

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 88 of 2014

Mst. Anwara Begum W/o Abdul Shakoor Appellant

Versus

1. Liaquat Ali
2. The State Respondents

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Criminal Appeal No. 100 of 2014

Mst. Halima Bibi W/o Haish Muhammad Appellant

Versus

1. Liaquat Ali
2. The S.H.O. KIA P.S. Respondents

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Mst. Anwara Begum, appellant in Crl. Appeal No. 88 of 2014 in person.

Mst. Halima Bibi, appellant in Crl. Appeal No. 100 of 2014 in person.

Mr. Zahoor Shah, DPG for State.

JUDGMENT

Omar Sial, J.: The appellants Anwara Begum and Halima Begum were alleged to have illegally dispossessed one Liaquat Ali from his plot of land in the Korangi Industrial Area. The appellants have impugned a judgment dated 13-3-2014 passed by the learned 4th Additional Sessions Judge Karachi East. In terms of the said judgment, the appellants were convicted for an offence under section 3(2) of the Illegal Dispossession Act 2005 and sentenced to suffer three years rigorous imprisonment and pay a fine of Rs. 10,000 each or suffer another six months of imprisonment upon failure to pay the fine.

2. According to the prosecution story, a man named **Liaquat Ali (P.W.-1)** owned a plot of land bearing number 224 in Sector 6-D of Mehran Town situated in the Korangi Industrial Area of Karachi. He handed over his property to one **Wasif Hussain (PW-2)** and then went away to his village. When he returned on 29-11-2008 he saw that Chaudhry Talat Hussain, his sons Akram and Asghar, Muntaz Bibi, Rehmat Bibi and the two appellants were in possession of his land. He therefore filed a criminal complaint under the Illegal Dispossession Act, 2005 against the encroachers.

3. At trial, Liaquat Ali was examined as the first prosecution witness. He admitted that he had no evidence to establish how the plot of land had been transferred in his name. He also admitted that he had filed no prior complaint with any authority or person about his alleged dispossession. He admitted that he had no evidence that he had made a boundary wall or had put any material or equipment on the said plot.

4. Wasif Hussain testified at trial that he had arranged the purchase of the land in question for the complainant Liaquat Ali and that he had then raised a boundary wall around it to establish possession. He further testified that he had gone to Punjab for a death of his brother and that when he returned from Punjab, he saw Chaudhry Talat Husain, Mumtaz Mai, Muzamil Hussain and Mudassir as the persons who had illegally occupied the land. He did not mention the name of the appellants. Upon his complaint to the Karachi Development Authority, representatives of the KDA had come and demolished the structures built on the said land. Subsequently, when the KDA team had left he learnt that appellants were claiming that they were the owners of the said plot having bought the same from one Muzamil.

5. **Mohammad Mairaj Ahmed (CW-1)** was examined as court witness. He was an Assistant Director of KDA and was asked to bring the record pertaining to the land in question. He testified that according to his record the last document that existed in the record was the transfer in the name of Liaquat Ali however he admitted that he had no record to show that possession was given to Liaquat Ali.

6. **Inspector M. Nadeem Ghouri (CW-2)** was also examined as a court witness. He testified that when he visited the land in question he saw the appellants in possession of the land. While the Inspector claimed that several people from the neighborhood were also present, he could not produce any witness who could testify that the complainant and not the appellants were in possession of the land when the illegal dispossession was said to have been effected.

7. The appellants in their section 342 Cr.P.C. statements pleaded innocence and further stated that they had nothing to do with the plot of land i.e. 224 in Sector 6-D of Mehran Town.

8. I have heard the appellants in person as due to being extremely poor the appellants were unable to retain a counsel who could argue their appeals for them. On a couple of occasions counsel filed vakalatnamas on their behalf but then failed to appear. I have also heard the learned DPG. The complainant remained unrepresented despite

notices and the appeals being pending in this court for four years. My observations are as follows.

9. The testimony of the complainant Liaquat Ali and Wasif Hussain was vague and sketchy as to how he established the ownership of the plot in question as well as whether the story he narrated as to his leaving for a condolence and coming back and finding the appellants amongst others having illegally dispossessed him. Both witnesses were unable to show conclusively their nexus with the plot in question, either as undisputed owners or as having being in possession at the time they complained that they were illegally dispossessed by the appellants. Further, it appears from the testimony of both these main witnesses that the main protagonist was Chaudhry Talat Hussain and not the appellants. They could produce no witness from the properties of the adjacent lands who could also corroborate their story. The report filed by the SHO shows that when he visited the land in question he found the appellants in possession.

10. One is at a loss to understand as to why the KDA team would come and demolish the structures built on the land, by the complainant himself, if the complainant had a clean title to it and was legally and lawfully in possession of the same. Like the complainant, Wasif Hussain too, was unable to produce a clean chain of title documents or show that the complainant was actually in possession of the said land when the appellants are said to have illegally dispossessed the complainant.

11. The appellants are two old ladies who due to poverty were unable to retain counsel. A mere look at them suggests that I would be rather incredible that these two ladies in their frail condition could actually illegally dispossess the complainant. Perhaps they were used as innocent tools by the main accused Chaudhry Talat Hussain, however, nothing was brought on record to even establish that nexus.

12. The prosecution was unable to prove its case against the appellants beyond reasonable doubt. The benefit of such doubt should have gone to the appellants in accordance with well established principles of law.

13. In view of the above, the appeals are allowed. The appellants are acquitted of the charge. They are present on bail. Their bail bonds stand cancelled and sureties discharged.

JUDGE

Criminal Appeal No. 88 of 2014 and 100 of 2014 have been filed by Anwara Begum and Halima Bibi respectively against a judgment dated 13-3-2014 passed by the learned 4th Additional Sessions Judge, Karachi, East.