

Stereo. H C J D A-38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.30037 of 2021

Rahim Dad

Versus

Saeeda Khanum

J U D G M E N T

Date of hearing: 26.11.2021.
Petitioner by: M/s Khawaja Mohsin Abbas, Farrukh Ilyas Cheema, Rizwan Afzal Tarrar and Shehzad Ahmad Cheema, Advocates.
Respondent by: M/s Malik Muhammad Awais Khalid, M. Siraj-ul-Islam Khan and Mohammad Osman Khan, Advocates.
Research by: M/s. Muhammad Imran Sheikh, Additional District Judge / Senior Research Officer and Ahmad Zia Ch., Civil Judge / Research Officer, LHCRC.

MUHAMMAD SAJID MEHMOOD SETHI, J.-

Through instant revision petition, petitioner has assailed consolidated judgment & decree dated 19.03.2021, passed by learned Additional District Judge, Sargodha, whereby respondent's suit for possession was decreed by learned lower Appellate Court by accepting respondent's appeal against consolidated judgment & decree dated 12.01.2021, passed by learned Civil Judge.

2. Brief facts of the case are that petitioner filed suit for specific performance of agreement to sell along with permanent injunction, whereas respondent filed suit for possession along with recovery of mesne profits regarding same suit property. Both the suits were contested by filing respective written statements. Learned Civil Judge, after framing issues, recording evidence and hearing arguments of learned counsel for the parties, proceeded to dismiss both the suits vide

consolidated judgment & decree dated 12.01.2021. Feeling aggrieved, both the parties preferred their respective appeals against the aforesaid decree. Learned Additional District Judge, vide consolidated judgment & decree dated 19.03.2021, proceeded to dismiss petitioner's appeal whereas allowed the appeal filed by respondent, thereby decreeing respondent's suit for possession along with recovery of mesne profits. Hence, instant petition.

3. Learned counsel for petitioner submits that impugned judgment & decree, passed by learned Additional District Judge, is based upon misreading and non-reading of available record as well as evidence. He adds that learned Appellate Court has passed impugned judgment & decree in a hasty and hurried manner, without taking into account the statements of the PWs which were quite in line with each other and corroborated the stance of petitioner. He argues that under the Punjab Tenancy Act, 1887 ("**the Act of 1887**"), suit for possession by a landlord to eject a tenant was not maintainable before Civil Court as only a Revenue Court was competent to decide this matter. In the end, he submits that impugned appellate decision is unsustainable in the eye of law.

4. On the contrary, learned counsel for respondent defends the impugned appellate judgment & decree and contends that learned counsel for petitioner has failed to pinpoint any illegality or legal infirmity therein, thus, same is liable to be upheld.

5. Arguments heard. Available record perused.

6. It is pertinent to mention here that both the suits, filed by petitioner as well as respondent, are interwoven which relate to the one and the same suit property, however, petitioner claimed decree for specific performance of an oral agreement to sell dated 22.06.2012 alleged to have entered between the parties, whereas respondent sought decree for possession along with recovery of mesne profits. Petitioner,

by way of filing another revision petition i.e. **C. R. No.30045 of 2021**, assailed the aforesaid judgments & decrees concurrently dismissing his suit for specific performance of agreement to sell, which stood dismissed by this Court vide order dated 24.11.2021.

7. So far as argument of learned counsel for petitioner that respondent's suit for possession was not maintainable before Civil Court rather same was triable on revenue side, is concerned, it suffices to say that in the present case, petitioner by filing a suit for specific performance of contract has himself denied his status of a tenant. Similarly, in the suit for possession against him, he reiterated his position to be owner of the suit land rather than holding that under the landlord. Therefore, at this stage, the petitioner, under principle of estoppel, is estopped from claiming that Revenue Court is required to decide the eviction suit against him under the Act of 1887, with the admission that relationship of landlord and tenant was existing between the parties. Estoppel is a collective name given to a bunch of legal doctrines whereby a person is prevented from making assertions, which are contradictory to his prior position on certain matters before the Court. According to the Supreme Court of United States in case cited as New Hampshire v. Maine (532 U.S. 742), for the applicability of the doctrine of judicial estoppel, three conditions are required to be satisfied: (i) the party's later position must be clearly inconsistent with its earlier position; (ii) whether the first Court had accepted the earlier position; and (iii) whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped. Nevertheless, the two crucial conditions are the first and the third. If they are met, even if the second condition is unsatisfied, still the doctrine of judicial estoppel would apply. Reliance can safely be placed upon Shri Surendra Nayak v. A.M. Mohammed Shafi [2016(4) KCCR 3606 Karnataka]. In the instant case, present stance of the petitioner of this case, is unequivocally different from his earlier stance, which *ex facie* aims at

