

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.S- 152 of 2009

Date of Hearing: 10.04.2023
Date of Judgment: 02.06.2023

Appellant: Allan s/o Sachidino (present on bail) through
Mr.Ghulam Shabbir Mari, Advocate.

The STATE: Through Ms. Safa Hisbani, A.P.G.
None for Respondent No.1.

J U D G M E N T

MUHAMMAD FAISAL KAMAL ALAM, J.- Through the present Appeal, the impugned Judgment is challenged, in which the Appellant has been convicted and sentenced as follows_

“Under Section 3 of Illegal Dispossession Act, 2005, is convicted and sentenced to undergo Rigorous Imprisonment for five years and to pay fine of Rs.1,00,000/-, in case of default, further undergo six months simple imprisonment. The accused is also directed to handover the possession of land in question to the complainant.”

2. Briefly the case of prosecution as mentioned in the FIR is that Appellant has occupied the agricultural land belonging to Respondent No.1, falling in Survey No.655 and 656, admeasuring 2.7 Acres situated in Deh Amin Lakho New Saeedabad District Matiari (**the Subject Land**).

3. An inquiry was ordered. Report was called from the concerned Police Officials under Section 5 of The Illegal Dispossession Act, 2005 [**the said Act**], which shows that the Respondent No.1 is the Owner of the Subject Land, but the Appellant is in possession. Cognizance was taken and a formal

Charge was framed under Section 3 of the said Law (Ex.1). Evidence was led by prosecution and present Appellant also recorded his statement under Section 342 of Criminal Procedure Code, Ex.9 [but did not examine himself on oath], wherein he has denied the allegation of occupying the Subject Land forcibly and stated that it was purchased by him through an Agreement [oral agreement] from the Deceased Father (Rehmatullah) of Respondent No.1 for a sum of Rs.100,000/- (Rupees One Lac), in presence of the witnesses and he has paid full price to the Deceased, whereafter physical possession of the Subject Land was handed over to him in the year 1986.

4. Mr. Ghulam Shabbir Mari, learned Advocate for the Appellant has argued that the impugned Judgment does not fall within the parameters of Law, as the learned Appellate Court has not evaluated the evidence properly. Contended, so also mentioned in the grounds of Appeal, that the learned Appellate Court did not consider the fact, that witnesses of Complainant were interested and related inter se and their independence was doubtful and hence veracity of their testimonies was questionable; contended that factum of the illegal dispossession was not properly determined and there is contradiction in the version of Respondent so also prosecution story, because, the Appellant is in occupation of the Subject Land as purchaser. The learned Appellate Court, it is argued, did not give a finding on the point that the Complaint was filed by Ali Murad who is claiming to be the guardian of Respondent No.1 (Wajid) but no Guardianship Certificate was produced and the Complaint of the nature cannot be filed through an Attorney or Guardian as is done in the present case. He has cited the following case law to support his arguments:-

- (i) Qasim v. Ghulam Mustafa alias Gulo and 5 others – 2019 P.Cr.L.J 1249.

- (ii) Muhammad Qasim v. Station House Officer, Police Station Khudabad, District Dadu and 7 others – 2016 MLD 1238.
- (iii) Basar and others v. The State and another – 2018 P.Cr.L.J Note 8.
- (iv) Eid Muhammad v. The State – 2022 MLD 630.

5. The above argument was refuted by learned A.P.G who has supported the impugned Judgment and argues that it has properly assessed the evidence and factum of dispossession of Respondent No.1 being Owner, has been proved, consequently under Section 3 of the said Act, the Judgment is handed down.

6. Arguments heard. Record perused.

7. The record shows that after the impugned Judgment dated 31.08.2009, the Appellant was taken into custody and after filing of present Appeal, on 16.09.2009, this Court suspended his sentence.

