman Exh.A7.

All these documents of title have been registered with and approved by the Housing and Physical Planning Department Faisalabd on 23.12.2002. The tenancy with respect to the 3/4th portion of main property No.135-C Peoples Colony Faisalabad was created through a written agreement Exh.A14 which is also an admitted document by the respondents. The present ejectment proceedings were commenced through two ejectment applications one instituted by Saleem ur Rehman in respect of the portion of property No.135-C-I Peoples Colony

Faisalabad and the other instituted by Muhammad Zulqarnain in respect of the portion of property No.135-C Peoples Colony Faisalabad. Both these ejectment petitions were instituted on 31.03.2003. In para-I of the ejectment petitions it was stated by the appellants that the relationship of landlord and tenant commenced through a written rent deed dated 24.4.1993 and was in respect of 3/4th portion belonging to Muhammad Zulqarnain, Saleem ur Rehman and Javaid Aslam. In the same para-1 of the ejectment petition 1/4th portion of property bearing No.135-C-III belonging to Sarfraz Pervaiz Rehman was stated to be separately owned by said Sarfraz Pervaiz Rehman and was excluded from the ejectment proceedings. This para-1 of the ejectment petition has been replied by the respondent No.1 in the following manner:-

“1. Para No.1 of the Application is not correct in the present form. Alleged agreement dated 24.4.93 is not an agreement but a rent deed which does not confer any right or title in favour of the applicant as it is unregistered and in-sufficiently stamped. However the correct position is that the respondents alongwith Muhammad Hanif took the suit premises on rent after paying an advance of Rs.2 lacs as security. The share of Javed Aslam one of the co-owners and landlord of the suit property was purchased by Respondent No.1, Mst. Salma Hanif, Gulab Din and Abdul KIarim vide registered Agreement to sell dated 28.1.97 after payment of entire consideration of Rs.35 Lacs vide a receipt of the Osame date, who were put into actual physical possession of the premises and later on decree for declaration regarding possession as co-owners was passed in favour of the respondent No.1 and above said purchasers by the civil court at Faisalabad which has become final and conclusive. The relationship of landlord and tenant has come to and end. Muhammad Sarfraz Pervaiz ur Rehman secured a decree with the collusion of applicant and Housing and Physical Department which is not binding on respondent

No.1 and his co-owners and this decree was never executed.”

The para-1 of the ejectment petition was replied by the respondent No.2 Muhammad Zulfiqar in his written reply dated 12.5.2003 in the following manner:-

نمبر 1- یہ کہ کرایہ نامہ و شرح کرایہ کے متعلق ہے۔ جو تسلیم ہے۔

In para-3 of the ejectment petition the appellant contended that rent was started to be deposited in the Court by the respondents at a specified rate from 01.6.1999 to 31.3.2000. This para-3 of the ejectment petition was replied in the following manner by the respondent No.1:-

“3. Para No.3 of the application is incomplete and discrepant. Respondent No.1, Mst. Salma Hanif, Gulab Din and Abdul Karim firstly occupied the suit premises under registered agreement to sell after payment of entire sale price of Rs.35 Lacs from Javed Aslam, co-owner and brother of the applicant, hence the possession of Respondent No.1 and his co-owners is fully protected U/S 53-A of Transfer of Property Act. Respondent No.1. never paid rent to the applicant after its purchase and the deposit of rent of the suit property if any would have been made by the applicant himself with the collusion of some one else just to prove himself landlord and the respondent No.1 as tenant.”

The respondent No.2 replied para-3 of the ejectment petition in the following manner in the written reply dated 12.5.2003:-

نمبر 3- درست ہے کہ کرایہ عدالت میں جمع ہوتا رہا ہے۔ اور بالآخر درخواست بیدخلی بوجہ تنازعات و موقف مسؤل الیہ نمبر 1 نسبت خرید ضروری حصہ جائیداد متدعو یہ واپس لے لی گئی۔ جس میں مسؤل الیہ کا کوئی تعلق نہیں ہے۔

14. The appellants of both the ejectment petitions produced in their evidence Ashfaq Ahmad who is Record Keeper of Housing and Physical Town Planning Department

Government of Punjab Faisalabad who proved the partitioning of the subject property and its approval by the Housing and Physical Town Planning Department as narrated above. The cross examination conducted upon this AW1 suggests that the respondent No.1 only got admitted from this witness that a copy of the decree passed by Rao Sultan Ali, Civil Judge in favour of the Muhammad Saleem Respondent No.1 Exh.R3 was present in the record of Housing and Physical Planning Department. This witness stated the following facts before the Rent Controller:-