delaying the delivery of possession of the suit property to respondent. Petitioner intends to gain an unfair advantage over his rival party by prolonging the litigation and the Court has not accepted his earlier stance of having purchased the suit property, therefore, the doctrine of judicial estoppel would come into play to stop him from taking a divergent position. Even otherwise, the tenancy between the parties has long extinguished, but petitioner neither had got the period of his tenancy extended nor had he vacated the possession of the suit land, therefore, his possession over the suit land could not be better than of an illegal occupant. This Court in Messrs Tanveer Spinning And Weaving Mills (Pvt.) Ltd. through Authorized Executive Director Finance v. Tariq Saeed through Shahzad Akber and 2 others (2017 YLR 1762), has already held that where the tenant, despite the termination of the tenancy, continues to occupy the rented premises without the consent of the landlord, then his status will be not better than an illegal occupant. Similarly, it is held by this Court in case reported as Muhammad Parvez v. Additional Rent Controller Walton, Lahore and 2 others (2013 YLR 2714) that if the tenant denies the relationship of landlord, he will be known to be an illegal occupant. It goes without saying that an illegal occupant cannot be entitled to any equitable or discretionary relief from the Courts of law. Reliance may be placed on Muhammad Aslam v. Muhammad Ismail and others (1999 SCMR 1331), , Mst. Nazir Mai v. Additional Secretary and 5 others (2011 YLR 972), Ghulam Rasool v. Government of Punjab through District Officer (Revenue), Sahiwal and 4 others (2016 MLD 1660) and Messrs Tanveer Spinning And Weaving Mills (pvt.) Ltd. through Authorized Executive Director Finance v. Tariq Saeed through Shahzad Akber and 2 others (2017 YLR 1762). Therefore, this argument of learned counsel for petitioner is misconceived.

8. Respondent-lady, in her suit for possession, admitted the lease deed executed between the parties with regard to suit property, but alleged that same had expired, even its oral extension also ended on

30.06.2011. She also claimed recovery of mesne profits of Rs.12,00,000/- for illegally cutting down 100 trees standing over the suit property.

9. Perusal of record shows that title of respondent-lady is admitted, therefore, after expiry of lease agreement between the parties, she has every right to claim possession of her land. As regards recovery of mesne profits, learned Appellate Court has rightly observed that since petitioner's claim of oral agreement could not be proved and he has been in possession over the suit land without paying even a single penny since 01.07.2012, therefore, he was directed to pay Rs.3,57,000/- per annum, which is the last paid lease money, as mesne profit along with 10 % annual mark up. The relevant observations of learned Appellate Court are reproduced as under:-

"26. Coming to the point of recovery of possession, mesne profit and compensation for cutting down the trees, it is observed that the title of Saeeda Khanum is undisputed rather admitted, hence, she is entitled to get it back. After the expiry of lease agreement, the status of appellant Raheem Dad is that of illegal occupant. So far, the recovery of mesne profit is concerned, although the evidence of the defendant is silent, yet there are many ways to prove any disputed fact including the "admission" which is the conclusive one as against its maker. Raheem Dad admitted that he came into possession through lease agreement in lieu of Rs.3,57,000/- per annum which he kept paying yearly up till 30.06.2012. His claim of oral agreement to sell remained unproved whereas his possession up till now without payment of lease money is admitted and admitted facts need not to be proved. The appellant-plaintiff is enjoying free ride all along for the last eight years and referring the adverse party to seek partition would tantamount to perpetuating the illegal occupation for another decade. It is therefore necessary to en-burden him with the cost of illegal possession in order to foster the justice and fair play. Hence, he is held liable to pay the mesne profit from 01.07.2012 up till the vacation of possession. About the quantum of mesne profit, we can use the previous lease money as the yardstick for calculating the mesne profit. Thus, the defendant-respondent Saeeda Khanum or her successor-in-interest is held entitled to recover Rs.3,57,000/- per annum as mesne profit with 10% yearly mark up from the appellant Raheem Dad / lessee for a period mentioned supra. So far, the compensation for

illegally falling the trees is concerned that claim remained unproved, hence declined.”

10. Petitioner has failed to point out any illegality or legal infirmity in the impugned decision of learned lower Appellate Court. Resultantly, instant revision petition, being devoid of any merit, is hereby ***dismissed***. No order as to costs.

(Muhammad Sajid Mehmood Sethi)
Judge

A.H.S.