

**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT HYDERABAD**

Cr. Acquittal Appeal No. S- 225 of 2016

24.08.2020

Mr. Sajid Ali, Advocate for the appellant.

Mr. Shawak Rathore, D.P.G.

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**JUDGMENT**

**ABDUL MAALIK GADDI, J-** The captioned appeal is directed against the judgment dated 13.12.2016 passed by learned IInd Additional Sessions Judge, Badin in Cr. Complaint No.13 of 2016, filed by the appellant against respondents, whereby the learned trial Court after hearing the learned counsel for the parties, dismissed the direct complaint and acquitted the respondents / accused u/s 265-H(i) Cr.P.C.

2. The facts of the case are that the complainant owns agricultural land viz: an area of 18-30 acres out of S.No.112, 113, 123, 124 and S.No.129 to the extent of full rupee share viz: an area of 9-05 acres total area 27-35 acres situated in deh Chanesari Taluka and District Badin and such entry also exists in the record of rights. The complainant is originally resident of Sahiwal Punjab and he used to visit his native place occasionally. About two month back, he left for his native place and about 15 days back, he returned back to Badin. On his arrival, P.Ws Sulleman and Nazar Muhammad informed him that the accused / respondents have occupied his land about a week back at about 5-00 PM. Upon such information, complainant alongwith his witnesses went to his land and saw the respondents alongwith some other persons duly armed with deadly weapons and occupied the land. On inquiry, the respondents extended threats to the complainant and asked him not to come on the land, otherwise, he will be killed. The complainant then approached to police but police did not listen him. The respondents being influential persons at the show of weapons

forcibly dispossessed the complainant from the land and they were not prepared to vacate the land. The act of the respondents of forcible and illegally occupying the land of the complainant amounts to the offence under section 3 (2) of the Illegal Dispossession Act.

3. After framing the charge against respondents, the trial court examined as many as evidence of ten (03) witnesses and thereafter, statements of accused as required u/s 342 Cr.P.C. were recorded, wherein they denied the prosecution allegations and pleaded their innocence. However, neither they examined themselves on Oath nor produced any witness in their defence.

4. Thereafter, as stated above, after hearing the learned counsel for the parties, the learned trial Court acquitted the respondents / accused through impugned judgment, hence this Criminal Acquittal Appeal.

5. Learned counsel representing the appellant submits that the impugned judgment is not sustainable under the law as there was sufficient evidence available on record against the respondents but the trial Court brushed aside the same, more particularly, the respondents were acquitted of the charge without assigning any valid reason; that the appellant has proved his case against the respondents; that the law applicable to all persons who enter into or upon immovable property and dispossess, grab, control or occupy it without having lawful authority to do so; that the appellant has proved his ownership and illegal dispossession from the subject land at the hands of respondents. He has argued that all the P.Ws have fully supported the version of the appellant including Investigation Officer; that the appellant was not party in previous suit filed by the respondents; that the written statement if any, filed in the said suit was managed by the respondents; that the appellant has paid the Dhal to the competent Forum; that the act of respondents, amounts to offence under section 3 (2) of the Illegal Dispossession Act, therefore, they may be convicted and possession of the subject land may be restored to the appellant.

6. Conversely, learned A.P.G contended that there is no gross illegality, irregularity or infirmity in the impugned judgment as there are sufficient reasons and grounds which create reasonable doubt in

favour of respondents; that respondents have purchased the suit land through sale agreement dated 20.07.2004 and they were put in possession by appellant himself; that one of the purchaser also filed F.C Suit No.69 of 2006, in which the appellant filed his statement wherein he admitted that the possession and sale to him; that the respondents had also filed F.C Suit No.170 of 2016; that neither the appellant nor his witnesses have supported the case; that the case of appellant does not come within the ambit of Illegal Dispossession Act; that no act of forcible dispossession has been committed by the respondents. Lastly he prayed for dismissal of this acquittal appeal.