8. The first prosecution witness is Ali Murad, who as a Guardian of Wajid [the Complainant], has pursued the Complaint. He deposed in support of the Complaint; stated that the Father of the Complainant [Wajid] passed away on 17-8-2006; that Subject Land is illegally occupied by the Appellant, who also started cultivating it; that the Subject Land be given back to the orphan, that is, Wajid. In cross examination he has categorically denied the suggestion that Subject Land was purchased by the Appellant in the year 1986. He has accepted that he did not produce the Guardianship Certificate to file Complaint on behalf of the actual owner Wajid, but has stated that Wajid is his nephew and a minor. He has produced the Extract of Ownership [exhibit 4] in his evidence showing the name of Wajid as Owner of the Subject Land.

The second witness is Muhammad Hassan, who has categorically denied the suggestion of Appellant's counsel, that the said witness was

working as Kamdar of any other person, as the said witness states, that he himself owns 40 to 50 acres of land. He has corroborated the version of the Complainant, that the Appellant occupied Complainant's land and the land of this witness is situated at a kilometer away.

The third witness is Kamaluddin who states that he owns a Cycle shop however, he could not reply about the date and time when the Subject Land was occupied by the Appellant.

Conversely, the Appellant neither examined himself on Oath, nor produced the alleged witnesses, regarding whom the Appellant has stated that in their presence he purchased the Subject Land from the deceased Father of the Complainant.

9. The contention of the Appellant's counsel is not correct, that witnesses are interested witnesses, nor the testimony of last witness in which he is unable to exactly depose about the date and time of illegal occupation, has shattered the testimonies of other witnesses, who remained consistent in their stance.

10. The argument of Appellant's counsel, that the Complaint under the said Act cannot be filed through a Guardian [Ali Murad], is untenable, and the case law relied upon by him (*supra*), in this regard, is distinguishable; because, there is no such bar in the above Statute itself; **secondly**, the right of ownership in respect of a property, coupled with to use and enjoy the same, by its legitimate owner, is a right guaranteed under the Constitution of Pakistan and to ensure that this fundamental right of a citizen is not violated, the said Act [*supra*] is enacted, with an object to protect the ownership and possessory rights of genuine and lawful owners, as contained in the Preamble of the above Act, which has a status of a special statute. Thus, a complainant under the above Act, cannot be deprived of a remedy, if his ownership and

dispossession is undisputed, merely on the ground that he has initiated a complaint through an attorney or guardian, who has no conflict of interest with the complainant. **Thirdly**, the evidence of witnesses and official record, leads to the conclusion that Subject Land is owned by Wajid, who at that time was minor and thus his interest was protected by Ali Murad, who is his near relative; hence, since the said Ali Muad has no conflict of interest with the minor Wajid [the Complainant], hence, no illegality is committed by the learned Trial Court, in allowing the said Ali Murad to prosecute the present Appellant.

11. The learned Trial Court has correctly done the appraisal of evidence and has rightly reached the conclusion, and no illegality as such has been pointed out by the Appellant, justifying, interference at this appellate stage. Record of present Appeal shows that the Respondent No.1 is not regular in his appearance, and nothing adverse has surfaced that the Possession of the Subject Land has not been handed over back to Respondent No.1, as directed by the learned Trial Court. However, considering that the present Appeal is pending since fourteen years (approximately) and Appellant though on Bail, but, continuously facing this litigation, coupled with the fact that Prosecution has not brought on record any other criminal case against the present Appellant to show that he is a habitual offender, therefore, the impugned judgment is modified and the sentence awarded to the Appellant is reduced to the period of his confinement already undergone; besides, reducing the quantum of Fine of Rs.100,000/- (Rupees One Lac) to Rs.50,000/- (Rupees Fifty Thousand), to be payable in two installments within two (2) months from today, failing which the same shall be recovered from the Appellant as arrears of land revenue.

12. With the above modification in the impugned Judgment, the present Appeal stands disposed of. Appellant is present on bail, his bail bond stands cancelled and surety is hereby discharged.

JUDGE

Tufail