

**JUDGMENT SHEET**  
**PESHAWAR HIGH COURT, PESHAWAR**  
**JUDICIAL DEPARTMENT**

**W.P. No.1165-P/2022**

**Muhammad Imran and others**

**Vs.**

**Sajjad Ahmad Jan and others.**

**Date of hearing**            **15.08.2022**  
**Petitioner(s) by:**        **Mr. Misbahullah, Advocate.**  
**Respondent(s) by:**      **Mr. Ahmad Saleem Khan, Advocate.**

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**JUDGMENT**

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**IJAZ ANWAR, J.** This writ petition has been filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, with the following prayer: -

*“It is, therefore, humbly prayed that on acceptance of this writ petition, both the impugned order and judgments dated 03.03.2022 and 19.05.2021 of both the respondents No.3 and 4 may very kindly be declared as illegal, unlawful, void-ab-initio, of no legal effect and ineffective upon the rights of the petitioners and respondent No.2 and as such the eviction petition of respondent No.1 may very kindly be dismissed with cost throughout .*

*Any other remedy, not specifically mentioned, may also be granted”.*

2.            This petition impugns the order of learned Additional District Judge-XIII, Peshawar, dated 03.03.2022 and of the learned Rent Controller, Peshawar dated 19.05.2021 whereby the eviction petition filed by respondent No.1 was concurrently decided in his favour.

3. Precisely, stated facts of the instant case are that respondent No.1 had filed an eviction petition against the petitioners, seeking their eviction on the ground of default in payment of rent since 2019, and also for his personal need in order to shift his family to Peshawar for the better education of his children. In the written statement the petitioners took the stance that their predecessor had purchased the premises and that they are residing in the house in question as its owner. While in response to the stance of respondent No.1 regarding the deposit of monthly rent in the bank account, it is alleged that the same was being regularly paid in order to help out their uncle and his family. Since, the petitioners have denied the relationship of tenancy, as such, the learned Rent Controller framed the following sole issue on 15.07.2020 "*whether the relationship of landlord and tenant exists between the parties?*". The Rent Controller after recording, appreciating the evidence of the parties, pro and contra, allowed the ejectment petition vide order dated 19.05.2021. The said order had been assailed by the petitioners before the appellate Court and vide the impugned judgment and order dated 03.03.2022, the appeal was also dismissed. Hence, this petition.

4. Learned counsel representing the petitioners argued that respondent No.1 failed to establish his ownership over the suit property and that no documentary

proof regarding the purchase of the suit house was placed on the record. He further contended that the respondent has miserably failed to establish on record the relationship with the petitioners as landlord and tenant. Petitioners have also placed on file written arguments narrating the same detail therein.

5. In response, learned counsel representing the respondents has also referred to his written arguments placed on file and argued that both the courts below have properly appreciated the relevant evidence and that this Court in its constitutional jurisdiction is not supposed to reappraise the evidence or take another view after appreciating the evidence from the one already taken by the two courts below. He supported the judgments and orders of the learned two courts below.

6. Arguments heard and record perused.

7. It is by now well settled that where the relationship is denied by the tenant the only course open for the Rent Controller is to frame an issue to this effect and where it is established that there exists relationship of landlord and tenant between the parties then to ask forthwith for eviction of the tenant.

8. Though it has been admitted by the respondent that he has not scribed any rent agreement with his deceased brother (predecessor of the petitioners), however, the stance taken by the petitioners regarding the deposit of monthly

rent throughout via bank duly establishes that the payment of the said amount was for no other purpose, but monthly rent. It is pertinent to mention here that it is by now well settled that *“tenancy would not be necessarily created by written instrument in express terms, rather might also be oral and implied. In normal circumstances, in absence of any evidence to the contrary, owner of property by virtue of his title would be presumed to be landlord in person in possession of premises and would be considered as tenant under the law”*. Reference can be made to the case of Ahmad Ali alias Ali Ahmad Vs Nasar-Ud-Din and another (PLD 2009 SC 453) and Shajar Islam Vs Muhammad Siddique and 2 others (PLD 2007 SC 45), Ms. Azra Riaz Vs Additional District Judge and others (2021 CLC 623 Lahore).

