

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Revision Application No. 86 of 2022

Date	Order with Signature(s) of Judge(s)
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Fresh Case.

1. For order on Misc. Application No. 4910/2022 (Urgency Application)
2. For order on office objections alongwith reply at flag "A".
3. For order on Misc. Application No. 4911/2022 (Exemption application)
4. For hearing of main case.

22.04.2022

Mr. Muhammad Javed Tanoli, Advocate for applicant.

1. Urgency Application is granted.
2. Office objections are deferred.
3. Exemption Application is granted subject to all just exceptions.
4. Applicant herein filed Criminal Petition No. 19/2022 under Illegal Dispossession Act, 2005, against the respondents No.1 to 3 alleging therein that he purchased first floor of the house bearing No.307-B, situated in Street No.6, Mohallah Christian Colony, New Abadi, Korangi Road, Karachi from Mst. Shehnaz Masih in the year 2015, vide Sale Agreement dated 04.02.2015, and got the possession thereof; that Mst. Shehnaz Masih after getting separation from her first husband, namely, Arshad Masih/*respondent No.1* got married with the applicant in the year 2016 and started living with him at the ground floor of the said house; that she had four children from respondent No.1 and since she was in need of money for their educational and other day to day expenses, she also sold out ground floor of the said house to applicant; as such, the applicant became the full owner of the said house; that Mst. Shehnaz Masih requested to applicant to allow her children to live with them in the said house so long as they arrange their own accommodation and in this regard she executed an affidavit wherein she clearly mentioned that the applicant had purchased the said house from her and he was the exclusive owner of the said house and her children from respondent No.1 had no concern with the ownership of the said house; however, they could live

therein for the time being and if the applicant wanted to sell out the said house, he would give proper time to her children to arrange the substitute accommodation; that Mst. Shehnaz Masih died on 27.11.2021, on that the respondents No.1 to 3 (*proposed accused*) came at the house of the applicant to participate her funeral ceremony and to show the solidarity with her children and stayed at his house; that, on 21.01.2022, when the applicant came back from his job, he was stopped by the respondents No. 1 to 3 to enter into the house and they threatened him for dire consequences, hence, he went at police station but police did not register the complaint against the said respondents by saying that it was their internal private and civil issue; that the respondents No. 1 to 3 forcibly occupied the ground floor of the house by dispossessing the applicant illegally.

The learned IV-Addl. Sessions Judge, Karachi-East after calling investigation report from S.H.O. Korangi, and hearing the counsel for the applicant and respondents dismissed the Cr. Petition, vide order dated 16.03.2022, (*"impugned Order"*) by observing, as under:

"...it appears that the proposed accused is residing in one portion of the property and the complainant is also residing on the upper portion of the same property. The property in fact was purchased by deceased Shehnaz and both complainant and proposed accused No.1 were brought into the property by the said lady on account of contracting first marriage with proposed accused No:1 and second marriage with the complainant. Undeniably, the property is indivisible and un-partitioned. The complainant in this complaint has put up claim over the entire property on the basis of an agreement, which certainly is not a property document or a document which confers any proprietary right in favour of complainant. I am fortified with the case law reported in 2020 YLR 2231, wherein the Hon'ble High Court of Sindh at Karachi has held that "fate of register document was required to be decided through civil action, criminal action against illegal Dispossession Act, was not proper. Thus in these circumstances, prima-facie on the basis of available record I am of the considered view that dispossession of

complainant at the hands of respondent has not been made out, therefore the matter does not warrant cognizance. Accordingly the complaint is dismissed.”

The respondent No.1 is admittedly residing on the ground floor of the said house along with his children. The claim of the applicant that he purchased said house entirely from his deceased wife requires adjudication by a competent Civil Court having jurisdiction. The sale agreement and/or an affidavit do not confer any title in respect of any immovable property.

At the very outset, learned counsel for the applicant has failed to point out any illegality or infirmity in the impugned Order requiring any interference of this Court under its revisional jurisdiction; hence, instant Cr. Revision Application is dismissed in limine, accordingly.

Athar Zai

JUDGE