

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Rev. A. No.S- 27 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on M.A- 5628 of 2020 (infructuous).
- 2. For orders on M.A- 782 of 2020 (infructuous).
- 3. For orders on office objection.
- 4. For hearing of main case.

21.09.2020

Mr. Bheem Chand Kolhi Advocate alongwith applicant Somji.

Mr. Hameedullah Dahri, Advocate for respondents No.2 to 6.

Ms. Rameshan Oad, A.P.G.
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ABDUL MAALIK GADDI, J.- Through this criminal revision application, applicant Somji has assailed the legality and propriety of the order dated 15.02.2019, whereby the learned trial Court / Additional Sessions Judge-II, Mirpurkhas dismissed the ID Complaint No.01 of 2019, filed by him against Barkat Ali and others.

2. Succinctly, the case of the applicant is that subject land admeasuring 12-31 acres, situated in Deh Athela, Tapo Bilalani, Taluka Digri (Jhudo), District Mirpurkhas, was originally belonged to Arjun, father of the applicant; and, was being cultivated by him during his life time; that after his death on 05.11.2003 the said land was / is being cultivated by the applicant and others who are surviving legal heirs of said Arjun; that private respondents No.1 to 5, who were residing in same locality without any right, title or interest have occupied one portion of said subject land measuring 00-10 acre, for which applicant and other legal heirs of said Arjun made complaint to their Nekmards, but with no result. It also case of the applicant on 20.12.2018, when applicant alongwith his tenants was present on his land in order to look after wheat crop at 12:00 noon private respondents duly armed with Desi Pistol, hatchets and lathis came there and attacked upon complainant, occupied his

land and dispossessed him from it. Meanwhile, respondent Barkat also made aerial firing with his pistol. Thereafter applicant approached the concerned police for report, who refused to register the same. Then he filed aforementioned I.D complaint.

3. Learned counsel for applicant submits that the impugned order is illegal, perverse and passed without hearing the applicant as well as considering the relevant record and report of the concerned Mukhtiarkar; that the trial Court did not consider the fact that applicant is having legal title documents in his favour and private respondents No.1 to 7 are in possession of the portion of subject land illegally and unlawfully; hence possession of said portion be restored in favour of the applicant.

4. Learned counsel for private respondents though opposed the instant revision application; however, he has not been able to controvert the submissions put forwarded by learned counsel for the applicant.

5. Learned A.P.G appearing on behalf of the State after going through the impugned order as well as other recorded proposed that the case may be remanded to the trial Court for deciding the same afresh after providing an opportunity of hearing to the applicant.

6. Heard arguments of learned parties' counsel and perused the record.

7. The case and claim of the applicant is that the I.D complaint filed by him was dismissed by the trial Court without hearing him. It is noted from the record that subject land originally owned by the father of applicant namely Arjun and after his death same was / is in possession of applicant alongwith other his other surviving legal heirs, who are cultivating the same and enjoying its fruit. According to learned counsel for the applicant, trial Court has called reports from concerned Mukhtiarkar and the SHO, which were received. However, the Mukhtiarkar concerned based his report on the statements of near relatives of the private respondents instead of private and independent persons / residents of the area, hence such report has no value in

the eyes of law. It is also fact on record that initially the subject land was owned by Arjun, father of the applicant and after his death applicant and his other surviving legal heirs were / are in possession of the same. During course of the arguments, on Court query, learned counsel for the applicant draws attention of the Court towards copies of title documents (available in Court file) in favour of said Arjun; whereas the learned counsel for private respondents has failed to show any title document with regard to said portion of land in their favour. Further the reports submitted by concerned SHO as well as Mukhtiarkar simply mention that the private respondents are in possession of the subject portion / land but there is nothing on record that said respondents have any title documents in their favour with regard to subject land; however, the trial Court without assigning any valid reason and giving a fair opportunity of hearing to the applicant dismissed his I.D complaint, which needs interference.

8. For what has been discussed above, I have no hesitation but to allow the instant criminal revision application and set aside the impugned order as well as remand the case to the trial Court for deciding the same afresh after providing an opportunity of hearing to the applicant and considering his case and claim in accordance with law.

9. Criminal Revision Application stands disposed of alongwith pending application(s).

JUDGE

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