

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Cr. Rev. A. No.S- 83 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on MA-3443/19
2. For orders on office objection
3. For hearing of main case
4. For hearing of MA-3138/18

04.10.2019.

Mr. Muhammad Arshad S. Pathan, Advocate for
applicants.

Mr. Shafqat Ali Shah Masoomi, advocate for
respondent No.1.

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Irshad Ali Shah J:- The applicants by way of instant criminal Revision Application have impugned order dated 05.04.2018, whereby cognizance of Direct Complaint filed by the private respondent for prosecution of the applicants for having committed an offence punishable u/s 3/4 of Illegal Dispossession Act, 2005, was taken by learned Sessions Judge, Hyderabad.

2. The facts in brief necessary for disposal of instant Revision Application as per private respondent are that land Survey No.885, 886 and 786 (8-02) situated in Deh Bharroki Taluka and

District Tando Allahyar is owned by him, the possession whereof as per orders of Hon'ble Supreme Court of Pakistan was delivered to him by Revenue officials on 22.01.2014, which was taken back by the applicants on 11.11.2016 forcibly. In these circumstances, the private respondent filed the instant Direct Complaint before Sessions Court at Tando Allahyar, it was assigned for its disposal to an Additional Sessions Judge, Tando Allahyar and then was transferred to Sessions Judge, Hyderabad by this Court, for its disposal in accordance with law. Same on enquiry and after due hearing to the applicants and the private respondent was brought on record by learned Sessions Judge, Hyderabad vide his order dated 05.04.2018, which is impugned by the applicants before this Court by way of instant Criminal Revision Application as stated above.

3. The operative part of impugned order of learned Sessions Judge reads as under;

“Learned Advocates referred to different reports of the revenue officials in support of their respective contentions but without going into their details at this stage, suffice to say, the precise point relevant here was that in compliance of the Order of Hon'ble Supreme Court, the complainant was reported to be put into possession of the land, which is born from the mashirnama besides the photographs allegedly taken at the site at relevant time. Even if as argued by the Advocate for the proposed accused, the said claim was imaginary, it requires to be examined as to which land was actually handed over to the complainant. Moreover, the Mukhtiarkar and Police of the area in their reports sought on filing of this complaint have also mentioned that the

possession of land cited in the complaint is now with the proposed accused. Thus, in my view, prima facie, the complaint deserves to be entertained and proceeded with more particularly in view of Order dated 13.1.2017 passed by Hon'ble Supreme Court in which the complainant was advised to approach proper forum, in the following words:

"Admittedly Order dated 2nd January, 2014 has been complied with by delivering possession to the petitioner as required in terms thereof. However, according to the learned counsel for the petitioner, the petitioner has been dispossessed from the land few days back with the help of the official respondents. Since admittedly, the order on the basis whereof, the present petition was filed has been complied with therefore no case for contempt or defiance and non-compliance of the said order is made out. The petition is, therefore, dismissed. However, the petitioner may seek his remedy, if any, before a proper forum."

In view of the above stated facts and circumstances, the complaint is hereby brought on file. Let it be registered."

4. It is contended by learned counsel for the applicants that the applicants are owner of the subject land in their own cause on having purchased the same from its claimant; they never were dispossessed from the subject land; the paper work done for its possession was managed by the private respondent in collusion with his brother who is Revenue Officer; the land which is being owned by the private respondent is already in his possession, which he has amalgamated with his other landed property and in order to deprive the applicants of their landed property has put false claim of ownership over the subject land which is less by two ghuntas in area as against the claim of the private respondent and learned Sessions Judge, has not

considered all these facts properly while taking the cognizance of Direct complaint of the private respondent by way of impugned order, which is illegal and is liable to be set aside.

5. Learned A.P.G for the State and learned counsel for the private respondent have sought for dismissal of the instant criminal Revision Application by contending that learned trial Court has committed no illegality by taking cognizance of the Direct Complaint of the incident and the applicants if are having a feeling that they are owners of the subject land then they could prove their case at trial and the instant Direct Complaint has been filed in terms of order dated 13.01.2017 passed by Hon'ble Supreme Court of Pakistan which is reproduced by learned Sessions Judge, Hyderabad in impugned order.

6. I have considered the above arguments and perused the record.

7. Admittedly, the applicants and the private respondent have been litigating over the subject lands since decades. The private respondent is claiming to have been put in possession whereof by the Revenue officials through an order of the Hon'ble Supreme Court of Pakistan, which possession according to him he retained for more than two years and then was dispossessed

therefrom by force by the applicants. The Direct Complaint filed by the private respondent after requisite enquiry has been brought on record by learned Sessions Judge. Enquiry admittedly is not substitute of trial. In enquiry, the burden upon the complainant is only to the extent that he may prima facie make out a case for cognizance/trial. At trial, the complainant has to prove his case against the accused involved therein beyond shadow of doubt. Such trial has yet to take place. If the applicants are carrying a feeling that they have never dispossessed the private respondent from the subject land and there is dispute between them over identity of their respective landed property together with area then they could prove such fact adequately by joining the trial which apparently would be a best recourse for them to resolve the dispute with the private respondent, once for all. No illegality apparently has been committed by learned Sessions Judge, Hyderabad by taking the cognizance of the direct complaint filed by the private respondent by way of impugned order which may justify this court to make interference with it by way of instant revision application. It fails and is dismissed accordingly together with the listed applications.

JUDGE

Ahmed/Pa