This witness was put the question in the cross examination in the following manner:-

AW2 who was an Assistant Accountant of District Accounts Office produced the record regarding the deposit of rent for the period from 12.6.1999 till January 2000 by the respondent No.1 Muhammad Saleem in favour of the petitioners/appellants Saleem ur Rehman and Muhammad Zulqarnain and the deposit challans were exhibited as Exh.A8 to A11. In cross examination this witness was suggested as follows:-

AW3 Muhammad Afzal is the Naib Nazir of Civil Courts Faisalabad who produced register of the Court whereby the

amount deposited as rent equivalent to Rs.333,000/- was withdrawn by Saleem ur Rehman the appellant through cheque under the order of the Court. As per this register this amount was deposited by Muhammad Saleem the respondent No.1. A copy of the register has been produced as Exh.A12 by this witness. Saleem ur Rehman appeared as AW4 in one ejectment petition whereas Zulqarnain appeared as AW4 in the other ejectment petition who proved the rent agreement Exh.A14 and the rough site plan of the subject property as A15. These witnesses were suggested in cross examination that Javid Aslam one of the co-owners has sold away his share of the subject property through agreement to sell dated 28.1.1997 for a sum of Rs.35,00,000/-which suggestion was denied by these witnesses. AW4 was confronted with the copy of a plaint of a pre-emption suit instituted by the appellants. These witnesses were also suggested that some application u/s 12(2) of CPC was moved for setting aside of the decree passed in favour of the appellants. This application u/s 12(2) of CPC was moved by Mst. Salma Hanif etc. and was dismissed by the Court of Mr. Riaz Bhatti, Civil Judge. A copy of the plaint of the suit instituted by respondent No.1 Muhammad Saleem and others the alleged vendees Mst. Salma Hanif was got exhibited as Ex.A16 which suit was instituted on 26.5.2003 against the present appellants and this Exh.A16 was produced in the statement of the learned counsel for the appellants.

15. None of the respondents No.1 & 2 appeared in evidence to make any statement on oath before the learned Rent Controller. Only a person Sakhawat Ali s/o Gulab Din appeared as RW1 and he produced his affidavit Exh.RW1/1 in which he narrated all the history of the case. But from the perusal of the affidavit Exh.RW1/1 it is not reflected or at least tried to prove the locus standi of this witness RW1

to make a statement on oath in this case. This RW1 does not claim to be the attorney of any of the respondents. It appears that he is son of Gulab Din and this Gulab Din is reflected as one of the vendees in whose favour the respondent No.1 claimed the purchase of 1/4th share through registered agreement to sell dated 28.1.1997 as is narrated in the contents of the plaint Exh.A16 but the statement of this RW1 who is not at all involved in the dispute concerning the tenancy between the parties of the instant litigation cannot be described as the best evidence. The relationship between the appellants and the respondent No.1 & 2 commenced as landlord and tenant on 24.4.1993 through the rent deed Exh.A14. Gulab Din the alleged vendee of 1/4th portion of the subject property cropped up in the scene on the basis of agreement to sell dated 28.1.1997 and this agreement to sell is not produced in evidence by the respondent No.1 nor the fact is available on the record as to when this Gulab Din died; the record is silent as to when this Sakhawat Ali who appeared as RW1 succeeded to whatever interest was claimed in favour of the deceased Gulab Din. The respondents particularly the respondent No.1 having not elected to appear in the witness box, a serious adverse inference can justifiably be drawn against him for this default. Sakhawat Ali who appeared as RW1 did not even state to be the attorney holder of the respondent No.1 in this controversy when he appeared as RW1 and thus he is a stranger to the proceedings. His statement based upon an affidavit RW1/1 can be described as a statement of just a passerby having little impact to make upon the outcome of the ejectment proceedings. To be more specific it cannot be even accepted that the statement of this RW1 in the ejectment proceedings is an evidence in rebuttal in the eye of law to the evidence produced by the petitioners/appellants.

