

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Cr. Appeal No. 465 of 2020

DATE	ORDER WITH SIGNATURE OF JUDGES
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For orders as to maintainability of main case.

06-12-2021

Mr. Zakir Hussain Bughio, Advocate for applicant.
Mr. Ghulam Murtaza, Advocate for respondent No.1.
Syed Mohsin Shah, AAG.
Mr. Talib Ali Memon, APG.

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Omar Sial, J: Habib-ur-Rehman had filed a complaint under section 3 of the Illegal Dispossession Act, 2005 on 13-2-2020. It was contended therein that Habib-ur-Rehman is the owner of a property bearing Flat No.101, 1st Floor, Plot No.8/C, Street No.9, Badar Commercial, Phase-5 Extension, DHA, Karachi. On 18-11-2018, when Habib-ur-Rehman went to the said apartment he found that the lock of the apartment was broken and was informed that one Ali Hasan who was a police constable in Sindh police was residing in the apartment. Ali Hasan declined to vacate the apartment and hence an application was filed.

2. Learned 11th Additional Sessions Judge, Karachi South, on 24.9.2020 passed an order, in terms of which police constable Ali Hasan was directed to immediately vacate the premises and hand over its possession to the SHO of Darakshan police station. It is this order which has been impugned through these proceedings.

3. The learned Judge in his order has observed that there was a dispute regarding the ownership of property between Habib-ur-Rehman and Altaf Hussain, both of whom claim to be the owner of the said apartment. He further observed that in the circumstances where the ownership of the property was in dispute hence proceedings under section 3 of the Illegal Dispossession Act, 2005 was not made out and that the two contesting parties should first approach the Civil Court for determination of the ownership. The learned Judge further ordered that until such time the ownership of the property is disputed the SHO of Darakshan police station was to take over possession of the property.

4. During pendency of this appeal both Habib-ur-Rehman and Altaf Hussain have submitted in person as well as through their counsels that both of them have resolved their dispute and therefore the SHO may be directed to hand over the property to Altaf Hussain. Statements to this effect have also been filed.

5. Mr. Talib Ali Memon, APG submits that neither of the two Habib-ur-Rehman or Altaf Hussain appear to be the owner of the said property, infact learned APG further submits that the person from whom the property was allegedly taken over is not present but that he too is not owner of the property. I am however of the view that the question of ownership of the property cannot be decided in these appellate proceedings emanating from a dismissal of a complaint filed under the Illegal Dispossession Act, 2005. It is up to the various claimants of the property to argue their respective positions before the Civil Court of competent jurisdiction who will then decide the issue of ownership. As far as these proceedings are concerned, the appeal is not being pressed by the learned counsel for Altaf Hussain solely on the ground that as far as the complaint under the Illegal Dispossession Act is concerned, neither the Habib-ur-Rehman nor Altaf Hussain have any grievance in this regard.

6. At this juncture the learned counsel for the appellant submits that the case be remanded back to the learned trial court where he intends to file the requisite application to withdraw the complaint. Order accordingly. The appeal stands dismissed as withdrawn. The parties are at liberty to seek any remedy provided to them in law.

JUDGE