

Form No.HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.39563 of 2016.

Ameena Haq. Vs. Rab Nawaz Khan etc.

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29.03.2018. Sh. Muhammad Siddiq-II, Advocate for the petitioner.
Mian Khalid Habib Elahi, Advocate for respondent No.1.

Succinctly, the facts forming factual canvass of the instant petition are that Muhammad Jamil etc. were owners of three residential quarters situated in Street No.48, Mohallah Ashfaqpura, Ghazi Abad, Lahore wherein predecessor-in-interest of the present parties and one Mst. Hameeda Bibi were dwelling as tenants. During currency of the tenancy predecessor-in-interest of the parties and Mst. Hameeda Bibi opted to purchase the said quarters and as a result two agreements were executed between the vendors and predecessor-in-interest of the present parties and Mst. Hameeda Bibi according to which Mst. Hameeda Bibi intended to purchase one quarter whereas two fell to the part of predecessor-in-interest of the present parties. As Haq Nawaz Khan, husband of the present petitioner, got transferred all the three quarters in his name, Mst. Hameeda Bibi filed a declaratory suit which was decreed by the learned

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Civil Judge, Lahore *vide* judgment & decree, dated 31.10.2005 and she was held entitled for execution of sale deed regarding one quarter. Pursuant to decree passed by the learned Civil Judge, Lahore one quarter was transferred in the name of Mst. Hameeda Bibi. On the other hand, on the demise of husband of the present petitioner rest of the two quarters devolved upon his legal heir and as a result of Surrender Deed, bearing document No.5179, Bahi No.1, Jild No.1903, dated 09.07.2014, executed by the other legal heirs in favour of the petitioner she became sole owner of the two quarters. Upon becoming the exclusive owner of two quarters the petitioner filed an ejectment petition against respondent No.1 (the respondent) which was dismissed by the learned Special Judge (Rent), Lahore *vide* order, dated 07.12.2015, against which she filed an appeal but without any success as the same was dismissed by the learned Additional District Judge, Lahore *vide* judgment & decree, dated 11.11.2016; hence this petition.

2. The submissions made by learned counsel for the petitioner can be summed up in the words that though father-in-law of the petitioner entered into an agreement to sell regarding two quarters but the sale

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deed having exclusively been registered in the name of husband of the petitioner, other legal heirs of Tamaz Khan (predecessor-in-interest of the parties) had nothing to do with the property in question; that Mst. Hameeda Bibi only challenged transfer of third quarter in the name of husband of the petitioner, thus, the decree passed in her favour could be read only to that extent; that tenant is always a tenant; that the respondent had been paying rent during the life time of husband of the petitioner but after his death, despite repeated requests by the petitioner, he refused to pay the same, thus, the respondent fell within the category of defaulter; that the findings of the courts below on the basis of decree passed in favour of Mst. Hameeda Bibi cannot sustain for the reason that much after the decree a Surrender Deed was registered in favour of the petitioner whereby two quarters were transferred in her name to the exclusion of anybody else and that when the respondent failed to show any title document his status could not be considered better than that of a tenant, thus, he was bound to vacate the premises. Relies on Abbas Ali Khan v. Mst. Farhat Iqbal and 2 others (2009 SCMR 1077), Barkat Masih v.

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Manzoor Ahmad (Deceased) through L.Rs (NLR 2004 Civil 702), Sh. Manzoor Ahmad and others v. Mst. Iqbal Begum and others (1989 SCMR 949), Bashir Ahmad v. Abdul Hamid and another (1983 SCMR 302), Abdul Hameed v. Abdul Rasheed (1981 SCMR 527), Messrs Lasbella Industrial Estate Development Authority, HUB through Managing Director and another (PLD 2011 Quetta 48), Rahat Iqbal v. Allauddin and another (2010 MLD 1988), Anjuman Jamait-ul-Ikhwan v. Karachi Building Control Authority and others (2006 YLR 1395), Inam Elahi v. Muhammad Javed and 5 others (2000 YLR 1343), Bashir Ahmad v. Abdus Salam and 3 others (1986 CLC 572), Kafayatullah v. Muhammad Inayat (1983 CLC 3316) and Raja Muhammad Afzal Khan etc. v. Zareena Akram etc. (PLD 1977 Lahore 662).

3. Conversely, learned counsel representing the respondent, while defending the impugned verdicts of the courts below, submits that in the second limb of the prayer clause Mst. Hameeda Bibi challenged the sale deed in favour of husband of the petitioner in *toto*, thus, the assertion of the petitioner that she only challenged it to the extent of 3rd quarter is not

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tenable; that while concluding his findings, the learned Civil Judge, Lahore held that the sale deed in favour of husband of the petitioner was result of fraud, thus, the title of husband of the petitioner vanished away; that the petitioner succeeded to get transfer the property in her name on the strength of Surrender Deed despite cancellation of sale deed executed in the name of her late husband and that as father of the respondent entered into an agreement to sell with the original owners the respondent being legal heir is a shareholder.

