

IN THE HIGH COURT OF SINDH, AT KARACHI

Criminal Revision Application No.156 of 2016

Qabil Khan Son of Sahab Khan.....Applicant

Versus

Vth Additional Sessions Judge South,
Karachi & others.....Respondent

Date of hearing: 1st August, 2017

Mr. Muhammad Ayoub Chandio, Advocate for Applicant.

Mr. Mehar Khan Advocate for Respondent No.3

Ms. Seema Zaidi DPG.

ORDER

ADNAN-UL-KARIM MEMON,J:- Through the instant Criminal Revision Application, the applicant has impugned Order dated 02.11.2016 passed by the learned Vth- Additional Sessions Judge Karachi South.

2. That on 01.08.2016 Applicant/Complainant filed Criminal Complaint No.1084 of 2016, under Section 3 sub-section (1) (2) of Illegal Dispossession Act, 2005 against Respondent No.3 in the Court of learned Vth Additional Sessions Judge, Karachi, South.

3. The case of Applicant/Complainant as set out in the memo of Criminal Complaint is that Applicant/Complainant had entered into an Agreement to Sell on 04.11.2015 with Respondent No.3 regarding Flat No. 705/4, 7th floor, admeasuring 924 sq. ft. in the project known as Bridge View Apartment (hereinafter referred to as subject property) on total sale consideration of Rs. 56, 60,000/- (Rupees fifty six lacs and sixty thousand only). Per Applicant he had paid complete sale consideration to Respondent No.1 till 26th April, 2016. Thereafter, possession of the subject premises along

with title documents were handed over to him. Applicant further assets that on 29.07.2016 Respondent NO.3 with her Gunda elements forcibly entered into the subject premises of Applicant and threw away Applicant and threw away Applicant as well his old aged father from the subject premises and locked the subject premises with her own lock. That due to said illegal act of dispossession by the Respondent No.3, father of Applicant received fatal injuries on his spinal cord and expired during medical treatment of Jinnah Hospital, Karachi. It is further added by Applicant that he moved an application to Station House Officer, Police Station Frere under section 22-A Cr. P.C. but, he did not receive the same so Applicant sent the said application to said Station House Officer through courier service. It is further added by the Applicant that Respondent No.3 is still in occupation of subject premises without lawful justification. Learned Trial Court called report from Station House Officer of Police Station Frere, which was submitted on 29.08.2016 with the assertion that allegations made by Applicant/Complainant are false and no such incident had taken place. That on 02.11.2016, learned Trial Court after hearing the parties dismissed the complaint. Applicant being aggrieved by and dissatisfied impugned Order dated 02.11.2016 filed the instant Criminal Revision Application.

4. Mr. Muhammad Ayoub Chandio, learned counsel for the Applicant has contended that impugned order is based on misreading of material facts and wrong application of law; that learned Trial Court has erred in travelling beyond the pleadings of the parties by referring to the facts of Application filed by Applicant under section 22-A Cr. P.C before Justice of Peace; that learned

Trial Court has wrongly taken adverse inference against the Applicant particularly when Application was allowed by learned Vith Additional Sessions Judge, Karachi, South vide order dated 24.10.2016; that learned Trial Court failed to consider factum of injuries received by father of the Applicant which are fully supported by medical record; that learned Trial Court failed to appreciate the factum of payment of amount to Respondent No.3 made by Applicant which is not specifically denied by Respondent No.3, therefore, allegations require evidence but, the same is not done; that learned Trial Court failed to appreciate conduct of police who had been submitting contradictory reports thrice; that instead of recording statement of concern persons including Applicant, police recorded statement of Manager and Chowkidar of Bridge View Apartments; that neither Manager nor Chowkidar were present at the time of incident; that police has conducted inquiry with malafide intention to favour Respondent No.3; that learned Trial Court while taking adverse inference of Electricity Bills of the subject premises wrongly held that the flat was locked without recording of any evidence; that Respondent NO.3 did not deny the allegations; that observation of learned Trial Court is based on presumption having no evidentiary value; that Sale Agreement was executed between the parties but, Respondent No.34 with malafide intention did not execute Conveyance Deed; that Applicant paid entire sale consideration and he was put in possession of subject premises; that impugned order is lacking legal sanctity; that impugned order is in violation of fundamental rights of the Applicant as provided in Constitution. Learned counsel lastly prayed for

setting aside impugned order. In support reliance is placed upon the case of Shaikh Muhammad Nasim Vs. Mst. Farida Gul (2016 SCMR 1931).

