

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.24 of 2013

Present: **Mr. Justice Nazar Akbar**

Applicant : Mr. Muhammad Hussain Babber,
Through Mr. Irfan Ahmed Bhutta, advocate.

Versus

Respondent No.1 : Jamil Ahmad S/o Sher Ali,

Respondent No.2 : The State,
through Ms. Rahat Ahsan, Additional P.G.

Date of Hearing : **11.03.2019**

Date of Decision : **11.03.2019**

J U D G M E N T

NAZAR AKBAR, J.- Appellant Muhammad Hussain Babber has preferred this Criminal Revision Application against the order dated **10.12.2012** delivered by learned III-Additional District and Sessions Judge, West Karachi, whereby Criminal Complaint No.19 of 2008 filed by respondent No.1/complainant under Section 3 and 4 of the Illegal Dispossession Act, 2005 was allowed.

2. To be very precise, the facts of the case are that respondent No.1 filed Criminal Complaint under Section 3 and 4 of the Illegal Dispossession Act, 2005 before the trial Court stating therein that he purchased plot No.681, Khuda Ki Basti, Phase-2 Surjani Town, Karachi (the said plot) vide sale agreement dated 08.08.2007 against sale consideration of Rs.250,000/- and possession was handed over to respondent No.1/complainant alongwith all documents of the plot by seller Muhammad Sharif. It was averred that respondent No.1 illegally and unlawfully took possession of the said plot, therefore, respondent No.1 filed criminal complaint against the accused.

3. The complaint was registered on report made by the SHO that as per statement of witnesses, respondent No.1 is owner of the said plot, therefore, the trial Court admitted the complaint against the applicant/ accused and another person namely Saeed Hussain. After framing of charge only applicant/accused Mr. Muhammad Hussain Babber has appeared before the trial Court while the co-accused Saeed Hussain has been declared absconder. Formal charge was framed against accused, who denied the charge and claimed to be tried.

4. In order to prove its case the prosecution examined respondent No.1, who produced sale agreement as Ex:3/A, General Power of Attorney at Ex:3/B, challan in respect of payment of Rs.27,500/-, card No.1565 dated 22.10.2003 at Ex:3/E, Electronic connection at Ex.3/F. Statement of applicant/accused under Section 342 Cr.P.C was recorded. He produced sale agreement dated 10.8.2006 between Muhammad Shareef and Rafiq, he also produced applications moved by his father Siraj to different authorities wherein he stated that the broker has committed fraud with him, as first he sold the said plot to them but not delivered the original file and later on the broker sold the said plot to respondent No.1.

5. Learned trial Court after hearing learned counsel for the parties by order dated **10.12.2012** allowed the said Criminal Complaint filed by respondent No.1 and directed the applicant/accused to handover the possession of the said plot to respondent No.1 and in case of failure, SHO was directed to get the possession of the said plot and handover the same to respondent No.1/complainant.

6. I have heard learned counsel for the applicant as well as learned Additional P.G and perused the record.

7. Learned counsel for the Applicant/ complainant contended that the impugned order is based on misreading and misinterpretation of law, facts, material and documentary evidence placed on record. He further contended that neither the applicant/ complainant illegally dispossessed respondent No.1 nor the owner of the said plot Muhammad Rafiq was made accused in the case and the trial Court has not discussed this point in the impugned order, therefore, the impugned order is liable to be set aside.

8. Conversely, learned Additional P.G has supported the impugned order and contended that the trial Court has rightly passed the impugned order.

9. I have considered the arguments advanced by the applicant/ complainant and learned DPG for the State. From perusal of impugned order it revealed that applicant/accused was in illegal possession of the said plot on the basis of fake agreement of sale and the learned trial Court in the impugned order has also observed as follows:-

Statement of complainant & documents prove that his plot was already in occupation of accused persons but case trespasser. It is not establish that accused Muhammad Hussain & Babar S/o Sirajuddin had snatched possession because they were already in illegal possession of the plot in question on the basis of fake agreement of sale 2006, therefore Muhammad Hussain & Babar S/o Sirajuddin and Saeed Hussain or Rafique and their representative nominee, agents assignees, if found in possession of the plot in question they are directed to hand over vacant physical possession of plot No.681, Khuda Ki Basti, Phase 2, Surjani Town Karachi to the complainant, who proved of his case without any shadow of doubt, point no 1, answered proved.

Above order clearly indicates that the applicant/accused has trespassed the said plot on the basis of fake agreement of sale, therefore, the trial Court has rightly observed that the possession of the said plot be handed over the respondent No.1.

10. In view of the above facts and circumstances, the learned trial Court has rightly passed the impugned order and the same does not require interference by this Court. Consequently, this Criminal Revision Application was dismissed by short order dated **11.03.2019** by short order and these are the reasons for the same.

JUDGE

Karachi
Dated:12.03.2019

Ayaz Gul