

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.266 of 2023

Applicant : Mst. Asmat Samreen D/o Israr Hussain
Through Syed Arshad Hussain, advocate.

Respondent Nos. : Mst. Nighat Mehboob and others
2 to 5 Through Mr. Mansoor Ali Thebo, advocate.

Respondent Nos. : The State
1, 7 to 10 Through Mr. Muhammad Mohsin, APG Sindh
duly assisted by Mr. Irshad Shaikh, AAG.

Date of hearing : 07.05.2025

Date of order : 19.05.2025

ORDER

KHALID HUSSAIN SHAHANI, J. –The applicant Mst. Asmat Samreen, statedly a permanently disabled person suffering from congenital deafness and muteness, by invoking revisional jurisdiction has challenged the order dated 16.11.2023 passed by the learned IIIrd Additional Sessions Judge, Central Karachi, whereby her application under Section 7 of the Illegal Dispossession Act, 2005 seeking interim possession of the property allegedly grabbed by the private respondents was dismissed.

2. The applicant claims to be one of the legal heirs of the late Mst. Talat Naheed, who was the registered owner of House No. L-1660, situated in Muslim Town, Sector 11-E, North Karachi. The said Mst. Talat Naheed reportedly died issueless on 20.07.2022, leaving behind her siblings as legal heirs, including the applicant, who had allegedly been residing in the house during the lifetime of the deceased. The applicant, being a deaf and mute individual and a dependent sister of the deceased owner, claims that she was wrongfully and forcefully dispossessed from the subject property on 01.02.2023 by respondent No.2 Mst. Nighat Mehboob and others, who allegedly broke into the premises with the help of armed individuals and unlawfully occupied the ground floor of the house. Following this, the applicant filed a complaint under the Illegal Dispossession Act, 2005, which was entertained by the learned trial court. Reports were also called from the

area police and the Mukhtiarkar (Revenue), both of which, as per the applicant's assertion, confirmed the illegal entry and occupation by the accused persons. Subsequently, the learned trial court took cognizance under Section 3(2) of the Act, framed charge against the accused persons on 16.10.2023, and commenced trial. Simultaneously, the applicant filed an application under Section 7 of the Act for interim restoration of possession, which came to be dismissed on 16.11.2023 on the pretext that no prosecution witness had yet been examined and thus it remained to be established, at that stage, whether she had indeed been unlawfully dispossessed. In support of contention, learned advocate for applicant relied upon the case laws cited at 2009 SCMR 1066, 2010 SCMR 1254, PLD 2011 Karachi 624.

3. On the other hand, the learned counsel for the private respondents contended that the charge in the case was framed on 16.10.2023, and the trial court has since recorded the evidence of three prosecution witnesses, including the complainant. It was submitted that one of the witnesses, P.W. Asad, has not been produced despite repeated opportunities, and the trial court has issued warrants for his appearance; failing his production on the next date, the prosecution's side is likely to be closed. The learned counsel further argued that the applicant has deliberately suppressed the existence of Mst. Mumtaz, the first wife of the deceased, and her daughter Nighat Mehboob. It was emphasized that the subject property is co-owned and the title is seriously disputed, with the applicant claiming exclusive rights based on a registered power of attorney and an alleged purchase, which the respondents assert are fabricated documents. Despite these assertions, it was pointed out that no civil suit has been filed by the applicant for cancellation of the said documents.

4. Upon perusal of the record and the impugned order, it appears that the learned trial court has exercised its discretion judiciously in declining to grant interim relief under Section 7 of the Illegal Dispossession Act, 2005. While it is evident that cognizance has been taken and charge has been framed, the question of actual dispossession, and whether the applicant had exclusive possession or co-ownership rights at the time of

the alleged incident, remains to be determined after full-fledged trial on the basis of evidence, production and analysing of documents.

5. The trial court has rightly observed that in the absence of examination of any prosecution witnesses, an order of restoration of possession would be premature and could potentially prejudice the final outcome of the case. The allegations of forged documents and fabricated claims of ownership by the accused are also matters requiring trial and cross-examination. However, this Court takes note of the fact that the matter has been pending since early 2023 and cognizance was taken several months ago. It is further informed that three prosecution witnesses have now been examined. In the interest of justice and to prevent unnecessary prolongation of proceedings, it is necessary to direct the learned trial court to expedite the matter.

6. Accordingly, this Criminal Revision Application is dismissed. The impugned order dated 16.11.2023 passed by the learned IIIrd Additional Sessions Judge, Central Karachi does not suffer from any legal infirmity or jurisdictional error requiring interference by this Court. However, in the interest of expeditious disposal and considering that the trial is already underway and three witnesses have been examined, the learned trial court is directed to conclude the trial within a period of one (01) month from the date of receipt of this order and decide the main complaint in accordance with law. Let copy of this order be transmitted to the learned trial court forthwith for strict compliance.

J U D G E