

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Revision Application No.S-19 of 2021

[Abdul Jabbar versus District & Sessions Judge Tando Allahyar & others]

Date of hearing & Order:

05.12.2022

Mrs. Razia Ali Zaman Patoli, advocate for applicant.

Mr. Yaseen Laghari, advocate for private respondents No.6 to 9

Mr. Imran Ahmed Abbasi, Assistant Prosecutor General Sindh

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ORDER

ADNAN-UL-KARIM MEMON, J. This Criminal Revision Application has impugned order dated 13.01.2021 passed by learned Sessions Judge Tando Allahyar, whereby applicant's complaint for illegal dispossession was dismissed.

2. During course of arguments the parties initially agreed with the understanding that private respondents will vacate 20 acres of land arising out of Survey No.3/2, 422/1 to 4, 4 to 3/3 situated at Deh Palhi Taluka Jhando Mari District Tando Allahyar; however, finally they resiled from their statements and prayed for decision on merits.

3. I have noticed that learned Trial Court dismissed the complaint lodged under Illegal Dispossession Act, 2005 filed by applicant Abdul Jabbar Son of Muhammad Bachal vide order dated 13.01.2021 on the premise that the case of parties requires to be adjudicated under civil jurisdiction as no case of illegal dispossession was made out.

4. Learned counsel for applicant has submitted that applicant is legal and lawful owner of agricultural land bearing Survey Nos.464/1,2, 465/1,2, 2-A measuring about 15-26 acres situated in Deh Palhi Taluka Jhando at Piyaro Lund District Tando Allahyar; that applicant had purchased land bearing Survey Nos.312, 422/1 to 4, 423/3 total area 25-33 acres in the month of July 2008 and was in possession total area 41-19 acres; however, the respondents grabbed half an acre from Survey No.465/1 in which there was an Otaq constructed by the applicant and was in bad condition and required reconstruction; that private respondents grabbed 25-33 acres which was purchased from Naseer and they also encroached upon the Otaq and not allowing the applicant to rebuilt the same which is forcible possession and occupation that was required to be vacated in

terms of Illegal Dispossession Act, 2005 however on account of dispute of civil nature between the parties they were directed to approach the Civil Court and complaint was dismissed which was erroneous decision on the part of the trial court for the reason that Mukhtiarkar concerned had reported that the land belongs to applicant thus the order passed by learned Sessions Judge Tando Allahyar is illegal as the respondents have committed offence under section 3 (i)(ii) of Illegal Dispossession Act, 2005.

5. On the other hand private respondents present in person supported the impugned order dated 13.01.2021 and submitted that no offence of whatsoever nature under Illegal Dispossession Act has been made out and prayed for dismissal of instant application.

6. I have heard learned counsel for the applicant, as well as private respondents who are present in person and perused the record with their assistance.

7. Prima facie there is no denial of fact that applicant is owner of subject land as discussed supra; besides Mukhtiarkar Taluka Jhando Mari vide his report dated 16.10.2020 endorsed the point of view of applicant. An excerpt of the report is reproduced as under:

“That, according to Record of Rights vide entry No.200 dated 29-09-2007 of VF-VII-B, the agricultural land survey No. 464/1,2; 465/1,2,2A, total area (15-26) acres entered in favour of khatedars Abdul Jabbar s/o Bacho Khaskheli. As per report of concerned Tapedar, on the site, out of above land, survey No.464/1,2 area (07-35) acres is cultivated with Banana crops which is under possession of Abdul Jabbar s/o Bacho Khaskheli and survey No.465/1 area (01-00) acres are cultivated with Banana crop and area (01-00) acres with grass (jantar) which is also under possession of Abdul Jabbar s/o Bacho Khaskheli and in the remaining area of survey No. 465/1, there is building of school, Khad which used for drinking water by the villagers, also there is a otak which is very old which was constructed by Dr. Sahib Khan s/o Bachal Khaskheli in the year 1992, which is also used as community purpose by the villagers also area (01-00) acres adjacent the otak and school is lying un-cultivated. There are Houses of Shameer, Akram and Sattar in Survey No.463/2A who are laborer of Abdul Jabbar s/o Bacho Khaskheli and they have constructed their houses with the consent of Abdul Jabbar. The survey No. 465/2 is under possession of Abdul Jabbar s/o Bacho Khaskheli, in which grass viz. (Jantar) is cultivated.

That, according to entry No. 241 dated 13-04-2009 of VF-VII-B of Deh Palhi, the agricultural land survey No. 312 area (07-01) acres, 422/ 1 to 4 area (14-32) acres, 423/3 area (04-00) acres, total area (25-33) acres full rupee entered in favour of Abdul Jabbar s/o Muhammad Bachal Khaskheli purchased through Registered Sale Deed from Naseer Ahmed s/o Dodo Khaskheli. As per report concerned Tapedar, on the site, the survey No. 312 area (07-01) acres and 422/ 1 to 4 area (14-32) acres are lying un-cultivated and there is a ungle, survey No. 423/3 area (04-00) acres as under ploughed which got done through Dr. Darya Khan s/o Muhammad Bachal Khaskheli.”

8. At this stage, it is urged by the private respondents that they are not in illegal occupation of the subject land. However, this stance has been refuted by the counsel for the applicant on the premise that the respondents have illegally occupied the portion of subject land which they are reluctant to vacate on lame excuses. If this is the position of the case, let Mukhtiarkar concerned shall ensure that the said portion of land be handed over to the applicant as per his entitlement under the law. However, if the private respondents resist, the Mukhtiarkar shall submit report within two weeks before the trial court for taking cognizance under the Illegal Dispossession Act, 2005; resultantly the Illegal Dispossession Complaint No. Nil of 2022 (Abdul Jabbar v. Mukhtiarkar Taluka Jhando Mari and others) filed by the applicant shall revive and the trial court shall try and conclude the same after recording evidence of the parties within a period of one month.

9. This Criminal Revision Application is disposed of in the above terms.

JUDGE