

Judgment Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Revision Application No. S – 59 of 2012

Applicant : Dr. Syed Ali Akbar Shah Limited,
through Mr. Jhamat Jethanand Advocate.

Respondents : Baboo alias Syed Ghulam Muhammad Shah and others,
through Mr. Wahid Bux Aajiz Laghari Advocate.

Mr. Muhammad Iqbal Kalhoro A.P.G.

Date of Hearing : 20.01.2014.

J U D G M E N T

NADEEM AKHTAR, J. – By this Criminal Revision Application, the applicant has impugned the order passed on 11.04.2012 by the learned Sessions Judge Badin in the applicant's Criminal Complaint No. 01 of 2012, whereby his said complaint under Sections 3, 4, 7 and 8 of the Illegal Dispossession Act, 2005 (**'the Act'**), was dismissed.

2. The relevant facts of the case are that the applicant filed the aforesaid complaint before the learned Sessions Judge Badin against the respondents / accused. The case of the applicant, as averred by him in his complaint, was that he was the sole and absolute owner of House No.1-A/C-28, measuring 2,660 sq. ft., Ward-3, Golarchi Town, (**'the house'**), having purchased the same through a registered sale deed dated 06.12.1977, which was mutated in his name in Deh Form VII on 21.07.1993. The house was rented out by the applicant to Sui Southern Gas Company, and it remained in the possession of the said Company till 31.07.2003, whereafter the house came into the possession of the applicant. The applicant, who is a doctor by profession, was running his hospital in Karachi, and he used to visit the house from time to time. On 01.07.2011 at about 11:00 a.m., respondent No.4, who is the real brother of the applicant, came at the house duly armed with a pistol, and meanwhile, respondents 1 to 3 also came there along with their household articles. They forcibly occupied the house and dispossessed the applicant and his sons therefrom. In the above background, the complaint was filed by the applicant praying that the respondents be ejected from the house, and the vacant possession thereof be handed over to him. It was also prayed by the applicant that the respondents be punished for the offence committed by them.

3. The complaint filed by the applicant was ordered to be registered by the learned Sessions Judge, who also called for the report from the SHO concerned. The Mukhtiarkar concerned was directed to verify the documents and to submit a spot inquiry report. In pursuance of the said directions, a report and a spot inquiry report were submitted by the SHO and the Mukhtiarkar, respectively. In his report, it was reported by the Mukhtiarkar that the respondents did not occupy the house recently, but were residing therein for the last 30 years. It was, however, reported by the Mukhtiarkar that the house was in the name of the applicant / complainant in the revenue record. The report filed by the SHO stated that the respondents were in possession of the house since long, and as such no offence of dispossession had been committed by them.

4. The respondents filed their objections, wherein they denied the allegations made against them by the applicant. It was averred by them that the house was in their possession for the last 30 years ; the applicant was never in possession of the house ; respondent No.4, who is the real brother of the applicant, spent a huge amount on the applicant's education, and for this purpose, the original title documents of the house were given to the applicant to obtain loan for his education ; the applicant managed a forged sale deed in his favour in respect of the house, and got the same mutated in his favour ; the electricity and gas bills of the house were in possession of the respondents ; and, the complaint against them was malafide.

5. Through the impugned order dated 11.04.2012, the complaint filed by the applicant was dismissed by the learned Sessions Judge. Mr. Jhamat Jethanand, learned counsel for the applicant, contended that the applicant's complaint has been decided by the learned Sessions Court only on the basis of the reports filed by the SHO and Mukhtiarkar. It was urged by him that the matter required evidence, and as such it could not have been decided in a summary manner without recording evidence. In addition to his above submission, the learned counsel submitted that the material available on record was sufficient to support the case of the applicant and to belie the assertions made by the respondents. It was further urged that the finding of the learned Sessions Court that the dispute between the parties was purely of a civil nature, is contrary to the settled principle of law that where no civil litigation is pending between the parties, the criminal case should proceed on merits. It was prayed that the impugned order be set-aside in view of the above submissions. Learned counsel for the applicant cited and relied upon the cases of (1) Rahim Tahir V/S Ahmed Jan and 2 others, **PLD 2007 Supreme Court 423**, (2) Iftikhar

Ahmad V/S Zulfiqar Ali and 3 others, **PLD 2008 Lahore 59**, (3) Malik Muhammad Naeem Awan V/S Malik Aleem Majeed and 5 others, **PLD 2008 Lahore 358**, (4) Abdul Rehman V/S Muhammad Shahid Qureshi, **PLD 2009 Karachi 117**, (5) Shahabuddin V/S The State, **PLD 2010 Supreme Court 725**, (6) Muhammad Bakhsh V/S Additional Sessions Judge and others, **2010 P.Cr.L.J. 268**, and (7) Shahabuddin V/S The State, **2010 P.Cr.L.J. 422**.

