

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Cr. Appeal No. 727 of 2019

Order with signature of Judge(s)

1. For orders on office objection at flag "A"
2. For orders on MA No.11207/2019
3. For hearing of main case

03.02.2022

Syed Asadullah Shah, Advocate for the appellant
Mr. Zafar Ahmed Khan, Additional Prosecutor General

This Court time and again has issued directions for notice to the respondents, which were evidently served as Mr. Raghieb Ali Junejo, Advocate undertook to file Vakalatnama on behalf of Respondent No.3 on the last date of hearing (i.e. 05.10.2021), however, today none is present on behalf of the said respondent neither any Vakalatnama is on file.

Counsel for the appellant submits that the impugned order is unfavourably titled on the side of the respondent, as learned 2nd Additional Sessions Judge, Malir Karachi failed to take cognizance of the documents proving title of the subject property in favour of the appellant. Counsel contends that even verification of the title from the office of the Sub-Registrar-II, Gulshan-e-Iqbal Town, Karachi came in favour of the appellant as well as the inquiry report dated 12.04.2019 also concluded that the appellant is undisputed owner of the said property (Double storey Bungalow No.R-120, admeasuring 120 square yards in the project known as Dawood Bungalow, situated in Sector 15-B, KDA Scheme No.33 Corridor, Gulzar-e-Hijri, Malir, Karachi) and enforcing legal rights through attorney/sub-attorney, as complainant/appellant Seema Shaikh is a resident of U.S.A. The report concluded that the respondents have forcefully taken possession of the property.

Learned Additional Prosecutor General also supports contentions of the learned counsel for the appellant.

Heard the counsel for the appellant as well as learned Additional Prosecutor General and perused the record.

A perusal of the impugned order reflects that the learned Court of 2nd Additional Sessions Judge, Malir Karachi dismissed the complain for the reason that there was a dispute as to the ownership of the subject property. It is however not clear that on the basis of what material the learned Court reached to the said conclusion. It is also not mentioned in the order that evidently lease of the property is in favour of the complainant. The inquiry report supported contention of the complainant and even went to say that the complainant has been forcefully dispossessed by the respondent(s) and the office of the Sub-Registrar affirmed title of the subject property in favour of the complainant, what remained to pass a favourable order on the complainant's application, remains a mystery.

In the given circumstances, when despite having given various opportunities none has effected appearance on behalf of the private respondents, who at one juncture even refused to receive the notice and thereafter gave halfhearted undertaking to engage a counsel, and where fore-mentioned material is on record to support the case of the complainant/appellant, this appeal is allowed by setting aside the impugned order.

Resultantly, complaint filed by the complainant becomes successful. Let the appellant be put into possession of the property in accordance with law and copy of this order be furnished to SSP concerned, as requested by the learned counsel for the appellant.

JUDGE