7. Arguments heard and record perused. During the course of arguments, learned counsel for the appellant could not show the specific part of the judgment wherein the learned trial Court has committed any gross illegality or irregularity. Admittedly, the question of title is not disputed. The respondents have also not denied the possession of subject land or otherwise. The question arises in this matter is that whether the respondents have illegally and forcibly dispossessed the appellant from the subject land or otherwise. The appellant Muneer Ahmed in his evidence before the trial court has stated that on 26.03.2016 he went to Punjab and after about one and half month he received telephonic call that his land has been occupied in evening time i.e. 5-0 PM and after about one month and 15 days i.e. 11.05.2016, he returned back from Punjab and met with P.Ws Sulleman and Nazar Muhammad and then they went to subject land where they saw accused persons / respondents present there, while P.W Sulleman in his evidence has stated that the peoples of Nohrio community without disclosing names of any person have illegally occupied the land of appellant. He has stated that when the appellant left for Punjab the land was lying barren. However, the appellant in his evidence has produced receipt of "Dhal" and "Abyana" of the subject land which shows that land was barren and un-cultivated. The appellant himself in his evidence has stated that he was at Punjab when the respondents illegally occupied the land. From his own admission, it is proved that the appellant was not present at the subject land as such, his evidence is hearsay. P.W Sulleman has not stated in his evidence that he informed the complainant on telephone about the illegal occupation of subject land by respondents. The main witness is the I.O of this case, who in his cross examination has specifically stated that *"it is correct to suggest that I have not received any evidence regarding forcible dispossession of the complainant"*

*Voluntarily says that the land was un-ploughed*". Neither the complainant nor his witnesses and even IO have stated about any hindrance or construction of huts etc. at the subject land. Investigating Officer has stated that when he visited the subject land, he has not seen the respondents present there. The complainant has stated that he was not party in the previous suit filed by accused and denied the written statement if any filed in the suit. He has stated that the respondents have committed forgery and fraud with him. I have minutely perused the FCS No.69 of 2006, perusal of the same shows that the appellant is party in that suit. The respondents have raised plea that they have purchased the land from the appellant through agreement and the appellant himself put them in possession of the subject land. No doubt there is no any conflict existed in respect of claim and title documents. The Illegal Dispossession act, 2005 had been promulgated to safeguard the interests of the owners and to stop the persons from occupying the lands illegally. In the present case, the question of title is not disputed and only the question is that the appellant was forcibly dispossessed from the subject land or not. The appellant in his written statement filed in FCS No.69 of 2006 admitted the possession of the respondents. There is nothing on record that the respondents have forcibly dispossessed the complainant from the subject land. On being confronted with such aspects of the case, learned counsel for the appellant has failed to give a satisfactory reply. Hence, I am of the view that appellant has not proved its case and the respondents have not committed offence punishable under section 3(2) of Illegal Dispossession Act.

8. I have also perused the impugned judgment and come to the conclusion that the learned trial Court has dealt with all aspects of the matter quite comprehensively in the light of all relevant laws dealing with the matter and the appellant in his appeal is unable to point out that the impugned judgment by any means suffers from any illegality or miscomprehension or non-appreciation of evidence by way of documents and evidence available on record. I am also not satisfied with any of the grounds agitated by appellant in the memo of appeal for indulgence of this Court in the matter. Therefore, I find that the impugned judgment passed by trial Court is perfect in law and facts and needs no interference by this Court.

9. As observed above, the respondents have been acquitted by the competent Court of law therefore, under the law once an accused was acquitted by the competent Court of law after facing the agonies of the

protracted trial then he would earn the presumption of double innocence which could not be disturbed by the appellate Court lightly. Resultantly, the instant Criminal Acquittal Appeal being devoid of merits is hereby dismissed along with pending application[s].

10. Before parting with this judgment, since there is dispute in between both parties with regard to ownership of the subject property and in this connection they have already remained in litigation, therefore, I would like to make it clear that the appellant, irrespective of the result of this acquittal appeal, may file a civil suit / proceedings before the competent Court of law having jurisdiction in the matter for redressal of his grievance and on filing such suit / proceedings the said Court shall decide the same in accordance with law.

**JUDGE**

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