

# **HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

## **Cr. Misc. Application No.S-649 of 2022**

[Muhammad Ishaque versus Mst. Najma& another]

### **Date of hearing & Order:**

**14.10.2022**

Mr. Sajjad Ali Gopang, advocate for applicant

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## **ORDER**

**ADNAN-UL-KARIM MEMON, J - .** This Criminal Miscellaneous Application has been directed against the order dated 07.09.2022 passed by learned Additional Sessions Judge-I Tando Adam in Criminal Revision Application No. S-19 of 2022, whereby, the learned Revisional Court dismissed the Revision Application and maintained the order dated 20.07.2022 passed by learned Judicial Magistrate-I Tando Adam in Case No.05 of 2021.

2. Facts of the matter are that respondent had applied under Section 145 Cr. P.C before learned Judicial Magistrate concerned, stating therein that her husband Abdul Mughani died about four months ago and after his death, she along with her children started living in the house inherited by her late husband from his father as joint property and in front of the said house there are two shops constructed over property of Municipal Committee Tando Adam. It is further averred that her husband owned and possessed those shops and the same were constructed by her father-in-law; however when she was observing the Iddat period, the opponent/applicant who is real nephew of her late husband, along with some unknown persons occupied the said shops and dispossessed her from her peaceful possession. The application of respondent was allowed by learned Magistrate vide order dated 20.07.2022 with directions to restore the possession to respondent lady. Being aggrieved by and dissatisfied with the said order applicant preferred revision application before learned Additional Sessions Judge concerned, but the same was dismissed vide impugned order, hence this application.

3. Mr. Sajjad Ali Gopang learned counsel for applicant argued that the impugned orders are result of misreading and non-reading of material available on record; that uncle of the applicant, who was the husband of respondent lady, during his life time executed non-judicial stamp paper bearing No.442 dated 11.02.2022 in presence of witnesses and such sale agreement was submitted before the learned Magistrate; however, same was not considered; that sale agreement was executed by late husband of respondent in favor of applicant and he was put in peaceful possession accordingly; that applicant is paying electricity bills since handing over of possession of property in question; that son of respondent had also moved an application under Section 22-A Cr.P.C; however, the same was dismissed. He prayed for setting aside the impugned orders.

4. I have heard learned counsel for applicant on the maintainability of instant petition and perused the record with his assistance.

5. The visceral of arguments put forth by learned counsel for applicant in essence is that there was no material on record to hold that the ancestor of applicant and / or respondent had ever been in lawful possession of the land in dispute; therefore, so far as the title of property is concerned, it can only be decided by a competent Civil Court whether the land in question belongs to Municipal Committee Tando Adam or otherwise.

6. Thus, this court finds no illegality or perversity in the order of trial court. Accordingly, this Criminal Miscellaneous Application is, disposed of, leaving the parties to approach the court of plenary jurisdiction and in the intervening period, the subject property shall be in the custody of learned Judicial Magistrate concerned till the decision of civil court if approached.

JUDGE

Sajjad Ali Jessar