

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

Cr. Appeal No. 196 of 2022

Cr. Appeal No. 197 of 2022

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Date

Order with signature of Judge

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13.07.2023

Mr. Ali Akbar Kamboh, Advocate for the appellants.

Ms. Seema Zaidi, APG.

Appellants are also present.

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1. Through instant Criminal Appeal, the appellants impugned the Judgment dated 09.03.2022 passed by learned Xth Additional Sessions Judge Karachi East, whereby, the appellants were sentenced under the provisions of Illegal Dispossession Act, 2005 to suffer R.I six months and to pay fine of Rs. 3,00,000/- each as compensation to the complainant and in case of default to suffer S.I for two months. These criminal appeals are being determined through this common order.

2. The saga of the ordeal faced by respondent No.2/complainant who was living abroad commenced when his properties being plot No. 510 and 511, Sector 32-a Zia Colony Korangi Township, Karachi (“subject properties”) were illegally occupied by the appellants. The respondent No.2/complainant’s attorney visited the subject properties and came to know the fact that the subject properties were illegally occupied by the appellants which act of the appellants falls within the ambit of Section 3 & 4 of the Illegal Dispossession Act, 2005 (“Act, 2005”).

3. The learned trial Court having heard the respondent No.2/ complainant issued the warrants against the appellants in the sum of Rs.10,000/- each for procuring their attendance who in deference of the said warrants appeared before the learned trial Court and after conducting a full-fledged trial being recording evidence of the litigating parties and statements of appellants under Section 342 Cr.P.C the appellants were convicted as enumerated in the operative part of this order.

4. Learned counsel for the appellants though not ready to proceed with the matter, however, upon query raised by the Court as to whether the appellants having any title documents with them to which the learned counsel for the appellants answered that the appellants having only sale agreements.

5. Learned APG supported the impugned Judgment of the learned trial Court. Upon scanning the record and proceedings available on record it reveals that the learned trial Court based its judgment on the factum that the appellants had not acquired any title documents of the subject properties, whereas, the respondent No.2/complainant having title documents issued by KDA. The appellants during course of trial failed to state or produce any cogent or concrete evidence to the effect that they had purchased the subject properties from the respondent No.2/complainant or his attorney. It is considered pertinent to reproduce the relevant excerpt of the police report submitted by the SHO concerned before the learned trial Court and that the learned trial Court discussed the same in the impugned Judgment and the same is delineated hereunder:-

**“12. On the other hand, the enquiry report submitted by concerned P.S. upon which cognizance was taken by this Court also speak about illegal occupation of accused persons over the subject plot and that the verified owner is actually the complainant of this case. Further, verification report obtained by KDA in respect of lease issued in the name of complainant is also on record. The enquiry conducted by the P.S. or the verification of indenture of lease in favour of complainant remained unchallenged by the accused persons. Hence the accused persons admitted that possession of subject plot was given to them by an irrelevant persons”.**

6. It is gleaned from appraisal of the foregoing that the SHO concern upon directions of the learned trial Court issued under the provisions of Section 5 of the Act, 2005 which inquiry and investigation is special in nature submitted the report to the effect that the appellants are neither the owner of the subject properties nor having any title documents in their possession but are in illegal occupation of the subject properties. It further reveals that the KDA also confirms that according to their record the respondent No.2/complainant is the owner of the subject properties.

7. The appellants claim to have purchased the subject properties through sale agreement. It is deliberated opinion of this Court rendered in several edicts that mere entering into sale agreement does not give any title over the property and that the appellants in this case never entered into the sale agreement with the respondent No.2/complainant who is the real and lawful owner of the subject properties as per Lease Deed produced by him before the learned trial Court (Ex. 3A & 3B available at page 33 to 49 of the paper book). Furthermore, when a sale transaction of an immovable property is challenged, the ultimate onus to prove the same is on the “beneficiary” thereof. However, this onus is shifted on

the “beneficiary”, only when the challenger puts forth some evidence to discharge the initial burden to rebut the legal presumption of truth. In the present case, I noted that appellant had not discharged the initial onus to rebut the execution of lease deed issued by KDA in favour of the respondent No.2/KDA.

8. Possession follows the title. This is a well settled principle. Therefore, unless contrary is proved by cogent evidence, an owner is presumed to be in possession of his property<sup>1</sup>. Respondent No.2/complainant, who is owner of the subject properties, as per the lease deed issued by KDA (Ex. 3A & 3B available at page 33 to 49 of the paper book) is thus presumed to be in possession of the subject properties, since the sanction of the lease deed.

9. The respondent No.2/complainant is an overseas Pakistani and it is considered appropriate to highlight the plight of the overseas Pakistanis in perusing their legal rights in courts in Pakistan. Their disadvantageous position requires urgent positive attention of all organs of the State. Overseas Pakistanis being not present in Pakistan, cannot pursue their cases as efficiently as can be done by the local residents, and are thus in a disadvantaged position in comparison to the latter. They as such form a class distinct from the local residents, based on an *intelligible differentia*. The public institutions can, therefore take affirmative actions and make certain special provisions for the protection of their lawful rights and for the redressal of their genuine grievances. The Sindh High Court has taken certain administrative measures for early decision of the cases of Overseas Pakistanis and to address their complaints regarding undue delay in

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<sup>1</sup> Per Yahya Afridi J. in case of Haji Muhammad Younus v. Mst. Farrukh Sultan (2022 SCMR 1282)

decision of their cases by giving a separate complaint option on its website, they can file online complaint through the website of this Court for redressal of their grievances.

10. In sequel to the above discussion, the impugned judgment of the learned trial Court does not need any interference and the same is maintained. The appeals at hand are meritless and the same are dismissed accordingly. Office is directed to place copy of this order in appeals listed above.

JUDGE

Aadil Arab