

IN THE HIGH COURT OF SINDH, KARACHI

Criminal Revision Application No. 79 of 2022

Applicant : Mrs. Raffia Khanum w/o Rashid Ali Baig,
through Mr. Syed Asif Ali Shah, advocate

Respondents : Mst. Fozia Zaheer & others (*nemo*)
No.1 to 6

Date of hearing : 21.04.2022

Date of order : 21.04.2022

ORDER

ZAFAR AHMED RAJPUT, J:- Applicant herein filed Criminal Complaint No. 25/2022, under sections 3 & 4 of the Illegal Dispossession Act, 2005 (**"the Act"**) against the respondents No.1 to 5 alleging therein that she is real owner of property bearing House No.B-80, measuring 400 Sq. Yds., Block-14, Gulistan-e-Jouhar, Karachi. It was further alleged that, on 28.1.2022 at about 6:30 p.m., respondent No.1 to 4 forcibly entered in the said property and by showing her weapons threatened her to commit murder of her and her family members and dispossessed her from the property illegally; hence, she moved an application to respondent No.5 (S.H.O., P.S. Gulistan-e-Jouhar, Karachi) who, on 31.1.2022, registered an F.I.R. bearing No.86/2022, but no action was taken, hence she filed the said Complaint.

2. The learned IV-Addl. Sessions Judge, Karachi-East after calling investigation report from respondent No.5, and hearing the counsel for the applicant and respondents No.1 to 4 dismissed the Complaint, vide order dated 03.03.2022, (*"impugned Order"*) by observing, as under:

"Indisputably, both the complainant and the proposed accused are in close proximity with the deceased Pervaiz Hassan. After the death of late Pervaiz Hassan, on 26.1.2022, both the sister (complainant) and proposed accused Eman Pervaiz (daughter) embroiled in a controversy regarding distribution of assets left by the deceased. There is no denial to

the fact that both the sister and daughter have put up their legal character/title/interest in the estate of deceased in the proceedings so far initiated by both sides against each other at different legal forums including the Hon'ble High Court of Sindh, Karachi. I cannot lose my sight from the order, dated 1.2.2022, whereby the Hon'ble High Court of Sindh, Karachi has directed both the parties to maintain status quo.

In response to the submission of learned counsel for complainant that civil as well as criminal proceedings can run together in respect of the same subject matter, I may venture to add that such proposition of law is correct and requires no further determination. In the present case, F.I.R. No.86/2022 U/S 448/506-B/34 P.P.C. has also been lodged at P.S. Gulistan-e-Johar by the complainant against the proposed accused. Section 448 P.P.C. relates to "House trespass". Now the question whether the sole real daughter of deceased Pervaiz Hassan has in-fact trespass the house of her father will be determined by learned trial Court in lieu of the F.I.R. so lodged by the complainant. I am of the considered view that the incident date shown in the F.I.R. is 28.1.2022, whereas in the instant complaint the similar date viz. 28.1.2022 (reference para-3), therefore, the complainant at the same time intends to initiate two criminal trial by prescribing same date of incident, between the same parties, regarding the same subject matter is not mandated under the law."

3. The learned counsel for the applicant has contended that even if a relative took possession of a property through illegal and unauthorized means from lawful owner, the provisions of the Act would be attracted. He has further contended that mere lodging of an F.I.R. by the complainant/owner would not act as a bar to avail remedy under the Act; so also, no bar exists for any party to choose to file civil suit or criminal proceedings as per law and the complainant/owner can avail both the remedies; hence, impugned order being against the law and facts of the case is liable to be set aside. In support of his contentions, learned counsel has relied upon the case of (i) *Muhammad Bakhsh v. Additional Sessions Judge & others* (2010 P Cr. L J 268), (ii) *Abdul Hafeez v. Additional District Judge-VII, South Karachi and 2 others* (PLD 2009 Karachi 350) and *Muhammad Ramzan alias Jani v. Muhammad Aslam and others* (2007 P Cr. L J 1784).

4. Heard the learned counsel for the applicant and perused the material available on record.

5. It appears that the complainant and the private respondents are *inter se* blood relatives. Deceased Pervaiz Hassan, who died on 26.1.2022, was the brother of the applicant and father of the respondent No.3 (*Ms. Eman Pervaiz*) and after his death, both the parties are at dagger drawn over distribution of assets left by him. Their respective claims over the assets left by the said deceased are subject matters of several legal proceedings pending adjudication in different forum including this Court under Civil Suit No. 168/2022 filed by the respondent No.3, wherein order with regard to maintaining *status quo* by the parties is already operating. So far the contentions of learned counsel for the applicant are concerned, same appear to be well phrased with supporting case-law, yet the distinguishable facts of the present case cannot be disregarded, which have properly been evaluated by the Court below vide impugned order.

6. For the foregoing facts and reasons, I have found no 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.

7. Above are the reasons of my short order, dated 21.04.2022.

Athar Zai

JUDGE