

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Misc. Application No.368 of 2020

Date *Order with signature of Judge*

For hearing of Main Case.

14.01.2021

Mr. Mumtaz Ali Khan Deshmukh, Advocate for the Applicant.
Mr. Saeed-uz-Zamman, Advocate for Respondent No.3.
Ms. Hina, Assistant Prosecutor General, Sindh along with Naveed Zaman, Asst. P.G, Sindh.

ORDER

Through this application, applicant seeks setting aside of order dated 29.09.2020 passed by Sessions Judge/Ex-Officio Justice of Peace, Malir Karachi in Criminal Petition No.1491/2020 (re-Asghar Masif Versus SHO, P.S Shah Latif Town and others).

Learned counsel for the applicant submits that proposed accused/respondents have occupied residential building belonging to the applicant; thereby have illegally encroached upon it, hence by doing so, have committed an offence for which directions are being sought against them. Therefore, the application filed by applicant before Ex-Officio Justice of Peace was rightly filed; however, has wrongly been dismissed; hence, this application has been maintained by the applicant before this Court.

Learned counsel for the applicant further submits that proposed accused Mst. Nasreen is the 2nd wife of father of the applicant Amanat Masih and during his lifetime he had divorced her, therefore, she is no more wife of father of the applicant and cannot claim any share out of the property left by father of the applicant; besides, the possession over the house by proposed accused is unjustified. He, therefore, prays for grant of application and issuance of directions to SHO, P.S concerned for getting his case registered.

Learned Assistant P.G, Sindh appearing for the State opposes the application on the ground that as far as question of illegal dispossession is concerned, proper remedy for the applicant is to invoke provisions of Illegal Dispossession Act, 2005 and issue involved in the case is with regard to the property of the parties, for which civil remedy is also available. She; however, submits that no case for issuance of directions for getting the case of applicant registered against proposed accused, is made out.

Learned counsel for proposed accused/respondent No.3 submits that application in hand is not maintainable and the Ex-Officio Justice of Peace has rightly rejected their claim. He next submits that as far as divorce deed is concerned, parties are from Christian community, therefore, as per provisions of Christian Marriage Act, 1872, no direct divorce can be pronounced unless decided or pronounced by the competent Court of law and the divorce deed allegedly shown and produced by counsel for the applicant is maneuvered and fake one. He also prays that applicant may be prosecuted for maintaining false and fake document to grab the share of proposed accused Mst. Nasreen, who is also his step mother. He finally submits that applicant in hand may be dismissed.

Heard arguments and perused record. Before discussing merits of the case, proposed accused is step mother of the applicant; however, he claims that his late father had divorced her during his lifetime. The objection raised by learned counsel for the proposed accused/respondent No.3 carries weight as divorce deed shown in the Court is not in consonance with the provisions of the Divorce Act, 1869, nor the conditions viz. adultery, cruelty or desertion have been urged or maintained. Moreover, the said divorce deed had not been produced by the applicant before Ex-Officio Justice of Peace. The plea taken by the applicant at this belated stage, is unjustified and cannot be acceded to; hence, same being unwarranted by law, is hereby deprecated. Now, reverting back to main grievance of the applicant, admittedly, the issue involved in the case is with regard to the residential house, which has allegedly been occupied by the proposed accused and if the contention so raised on behalf of the applicant presumes to be true, then provisions of

Illegal Dispossession Act, 2005, are in existence, for which applicant is at liberty to file such complaint, if so advised. As far as, issuance of directions is concerned, it will be appropriate to reproduce the observations made by Ex-Officio Justice of Peace in the impugned order, which reads as under;_

“The present applicant has not disclosed in this petition that proposed accused Mst. Nasreen had remained legally wedded wife of his late father. Main dispute is over the plot and one civil suit is also pending in the competent court of law. This is civil dispute, hence the present forum is not in position to give opinion in respect of claims of the parties. Lately a tendency has developed where people try to convert civil disputes in to criminal litigation.

Therefore, no specific direction for registration of FIR is required. However, the concerned police is duty bound to act according to law and let no one cross the limits provided by law. The present petition is disposed of accordingly. This order shall have no effect on pending civil suit.”

Accordingly and in view of above, instant Criminal Miscellaneous Application merits no consideration. Consequently, it is hereby dismissed along with pending application(s), with no order as to cost.

JUDGE