

ORDER SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Revision Application No.S-112 of 2015

Date of hearing: 29-05-2015.

Date of decision: 29-05-2015.

Applicant: Through Mr. Rasool Bux Solangi, advocate.

MUHAMMAD IQBAL KALHORO, J: -By means of this revision application, applicant has called into question the order dated 05-05-2015, passed by the Additional Sessions Judge, Umerkot dismissing his direct complaint, filed against the respondents wherein he claimed that he was in possession of a plot admeasuring about one acre surrounded by a boundary wall with one wash room duly constructed thereon, situated in his village about 10 / 15 feet from his house for the last many years. He further claimed that on 25-0-2014 at about 10-00 a.m. when he was present over the said plot along with his witnesses, the accused / respondents came over there duly armed weapons and illegally dispossessed him. In the wake of his dispossession, he filed the above direct complaint, during course of which learned Court called reports from the Mukhtiarkar and SHO concerned.

2. Mukhtiarkar concerned in his report has stated that disputed plot is admeasuring about 11656 square feet, which is a Government Barani land and was in fact, in possession of late Muhammad Umer Bajeer. Regarding the applicant, it has been stated that he had occupied the disputed plot illegally and had got illegally constructed there one wash room and two katcha rooms without roof.

3. The SHO concerned in his report has stated that after due inquiry, it has transpired that the disputed plot is Government Land which was in possession of Bajeer community. After perusing such reports submitted by the Mukhtiarkar and SHO concerned, learned Court came to the conclusion that there was no substance in the allegation leveled by the applicant against the respondents and dismissed the same.

4. Mr. Rasool Bux Solangi, learned counsel for the applicant in order to make out his case has argued that the learned Court has not properly appreciated the factum of possession in favour of the applicant, which he states the Mukhtiarkar and SHO concerned have admitted in their reports i.e. the possession of the disputed plot was with the applicant. In order to support his contention, he has referred to a portion of the report of Mukhtiarkar.

5. I have gone through the impugned order as well as the reports of Mukhtiarkar and the SHO concerned. During the course of arguments, I have put a query to the learned counsel to establish how the applicant is owner of the plot as claimed by him in para No.9 and 11 of his complaint. His simple reply is that since the Mukhtiarkar concerned has admitted in his report that the disputed plot is in the possession of the applicant, therefore, his possession over the plot and ownership is established. With due respect to the learned counsel such unsubstantiated arguments cannot be acceded to, for the reason that an illegal occupier cannot be considered as an owner of the plot or bonafide possessor of the property. The illegal occupier just because of his possession would not be equated with the owner of the premises or the one who is in possession of the property in pursuance of some agreement. The report of Mukhtiarkar unequivocally has established that the applicant is an illegal occupier, who does not possess any document to prove his ownership. For ready reference the relevant portion of Mukhtiarkar's report is reproduced herewith: -

"The statement further reveals that now Mr. Lal Bux Solangi has occupied the disputed plot illegally and has constructed

there in one wash room and two katcha rooms (without roof) while the rest area is lying open. The disputed plot is covered by "LOHRO" from three sides."

6. Both the reports submitted by Mukhtiarkar and SHO concerned have established that the disputed land is a Government Barani land and in fact, was in possession of Bajeer community. Learned counsel has not been able to produce any documents showing either the ownership of the disputed plot or the possession whereof by the applicant. In absence of any thing in favour of applicant, no criminal proceedings can be initiated against the respondents. The claim of ownership made by the applicant in para No.9 and 11 of the complaint is not supported by any material produced by him. In my view the applicant has failed to make out his case even prima facie for issuance of process against the respondents.

7. Under the facts and circumstances, I do not find any merit in the instant application which is accordingly dismissed in limini.

JUDGE

A.C