5. Mr. Mehar Khan, learned counsel for Respondent No.3 has supported impugned Order dated 02.11.2016 and contended that there is no relationship between Applicant and Respondent No.3; that no Agreement to Sell is executed between the parties; that no such incident has taken place as portrayed by the Applicant; that Applicant has submitted forged documents with aim to grab the property of Respondent No.3 through illegal means; that original title documents of subject premise are in possession of Respondent No.3; that police submitted Report on 18.10.2016 which shows that the alleged incident did not taken place as inhabitants of the locality did not support the version of Applicant; that Applicant has forged Sale Agreement as well as Receipt of alleged payment and possession; that on the basis of forged documents Applicant approached learned Trial Court with unclean hands; that learned Trial Court had rightly dismissed Complaint of Applicant through impugned Order; that Applicant miserably failed to make out genuine case before learned Trial Court; that learned counsel for Respondent No.3 supported the impugned order dated 02.11.2016; that the alleged Sale Agreement is not registered as required under section 54 of Registration Act therefore no sanctity can be attached to that documents. In support reliance is placed upon the case of Muhammad Bashir Vs. Haji Muhammad Siddique & others (1997 CLC 466).

6. Ms. Seema Zaidi, learned D.P.G has adopted arguments of learned counsel for Respondent No.3. She further states that

impugned Order is well reasoned and does not suffer from any direct or irregularity therefore, no interference is called for.

7. I have heard learned counsel for the parties and perused the material available on record as well as case law cited at the bar.

8. There is one primordial question as follows which requires determination.

a. Whether section 3 of Illegal Dispossession Act, 2005 is attracted in the present proceedings?

9. The substantive provisions of Illegal Dispossession Act, 2005 which describe the offence and the offender are contained in section 3 of the Act which is reproduced as follows:-

“3. Prevention of illegal possession of property, etc, (1) No one shall enter into or upon any property to disposes, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property.

(2) Whoever contravenes the provisions of the subsection (1) shall, without prejudice to , any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with provisions of section 544 of the Code”.

10. It is evident from bare reading of section 3 of the said Act that it describes the offence exclusively but does not describe the offenders in specific terns. On the contrary, it uses general terms such as, ‘no one’ and whoever for the offenders. The use of such general terms clearly indicates that widest possible meaning has been attributed to the offenders. Thus use of such general terms clearly indicates that widest possible meaning has been attributed to the offenders. Thus, Section 3 clearly demonstrates that

whosoever commits the act of illegal dispossession, as described in the Act (supra) against a lawful owner or a lawful occupier, he can be prosecuted under its provision without any restriction.

11. Learned counsel for the Applicant emphasized that on 26.04.2016 Respondent No.3 issued receipt of balance amount of Rs. 10,60,000/- (Rupees Ten Lacs and Sixty thousand only) in cash and referred to page 47 of the memo of application to demonstrate said contention but he failed to convince this Court on the legal proposition raised in the instant matter.

12. Section 3 of Illegal Dispossession Act, 2005 can only be attracted when any person dispossess, grab, control or occupy the property without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property. In this case, per record Applicant is neither lawful owner nor lawful occupier of the subject premises. Therefore, section 3 of the said Act, 2005 is not attracted. Besides, Applicant has failed to point out that he was put in possession of the subject premises by Respondent no.3 and was subsequently dispossessed. Five Member Bench of Hon'ble Supreme Court has already settled the above proposition of law in the case of Mst. Gulshan Bibi and others v. Muhammad Sadiq and others (PLD 2016 SC 769).

13. It is well settled now that where the possession of transferee is not under proper, legal and enforceable contract, protection of section 53-A of Transfer of Property Act is not available to him and transferee cannot use the same as weapon.

This court has already settled the above proposition of law in the case of Haji Muhammad Usman Vs. Abdul Sattar and others (2012 S.L.J 1429)

14. Learned trial court has premised findings on the assertion that Applicant failed to produce title documents of the subject premises as well as Electricity Bills. Police Officer submitted Report based on the statement of Manager and Chowkidar of the Apartments which shows that no such incident took place.

15. From the perusal of record it is quite clear that Applicant has failed to establish his claim of possession of the subject premises. Therefore, no sanctity can be attached with the Assertion of Applicant at this stage.

16. The case law referred to by learned counsel for the applicant are not relevant to the facts and circumstances of the present case.

17. In the light of facts and circumstances discussed above, I do not find any illegality or irregularity in the Impugned Order dated 02.11.2016 passed by the learned V-Additional Sessions Judge, Karachi South in Illegal dispossession Complaint No. 1084/2016. Therefore, instant Criminal Revision Application is dismissed.

Karachi
Dated:

JUDGE

Shafi P.A

JUDGE