16. However the documents which have been produced by the learned counsel for the respondents in cross examination of the AWs can be analysed in the above context. Ex.R1 is an ejectment petition which was instituted by the appellants earlier and is stated to have been withdrawn with permission to file a fresh one. Ex.R2 is a copy of the plaint of suit instituted by Sarfraz Pervaiz Rehman dated 20.11.1997 for declaration of his ownership rights with respect to 1/4th portion of plot No.135-C. Ex.R3 is a copy of the decree dated 28.1.1997 which suit was instituted as per Ex.R3 on 06.01.1997 and was decreed on 28.1.1997 on the basis of some compromise. In this suit only Javed Aslam s/o Abdul Rehman was impleaded as the defendant and the claim in the prayer clause is recorded as follows:-

“Suit for declaration to this effect that the plaintiffs are owners of possession of Area 1 Kanal 3-Marlas (51 ¼ x 122 ½) Share ¼, out of Area 4 Kanals 12 marlas and 88 Sq.Ft. (122 ½ x 205) situated at 135/C, Peoples Colony, Faisalabad that the defendant sold away the suit property in favour of plaintiffs by way of sale and handed over the physical possession over the suit property and for grant of perpetual injunction, restraining the defendant from claiming himself to be the still owner of the suit property and interfering into the lawful possession of the plaintiffs over the suit property which manner whatsoever, the plaintiffs are entitled in incorporated their names in the record of the relevant department.”

This document Ex.R3 is produced as the basis of the ownership rights claimed with respect to 1/4th portion of the subject property by the respondent No.1 and other three plaintiffs. If this document is compared with the facts stated in the written statement submitted by the respondent No.1 a strange picture is drawn on the surface. In para-1 of the written statement on

facts the respondents No.1 claimed a registered agreement to sell dated 28.1.1997 in his favour as well as in favour of Mst. Salma Hanif, Abdul Karim and Gulab Din. The respondent No.1 claimed the co-ownership in his favour as well as in favour of the other alleged vendees on the basis of the decree dated 28.1.1997 as well. This decree dated 28.1.1997 is passed in a suit which as per document Exh.R3 is registered as Suit No.2-1/1997 and its plaint was present on 6.1.1997 and is not based upon any agreement to sell dated 28.1.1997 and cannot be even based upon an agreement to sell dated 28.1.1997. Exh.R6 is the copy of a compromise C-1 from which no specific terms and conditions to the effect of the recognition of sale of any portion of the subject property in favour of the respondent No.1 and other co-vendees can be understandably read. The respondent No.1 did not produce any copy of the agreement to sell dated 28.1.1997 before the learned Rent Controller. No acknowledgment of such an agreement to sell from the Housing and Physical Planning Department has been claimed by the respondents in the instant rent proceedings nor produced before the Rent Controller. The certified copy of the plaint produced as Exh.R4 in a pre-emption suit dated 16.3.1999 and the legal notice dated 26.5.1999 addressed to the Secretary/Deputy Director District Allotment Committee for giving effect to the decree dated 28.1.1997 (without any specific order of the Housing and Physical Planning Department Faisalabad accepting such a notice and acting upon the same) do not substantiate the title in favour of respondent No.1 and others. Ex.R7 is again copy of the plaint in a pre-emption suit dated 16.3.1999. Ex.R8 is a copy of the amended ejectment petition (without showing the outcome of the such ejectment petition). Ex.R9 is a copy of the revision petition instituted on 14.2.2006. Ex.R10 is a copy of the plaint in a suit for declaration and perpetual injunction instituted by the respondent No.1 and others and copy of written statement dated 27.10.2003 is

Ex.R11. These documents without proving the final outcome of the litigation in which those copies of the pleadings were the part, do not establish the 1/4th share of the property having been purchased by the respondent No.1 and other co-vendees of the subject property in accordance with law. An agreement to sell registered or unregistered is not a title deed at all in the eye of law. The decree claimed by the respondent No.1 and others produced as Ex.R3 is not based upon the alleged agreement to sell dated 28.1.1997 and the suit in which the decree Ex.R3 was passed was commenced with the presentation of plaint on 6.1.1997. The terms and conditions of the alleged compromise C-I produced through the document Ex.R6 are not specifically ascertainable. If the parties in the suit in which the decree Exh.R3 was passed upon a compromise in the matter on 28.1.1997 in favour of the respondent No.1 and other plaintiffs of the said decree, there was no practical necessity of claiming an agreement to sell dated 28.1.1997 of 1/4th portion of the subject property by the respondent No.1 and others alleged vendees. If the agreement to sell dated 28.1.1997 was the result of the compromise Exh.C-I as reflected in document Exh.R6 then this agreement to sell has neither been produced before the Court nor a decree for specific performance of this agreement to sell has been passed in favour of respondent No.1 and other co-vendees nor this agreement to sell to have been proved to have been accepted by the Housing and Physical Planning Department nor any sale deed in favour of the respondent No.1 and other co-vendees on the basis of agreement to sell dated 28.1.1997 has even been claimed by the respondent No.1 to have been executed in favour of the alleged vendees. In this context the document Exh.R9 may have some relevance as well which has been produced by the respondent No.1 himself which is a revision petition filed by the respondent No.1 who is shown as petitioner No.19 and in the contents of which it appears that the alleged co-vendees moved some application u/s 12(2) of CPC

against the passing of a decree dated 03.1.2002 in favour of the present appellants and which application u/s 12(2) of CPC was dismissed on 11.11.2005 and a revision petition was filed by the respondent No.1 and others. No outcome of all the proceedings forming basis of the said revision petition have been produced by the respondent No.1 in his evidence. The respondent No.1 did not appear in the evidence to face the cross examination.

