

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Acq. Appeal No.424 of 2011

Date	Order with signature of Judge
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For hearing of main case

27.02.2019

Mr. Wasif Riaz, advocate for the appellant.
Ms. Rahat Ahsan, Addl. P.G.

This Crl. Acq. Appeal is directed against the judgment dated **15.09.2011** passed by the learned IV-Addl. Sessions Judge, East Karachi in Cr. Complaint No.112/2009 whereby the trial Court has acquitted Respondent No.1 by extending benefit of doubt to the respondent.

It is contended by the learned counsel for the appellant/complainant is lawful owner of a residential plot bearing No.403, measuring 500 sq.yds situated at Survey No.300 Jaffer Bagh, Deh Mehran, Model Colony, Karachi East, having been acquired/purchased from its previous owner namely Islam Ahmed Khan under the sale agreement dated **31.8.2005** for a sum of Rupees One Million and subsequently under the registered instrument of sale deed dated **02.7.2009**. It is further averred that Respondent No.1 is residing in his house situated just on the back of said plot and dividing wall is common and on **29.9.2009** when the appellant went to his plot with intention to evaluate the expenses for construction, he was shocked to note that the accused having no right, title or interest, illegally and un-authorizedly has grabbed the said the said plot belonging to the complainant. The complainant immediately reported to the Police Station Model Colony, under the written applications dated 29.9.2009 & 30.9.2009. It is further averred that

Respondent No.1 is an illegal, unauthorized occupant of the plot and is trespasser has occupied the same unlawfully, taken over the control thereof and has deprived the appellant from the use and occupation thereof.

I have heard the learned counsel for the appellant and perused the record.

From the judgment impugned following observations are relevant to uphold the acquittal :-

“Appraisal of the evidence shows that the complainant has asserted his ownership rights in respect of Plot No. 403, Survey No. 300 Jaffer Bagh Deh Mehran, Malir Colony measuring 500 sq. yds. on the basis of sale deed dated 02.07.2009, copy whereof he has exhibited in his evidence. He claimed possession since 31.08.2005 on the basis of sale agreement dated 31.08.2005. He has alleged that the accused on 29.09.2009 opened gate from back side of the plot through his plot situated at the immediate back side of plot of the complainant. The complainant admitted that he did not obtain any utility connection on the said plot, whereas the accused has submitted copies of paid utility bills duly mentioning plot No. 403/416 Jaffer Bagh Model Colony, Karachi pertaining to the year 1992 to 2009.....”

“Thus, merely having ownership in the record of rights is not sufficient to invoke jurisdiction of criminal court under the provisions of Illegal Dispossession Act as the complainant has to prove mens rea and actus reus of the accused person as to his alleged dispossession from the subject property. However in the case in hand at the one hand the complainant has failed to establish his possession on the subject plot on the alleged date of dispossession as well as no other witness has been produced by him to corroborate his version, besides the dispute has been contested by the accused on the basis of registered documents in respect of the subject plot. The

case law cited by the learned counsel for complainant are distinguishable on the facts of the case.”

In view of the above, no case is made for interference in the impugned judgment by this Court, therefore, this Crl. Acq. Appeal is dismissed alongwith listed applications.

JUDGE

Zahidbaig