4. While exercising his right of rebuttal, learned counsel for the petitioner submits that after execution of sale deed in favour of husband of the petitioner the agreement to sell executed in favour of her father-in-law was no more enforceable.

5. I have heard learned counsel for the parties at considerable length and have also gone through the documents, annexed with this petition, as well as the case-law cited at the bar.

6. Firstly taking up question relating to title of the petitioner after passing of decree in favour of Mst. Hameeda Bibi, I am of the view that a perusal of

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the prayer clause of the suit filed by Mst. Hameeda Bibi shows that though she dubbed the sale deed as forged, fabricated and unlawful but she confined her claim to the extent of one quarter. Further, the learned Civil Judge, Lahore while dealing with Issue No.8, concluded as under: -

“ISSUE No.8. RELIEF.

18. That, in view of my finding on issue No.7, the suit is decreed and the sale deed bearing Dastawaiz No.4536 dated 8.4.1990 (executed in the office of sub-Registrar Cantt) is declared illegal, void, forged, result of dishonesty and misrepresentation. The defendants No.1 & 2 are ordered to execute sale deed in favour of plaintiff in view of agreement to sell dated 9.2.1990 subject to their title. That after execution of sale deed the plaintiff will become owner in possession of 1/3 (one quarter) bearing Khasra No.2060/758, Imarti Had Bast, Mauza Gunj Kumharpura, Ghazi Abad, Cantt. Lahore. No order as to costs. File be consigned to the record room after preparation.”

A cursory glance over the afore-quoted findings of the learned Civil Judge, Lahore leaves no ambiguity that after declaring the sale deed as result of fraud to the extent of Mst. Hameeda Bibi, an order for registration of sale deed in her favour to the extent of one quarter was passed. When the said fact is considered while putting it in juxtaposition to the transfer of one quarter in favour of Mst. Hameeda Bibi, without any objection on any side, the assertion

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of learned counsel for the respondent that after declaring sale deed as result of fraud no title in the name of husband of the petitioner remained intact, is misconceived.

Considering from another angle if for the sake of academic discussion it is presumed that the Sale Deed in favour of husband of the petitioner was cancelled even then the said fact cannot be used in favour of the respondent for the reason that after cancellation of Sale Deed in favour of the husband of the petitioner the land was to revert back to the original owners without improving the status of the respondent.

7. It is imperative to note over here that while dealing with the ejectment petition a Rent Tribunal is not supposed to go into disputed questions relating to title rather it has to decide the matter on the pivotal question as to whether tenancy between the parties existed or not. Thus, this Court will not dilate upon the said question.

8. Now reverting to question relating to tenancy between the parties, I have observed that the petitioner, while appearing as AW-1, admitted that

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the respondent has been putting up in the rented premises since the life time of her father. She further admitted that neither any tenancy was executed nor the terms thereof were settled between the parties; that during his life time her husband neither filed any proceedings against the respondent nor gave any notice rather he was asked verbally to vacate the premises and that the respondent lastly paid rent to her late husband in August 2014 which was changed as 2005 and then 2010. Likewise, Muhammad Yousaf, AW.2, admitted that he came to depose before the Court due to friendship with the petitioner. He also admitted that he did not witness any tenancy between the parties. He further admitted that no tenancy agreement was executed between the parties. Similarly, AW-3 showed his lack of knowledge about any tenancy between the parties. In this backdrop, one thing is clear that the respondent is residing in the rented premises since the time of his father without execution of formal tenancy between the parties. So, the assertion of the petitioner that the respondent is residing as tenant is not worth consideration.

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9. There is no cavil with the proposition that tenant is always a tenant but when a person did not enter the premises in the capacity of tenant he cannot be dubbed as such just due to filing of ejectment petition and that too in absence of any solid proof. Insofar as the case in hand is concerned, when all the AWs admitted that the respondent has been putting up in the demised property without any terms & conditions regarding tenancy since the life time of his father, by no stretch of imagination he can be considered as tenant.

10. As per law laid down by the apex Court of the country in the case of Farhat Jabeen v. Muhammad Safdar and others (2011 SCMR 1073) concurrent findings of facts recorded by the courts below cannot be upset in Constitutional jurisdiction until and unless they are proved to be perverse or result of arbitrariness which is not the position in the case in hand.

11. Now coming to the case-law cited by learned counsel for the petitioner, I am of the view that the same is of no help for the petitioner, to the extent of tenancy, for the reason that in none of the judgments,

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a person did not enter the premises as tenant was subsequently dubbed as tenant in absence of any terms & conditions, verbal or oral.

12. As a necessary corollary to the discussion made in the fore-going paragraphs, I have no hesitation to hold that the petitioner failed to establish that relationship of landlord and tenant exist between the parties. Consequently, instant petition is **dismissed** with no order as to costs.

(Shujaat Ali Khan)
Judge

Announced in Open Court today i.e. 24.04.2018.

Approved for Reporting.

Judge