9. Admittedly despite the stance taken by the petitioners to have purchased the suit property by their father, not a single authentic document was placed on record, while contrary to that, the purchase of suit house by the respondents remained un rebutted. In the case of Shajar Islam Vs Muhammad Siddique and 2 others (PLD 2007 SC 45), it has been held that *“ the determination of the pivotal question related to the legal status of the parties vis-à-vis the premises and the nature of their relationship inter-se, would certainly be a mixed question of law and fact to be decided in the light of evidence. The title of the petitioner is*

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*not as such disputed and in the absence of any evidence in rebuttal, there would be a strong presumption of existence of tenancy between the parties.*

*This is settled proposition of law that a landlord may not be essentially an owner of the property and ownership may not always be a determining factor to establish the relationship of landlord and tenant between the parties. However, in normal circumstances in absence of any evidence to the contrary, the owner of the property by virtue of his title is presumed to be the landlord and the person in possession of the premises is considered as tenant under the law or the tenancy may not be necessarily created by a written instrument in express terms rather may also be oral and implied”.*

10. It is also settled principle of law that once a tenant is always a tenant. During the subsistence of tenancy, tenant has no right to challenge the title of landlord.

11. Thus, where the relationship of tenancy is proved, eviction order shall be passed in accordance with law. In the case of Sarfaraz Vs Mukhtar Ahmad and others (2016 CLC 48) the Lahore High Court held that “ *if an alleged tenant is allowed to deny his relationship of landlord and tenant without having any proof of title of the disputed property in his favour, then it will be very easy for any person, who takes over a property as a tenant and fails*

*to pay the rent to the landlord/owner, to deny the relationship of landlord and tenant”.*

12. The evidence scanned by the Courts below clearly suggests that there exists relationship of landlord and tenant between the parties, similarly, payment of the monthly rent is also established and through recording of evidence, respondents have duly proved their case.

13. This Court is hearing this petition in its constitutional jurisdiction which is neither alternate to right of appeal nor revision as provided under the law. The High Court can only in its constitutional jurisdiction rectify and amend a wrong order or a mistaken conclusion of lower appellate courts while exercising its jurisdiction under article 199 of the Constitution of Islamic Republic of Pakistan. In the case of Dilawar Jan vs Gul Rehman and 5 others (PLD 2001 Supreme Court 149), the Hon'ble Supreme Court has laid down the following principles.

*“We are conscious of the fact that learned High Court in exercise of constitutional jurisdiction cannot sit as a Court of Appeal but where order passed by the Court, suffers from any jurisdictional defect or violates any provision of law, invocation of constitutional jurisdiction would be justified and if the error is so glaring and patent that it may not be acceptable that in such an eventuality the High Courts have interfered when findings are based on insufficient evidence, misreading of evidence, non-consideration of the material*

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*evidence, erroneous assumption of fact, patent errors of law, consideration of inadmissible evidence, excess or abuse of jurisdiction, arbitrary exercise of power and where unreasonable view on evidence has been taken..”.*

14. Similar view was expressed by the Apex Court in the case of Muhammad Lehrasab Vs Mst Aqeel-un-Nisa and 5 others (2001 SCMR 338).

15. The August Supreme Court of Pakistan in the case of “Abdul Rasheed Vs Maqbool Ahmad and others” (2011 SCMR 320) while relying upon the cases of “Shamin Akhtar Vs Muhammad Rashid” (PLD 1989 S.C 575; Mst. Azeemun Nisar Begum Vs. Mst. Rabia Bibi (PLD 1991 SC 242); Muhammad Rafique Vs. Messrs Habib Bank Ltd. (1994 SCMR 1012) and Mst. Bor Bibi Vs Abdul Qadir (1996 SCMR 877) held that *“where in a case filed for eviction of the tenant by the landlord, the tenant takes up a position that he has purchased the property hence is no more a tenant and he has to vacate the property and file suit by specific performance for the sale agreement, whereafter he would be given easy access to premises in case he prevails”*. Even in the instant case, no such pleas were raised rather regarding their alleged sale no such documentary evidence has been brought on the record.

16. In view of the above, we find no merit in the instant constitutional petition, there are concurrent findings

of fact against the petitioners, which require no interference in the constitutional jurisdiction of this Court.

17. This petition is accordingly dismissed.

**Announced**  
**Dt:15.08.2022**



**JUDGE**

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*(Amir Shehzad) \**

*(SB) Hon'ble Mr. Justice Ijaz Anwar*