16. The two courts below therefore acted illegally and with material irregularities whereby the respondent No.1 was accepted as a co-owner in 1/4th portion of the subject property and the relationship of landlord and tenant was declared by the two courts below to have ceased to exist. These findings recorded by the two courts below are absolutely illegal and not based on legal considerations and are also result of mis-appreciation and mis-reading of the evidence on the record. A judicial mind has not been applied by the two courts below on the evidence produced by the parties. The two courts below have further overlooked as to the status of the RW1 Sakhawat Ali to appear as witness of the respondent; the non-appearance of the respondent No.1 in his evidence and its effect have also been overlooked. The respondents No.1 & 2 admittedly entered in the premises in question as tenants in the year 1993 on the basis of a rent deed which has not been denied. They have been paying rent and depositing the same in the Court as per evidence produced. The respondent No.2 subsequently withdrew from the possession of the subject property and handed over its possession to the respondent No.1. A false plea of denial of relationship of landlord and tenant was raised by the respondent No.1 during the proceedings of the ejectment petitions wherein he even did not elect to appear in his evidence and make a statement on oath; no title deed as recognized by law exist in favour of the respondent No.1 so as to declare him a co-owner in the subject property; a declaratory decree without any

specification of the terms and conditions of the declaration is not sufficient to clothe the respondent No.1 with the co-ownership in the subject property. The argument of the learned counsel for the respondents that a pre-emption suit was filed by the appellants the plaint of which has been produced as Exh.R4 and R7 does not cause any damage to the entitlement of the present appellants to seek the ejectment of the respondent No.1 who was admittedly inducted as a tenant in the subject property by the appellants on the basis of rent deed Exh.A14.

17. The Rent Controller who has limited jurisdiction in rent proceedings cannot decide the disputed question of law and fact involving the ownership right of the respondent No.1. It was an illegal act on behalf of the Rent Controller as well as the learned first appellate court in this matter to have accepted the joint ownership of the respondent No.1 in the subject property on the basis of the documents produced by the respondents' learned counsel. This exercise of powers by the learned Rent Controller and the learned first appellate court for declaring the cessation of the relationship of landlord and tenant between the parties was beyond the scope of the powers vested in the Rent Controller. The relationship of landlord and tenant having commenced between the parties did not come to an end through any legal course of law or on the basis of any legal document clearly ascertainable in the eye of law declaring the respondent No.1 to be one of the co-owners in the subject property. The learned Rent Controller could have allowed the ejectment proceeding by taking conclusive steps leaving the respondent No.1 and other alleged claimants of co-ownership of the subject property to seek their relief through the Civil Court if so advised and the ejectment petitions should have been allowed by the learned Rent Controller in the instant matter against the respondents and

the learned first appellate court should have applied its judicial mind upon the facts and circumstances of the case which legal steps were not undertaken.

18. The case law produced by the learned counsel for the respondents has no relevance to the facts and circumstances of the instant case as in none of the cases an unproved agreement to sell was found to be a sufficient basis for claiming the joint ownership in the rented premises subject matter of the said case law.

19. The impugned judgments passed by the two courts below dismissing the ejectment petitions of the appellants are therefore not sustainable in the eye of law and are **set aside**. The respondent No.1 who is not paying the rent for the last so many years is not entitled to any indulgence. The ejectment proceedings have been resisted by the respondent No.1 for the last so many years on the basis of an unproved and false plea of having purchased a portion of the subject property through any lawful means. The S.A.O.No.191 of 2007 and S.A.O.No.192 of 2007 are accordingly **accepted**.

20. The respondent No.1 is directed to immediately hand over the vacant possession of the subject property to the appellants. The costs should also be borne of the entire proceedings by the respondent No.1. As the respondent No.2 has already left the possession of the subject property and has handed over the same to the respondent No.1, no order needs to be passed against the respondent No.2 in this matter. The appellants shall also be entitled to recover arrears of rent from the respondent No.1 at the rent rate in accordance with law during the period the subject property remains in occupation of the respondent No.1.

**(NASIR SAEED SHEIKH)
JUDGE**

Announced in open Court on 5.6.2012.

JUDGE

APPROVED FOR REPORTING

AMJAD