

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Revision No. 125 of 2015

Mst. Tahira.....Applicant

Versus

Muhammad Shareef and others.....Respondent

M/s. Salahuddin Khan Gandapur, Pir Darwesh Khan and Sabir
Shah, advocate for applicant
Syed Nasir Abbas Rizvi, advocate for respondent No.1
Syed Meeral Shah Bukhari, Addl.PG

Date of hearing : **19.02.2020.**

ORDER

RASHIDA ASAD, J- By filing the instant criminal revision application, the applicant has questioned the impugned judgment dated 31.10.2015 passed by learned II-Additional Sessions Judge, Malir, Karachi. Through the impugned judgment, learned trial Court has acquitted the accused persons/respondent Nos.2 to 5 in I.D.Complaint No.03/2010 filed by respondent No.1 against respondents 2 to 5 under Illegal Dispossession Act, 2005 in respect of Plot No.84, Road No.3, Bhains Colony, Landhi, Karachi, and issued writ of possession in respect of the said property in favour of the respondent No.1/complainant, with direction to the Nazir to act in accordance with law for its restoration.

2. The matrix of the case as laid down in the memo of the instant application are that respondent No.1/complainant filed I.D. Complaint No. 03/2010 under the Illegal Dispossession Act against respondent No.2 to 5 before trial Court in which the applicant was not made a party/accused who is actually in possession of subject property vide Gift Deed dated 15.10.1999. After filing of complaint, trial Court adopted legal formalities

and framed the charge against accused person who did not plead guilty. Respondent No.1 and applicant are having family disputes as applicant is daughter-in-law of complainant and she left the house on 24.10.2008 alongwith her four children due to maltreatment but subsequently the matter was compromised and said property was gifted to her and she started to live therein since 1999 and is still residing therein alongwith her children. Complainant/respondent No.1 alleged that on 02.11.2008, respondent No.2 in collusion with his accomplices dispossessed his tenant Muhammad Afzal forcibly and handed over possession thereof to his cousin and accused Nomi was put in possession. It is stated in the instant revision that the applicant was/is in possession of said property since 15.10.1999 but she was neither made a party nor any allegation of illegal dispossession are stated against her. It is stated that learned trial Court during the course of trial in the aforesaid complaint, passed the order dated 05.05.2012 whereby Nazir was directed to take possession of subject property against which order, the applicant filed Cr.R.A.No.114/2012 before this Court and ultimately the said order was set aside vide order dated 31.05.2012 and in compliance of order dated 31.05.2012, her statement was recorded but she was neither made an accused although she is in possession of subject property since 1999 and trial Court passed the order dated 31.10.2015 which is question through instant revision.

3. Learned counsel for the applicant submits that the impugned order is not sustainable in law on the ground that trial court observed that the applicant had not joined the trial as a party nor the complainant made her as an accused in the complaint. He further submits that trial Court ceased the powers of issuing writ of possession when accused were not convicted under the said Act. He also submits that trial Court acquitted accused persons and issued writ of possession without lawful authority which is not vested to it under the said Act. He submits that there was no dispute

regarding illegal dispossession against the applicant nor any allegation of dispossession against her is made in the complaint. He points out that gift deed in favour of the applicant is undisputed, as such the impugned order is liable to be set aside to extent of restoration of property in favour of the complainant/respondent No.1.

4. Respondent No.1 has filed his written statement to instant revision and has denied all allegations made therein. Learned Prosecutor has also supported the impugned judgment.

5. I have heard the learned counsel for the parties and perused the record available before me. Statement of applicant was recorded on the order passed in the aforesaid revision which was filed before this Court and some relevant portions have been reproduced by trial Court in the page-10 of impugned judgment and after perusal of it, it is crystal clear that the applicant has failed to prove that she was/is in possession of the subject property as its lawful owner/occupier. It is also mentioned in the impugned judgment that the applicant has also filed a civil suit which was subsequently withdrawn by her on the basis of Panchayat Faisla. The applicant is claiming her right in the light of a Gift Deed which is not a registered document and same has been discussed at length by trial Court in the impugned judgment.

6. Under the above said circumstances, I am of the view that the instant revision application has bearing no merits and impugned judgment was properly passed, as such the same does not require any interference in the revisional jurisdiction of this Court. Criminal revision application is dismissed alongwith pending applications.

J U D G E