

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Acq. Appeal No.623 of 2018

Date	Order with signature of Judge
------	-------------------------------

1. For orders on M.A No.10428/2018
2. For orders on M.A No.10429/2018
3. For orders on M.A No.10430/2018
4. For hearing of main case

27.02.2019

Mr. Imtiaz Hussain Gondal, advocate for the appellant.

This Crl. Acq. Appeal is directed against the judgment dated **03.11.2018** passed by the learned Xth Addl. Sessions Judge, West Karachi in D.C No.28/2016 whereby the trial Court has acquitted Respondents No.1 to 3 by extending them benefit of doubt.

It is contended by the learned counsel for the appellant/complainant that in the month of January, 2016, Respondents/proposed accused have illegally, unlawfully and unauthorizedly occupied the plot of appellant/complainant bearing Plot No.359, Sheet No.3 (Residential) Khayal Din Baba compound, ad-measuring 127 sq.yds, situated at Bhutta Village, Keamari, Karachi and dispossessed the appellant/complainant.

I have heard the learned counsel for the appellant and perused the record. The record shows that:-

The complainant has failed to prove that he was ever into the possession of plot in question since 1985 after the family settlement between the parties. The complainant has also admitted that the plot in question was not separated from Khayaluddin Baba compound, which was the joint property of father of complainant and grandfather of co-accused Haji Gul Muhammad. The complainant has also not denied that the plot in question was never bifurcated from the other portion of said Khayaluddin Baba compound. The complainant has failed to file a single documents that prior to the obtaining lease deed in the year 2013, he was ever in possession or any other document pertaining to year 1985 and thereafter was also in his possession. The

complainant has also admitted his signature on the family settlement agreement executed in the year 1985 pertaining to plot in question and other piece of land being part of Khayaluddin Baba compound. The complainant has himself filed the certain documents which shows that he was in knowledge that the plot in question was sold to co-accused Raja Hazrat Hussain by main accused Haji Gul Muhammad and to stop such transaction he made efforts prior to going for Umra in the month of December 2016, which shows that the allegation that plot in question was occupied in the month of January 2017 is baseless as per own documents of complainant. It is also come on record that the complainant made publication that some parties were interested to buy the plot in question so they be restrained, shows that the complainant was attempting to stop the sale and was not interested to clarify his position. It appears from the evidence of complainant that dispute was going over the plot between complainant and his nephew co-accused Gul Muhammad and Jirga had taken place, which shows that no act of dispossession of complainant from plot in question took place; however the present case is one of civil nature for which civil litigation is pending between the parties. The complainant has admitted that he filed two application one with SSP and one DSP but he did not the accused who occupied the plot in question, which creates serious doubt as the complainant and accused party were known to each other for several years and co-accused Haji Gul Muhammad was nephew of complainant but he did not nominate them. The complainant has also admitted that he has not mentioned in his complaint that he went to perform Umra when in his absence the plot in question was occupied. The entire evidence of complainant reflects that he was never in possession of plot in question and the property was part of joint property of complainant and father of co-accused Gul Muhammad. The complainant has clearly admitted that he moved applications to Director Kachi Abadi and also published news in daily Aman dated 23.8.2015 and daily Dunia dated 23.8.2015 and also sent neckmard to co-accused Gul Muhammad to settle the dispute, which clearly proves that quite prior to the date of alleged dispossession of complainant, the parties were in dispute on the same plot in question; therefore, no question arises of dispossession on the given date in the month of January 2016.

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