

on same set of evidence with regard to same property with nature of same cause of action, they cannot be waxed twice.

4. In contra, learned counsel for respondent while relying upon 2016 SCMR 1931, PLD 2019 SC 739 and 2019 YLR 2307 contends that both cases can be tried separately as under the Illegal Dispossession Act 2005 set of ingredients and proceedings of complaint would be in different manner as well as relief which is of criminal as well civil nature and this is a case of forcible dispossession hence any acquittal in FIR will not affect the proceedings under the Illegal Dispossession Act 2005.

5. At this juncture learned AAG while relying upon 2014 SCMR 1376 also supported counsel for respondent on the plea that on same evidence offence can be tried if punishable through different enactments in different procedures (*fora*).

6. During hearing learned counsel for applicants pointed out objections filed by complainant/respondent No.3 in Illegal Dispossession Petition No.60/2019 while referring paragraphs No.1 to 5, which are that :-

“i). The answering respondent NO.3 is the bonafide purchaser of the subject property viz. Na-class No.01 of Deh Moach, Tappo Gabapat, Karachi West, measuring 04-00 acres, having purchased the same by paying huge amount (through cheques) as part performance from its recorded owner Mr. Ilyas Habib Khanani s/o Habib who acquired the same through registered lease deed dated 20.04.2012 granted by the Govt. of Sindh (land Utilization Department) for 99 years for industrial purpose.

ii). That there is an undisputed civil transaction between the said owner (lease holder) Mr. Ilyas Habib Khanani/vendor and the Respondent No.3/Vendee.

ii). That since the physical possession is yet to be delivered to the Vendee / respondent No.3 by the said Vendor, therefore the question of alleged dispossession of the petitioner and possession of the respondent No.3 does not arises.

(iv). That there is no relation between the answering respondent No.3 and other respondent nor the same has been specified or pointed out by the petitioner.

v). That since the respondent No.3 has paid a huge amount towards the said sale consideration of the said property to its recorded owner, Mr. Ilyas Habib Khanani, who has undertaken to handover the physical possession of the said property to the respondent No.3 undisputedly under the said agreement, therefore the allegations of dispossession of the petitioner by the respondent No.3 is implausible.”

7. Case of the complainant is that he was forcibly dispossessed on 15.03.2019 and that he had purchased property in 2018, whereas Objections filed in Criminal Petition No.60/209 speak that he purchased same property from Ilyas Habib Khanani however possession was not delivered by the vendor to respondent (complainant) and owner was under obligation to hand over the possession to the complainant. These objections were filed on 27.04.2019 before District and Sessions Judge, Karachi West. When this fact was confronted to respondent No.3 (complainant) present with the counsel, he admitted the same and contends that this is a human error.

8. Under these circumstances, when admittedly complainant himself has admitted that he was not in possession on 15.03.2019 and was waiting for possession by the owner, therefore, the question that he was dispossessed on 15.03.2019 lost its value and it is suffice to say that this is not a case of forcible dispossession. Therefore, proceedings of Direct Complaint No.97/2000 pending before the 6th Additional Sessions Judge Karachi West under the

Illegal Dispossession Act 2005 cannot be tried upon applicants, same are hereby quashed.

Disposed of.

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