

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CR. REVISION APPLICATION NO.105/2022

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| Date | Order with signature of Judge |
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1. For order on MA No.9759/2022
2. For hearing of case.
3. For hearing of MA No.5716/2022.

25.08.2022

Mr. Shafiq Ahmed advocate for applicant.
Mr. Azmat Ali Khan Lodhi advocate for respondents.
Mr. Abrar Ali Khichi, APG.
Mr. Zahid Farooq Mazari, AAG.

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SALAHUDDIN PANHWAR, J. Heard respective parties.

2. Applicant is claiming ownership of the question property on the plea of sale agreement, according to him that property was owned by Ghazala Yasmeen however she died, thereafter applicant purchased the same through her brother Iqbal Mateen Babar who also passed away, thereafter applicant was renovating the subject matter property and meanwhile respondents who are office bearers of Association of respective project allegedly have put their locks on that apartment and that apartment is lying vacant hence order dated 12.04.2022 passed by the 3rd Additional Sessions Judge Malir Karachi in Illegal Dispossession Complaint No. Nil of 2022 is against the principles of law.

3. Being relevant paragraphs No.6 and 7 of the impugned order are that :-

“6. From perusal of the contents of complaint, enquiry report of E.O and objections from private respondents, it is quite clear that there is dispute between both parties over flat No.C-317 situated in Madam Apartment which was originally owned by Mst. Ghazala Yasmeen and her brother Iqbal Mateen who are said to be died in the year 2017 and 2019 respectively as per report of enquiry

officer that both owners of subject flat have been expired, on the other hand complainant is claiming his ownership over subject flat on the basis of sale agreement, so also he has already filed a Civil Suit bearing No.587/2021 against the respondents under section 9 of Specific Relief Act for possession of suit property pending before learned 1st Senior Civil Judge, Malir.

7. Under such circumstances as discussed above I am of humble opinion that matter pertains to Civil nature which may be better decided in the Court of learned Senior Civil Judge, Malir where Civil Suit of Complainant is already pending for adjudication. Furthermore, complainant is claiming his ownership over subject property on the basis of sale agreement, hence, on this alone score firstly matter in respect of subject flat required to be decided through Civil Suit while complainant has filed instant complaint under Illegal Dispossession Act which in my humble opinion is not proper at this stage when dispute of flat is already pending for a adjudication before competent Civil Court of law regarding ownership of subject flat.”

4. Perusal of above reflects that the Applicant is claiming his ownership on the basis of an unregistered “Sale Agreement”, which itself does not create right and title of the Applicant in the subject property. The Applicant has failed to produce valid documents which could establish that the possession of the subject property was handed over to him by the deceased owners during their lifetime and that he was forcibly dispossessed by the respondents. It is also matter of record that Civil Suit was instituted by the applicant for “Recovery of Possession” against the respondents that was dismissed and applicant has filed a civil appeal which is pending adjudication before the Appellate Court. Section 3 of Illegal Dispossession Act, 2005 provides: “*No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owner or occupier of such property*”. The “Occupier” is defined under Section 2(c) of the Act

2005, which means the person who is in lawful possession of a property. However, as per Section 2(d) of the Act, 2005 “owner” means the person who actually owns the property at the time of his dispossession, otherwise than through a process of law. The main ingredients of Section 3, read with Section 2(c) and 2(d), of the Illegal Dispossession Act, 2005 are missing in this case. The question of forcible dispossession is moot question under the Illegal Dispossession Act 2005 and here the applicant has miserably failed to demonstrate that he had ever remained in possession of the property in question and subsequently dispossessed through force at the hands of the Respondents; hence, the impugned order is well-reasoned and sustainable. Consequently, the present Criminal Revision Application is dismissed.

5. According to respondents, there is no legal heir of Ghazala Yasmeen and Iqbal Mateen Babar. Hence until any legal heir appears and/or any forum decides the controversy, subject property shall be attached by the Nazir of this court.

J U D G E

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