6. Mr. Wahid Bux Aajiz Laghari, learned counsel for the respondents, supported the impugned order. He submitted that the reports submitted by the SHO and Mukhtiarkar were sufficient to establish not only that the respondents were in possession of the house since long, but also that there was no question of illegal dispossession of the applicant therefrom. He further submitted that after such convincing reports, there was no need to record evidence of the parties. The learned counsel pointed out that respondent No.4 had filed an application before the Assistant Commissioner for cancellation of the mutation in respect of the house in favour of the applicant, which is pending. On my query, the learned counsel conceded that till this date respondent No.4 has not filed any Civil Suit for cancellation of the registered sale deed dated 05.12.1977 in favour of the applicant pertaining to the house.

7. The learned APG contended that the preliminary inquiry undertaken by the learned Sessions Judge through the SHO and Mukhtiarkar had revealed that *prima facie* the applicant was not in possession of the house, and the same was in possession of the respondents. He submitted that the Court may pass order as it may deem fit and proper in the facts and circumstances of the case.

8. I have heard the learned counsel for the parties and the learned APG, and have also perused the material available on record with their assistance. The applicant had specifically pleaded in his complaint that, as the lawful owner / landlord of the house, the house was given by him on rent to Sui Southern Gas Company and it remained in possession of the said company till 31.07.2003. A notice dated 07.07.2003 addressed by the said company to the applicant is available on record, whereby the applicant was informed by the said company that the house would be vacated on 31.07.2003, and the applicant was called upon to take over its vacant possession from the said company on the said date. It is to be noted that the objections filed by the respondents were completely silent with regard to the above contents of the complaint. Moreover, the respondents were unable to explain that when the house was on rent till 31.07.2003 with a reputable company, whether or not any amount on account of rent was received by respondent No.4 from the said company ; and, if

respondent No.4 had not received rent, then who had actually received rent from the said company.

9. It appears that the learned Sessions Judge was impressed by the fact that the application filed by respondent No.4 for cancellation of the applicant's mutation was pending before the Assistant Commissioner, but it was not appreciated that mutation is not a title document of an immoveable property ; the title of the house, acquired by the applicant through a registered sale deed, was admittedly in the name of the applicant ; the registered sale deed in favour of the applicant was in the field as the same was admittedly not challenged by respondent No.4 before the Civil Court ; and, only a Civil Court has the exclusive jurisdiction to cancel a registered instrument. It was also not appreciated by the learned Sessions Judge that the dispute with regard to the title of the house could not be decided in the application filed by respondent No.4 before the Assistant Commissioner, and the Assistant Commissioner had no jurisdiction to decide such dispute.

10. I do not agree with the contention of the learned APG that the preliminary inquiry had revealed that the applicant was not in possession, as it was the case of the applicant that he had been dispossessed illegally from the house by the respondents. In such a situation, the applicant could not have been in possession. In cases under the Illegal Dispossession Act, 2005, a complaint is filed by the complainant only after his illegal dispossession, otherwise the complaint is not maintainable. As far as the submissions of the learned counsel for the parties are concerned, I am of the opinion that disputed questions of fact were involved in this case which could not be decided without allowing the parties to adduce evidence. The learned Sessions Court ought to have allowed the parties to prove their respective cases through evidence. In view of the above, the impugned order is liable to be set-aside.

Foregoing are the reasons of the short order announced by me on 20.01.2014, whereby this Criminal Revision Application was allowed and the case was remanded to the learned Sessions Judge Badin with a direction to decide the same after notice to parties within thirty (30) days from the date of receipt of the judgment. It is clarified that the observations made in this judgment shall not prejudice the case of any of the parties, which shall be decided on its own merits strictly in accordance with law.

J U D G E