

Date

Order with Signature of Judge

- 1- For Order on office Obj: A
- 2- For Katcha Peshi

23-9-2016.

Mr. Sam Dino G. Shaikh, advocate for applicants;

Mr. Khedim Hussain Khoshro, D.P.

Mr. Sabir Ali Shaikh advocate files power on behalf of respondents No. 2, 4 & 5 and seeks time for preparation. Adjourned to 21-10-2016.


Judge

- 1- For Order on office Obj: A
- 2- For Katcha Peshi

21-10-2016.


Mr. Sam Dino G. Shaikh, advocate for applicant

Mr. Syed Sarder Shah, D.P.

Mr. Sabir Ali Shaikh for Resp. 3 & 5.

For the reasons to be recorded

Order on this Criminal Revision Application dismissed.


Judge

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CERTIFICATE OF THE COURT IN REGARD TO REPORTING

G. Rev Nos. 29/2016

Allah Rakho and another vs. The State and others

SINDH HIGH COURT

Composition of Bench

Before Mr. Justice Zafar Ahmed Rajput

Single/D.B.

Dates of hearing: 21-10-2016

Decided on : 21-10-2016

(a) Judgement approved for reporting.

☒ YES

☐ No

[Signature]

CERTIFICATE

Certified that the judgment • / Order is based upon or enunciates a principle of law • / decides a question of law which is of first impression / distinguishes / over-rules / reverses / explains a previous decision.

•Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

ORDER SHEET

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, LARKANA.**

Criminal Revision Application No.S-29 of 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

Applicants : Allah Rakhyo & another, through
Mr. Sian Dino G. Shaikh, Advocate

Respondent No.1 : The State, through Mr. Syed Sardar
Ali Shah A.P.G.

Respondents No.2 to 5 : Muhammad Nawaz & others, through
Mr. Sabir Ali Shaikh, Advocate

Date of hearing : 21-10-2016.

Date of order : 21-10-2016.

ORDER

ZAFAR AHMED RAJPUT, J:- This criminal revision application under section 439 r/w section 435 of the Cr. P.C. is directed against the order dated 02.05.2016, whereby the learned Sessions Judge, Jacobabad dismissed the Illegal Dispossession Complaint No.15 of 2015 (*Re: Allah Rakhyo & another v. Muhammad Nawaz and others*), filed by the applicants/complainants, under section 3 (3) of Illegal Dispossession Act, 2005, (hereinafter referred to as the “Act, 2005”).

2. Briefly facts of the case are that the applicants above- named filed aforementioned I.D. Complaint before the Court of Sessions Judge, Jacobabad averring therein that they as well as their women-folk are the owners of land, to the extent of their shares, bearing survey Nos. 127, 107, 119, 120, 143, 144, 145,146, 149, 150, 165, 166, situated in Deh Khoso, Tapu Thul Purano, Taluka Thul (hereinafter referred to as the “land in



question") being their inherited property. It has further been averred that on 09.06.2015 the respondents No. 2 to 5/proposed accused without any right or title in or over land in question, illegally and forcibly occupied the same by dispossessing the applicants.

3. The learned Sessions Judge, Jacobabad after holding investigation under section 5 of the Act, 2005, dismissed the complaint, vide order dated 02-05-2016, holding the same as not maintainable by observing that occupation of the respondents No. 2 to 5 on the land in question is not illegal and the dispute between the parties is purely of civil nature, as contractual issues are involved in the matter; besides, the respondents are neither reported to be land-grabbers nor they are part of land mafia. It is this order against that instant criminal revision application has been maintained by the applicants.

4. I have heard the learned counsel for the parties and A.P.G. for the State and perused the material available on record.

5. Learned counsel for the applicants has contended that the applicants are joint owners of the land in question to the extent of their respective shares, which they inherited from their deceased fathers, namely, Mehmood Sarki and Sher Muhammad Sarki, respectively, and such entries bearing No. 11 and 12, dated 16.05.2013 stand mutated on their names in record of rights. He has further contended that the respondents No. 2 to 5 are big guns of the area, they have closed relations with the politicians and land grabbers and they illegally occupied the land in question by dispossessing the applicants. He has also contended that the learned trial Court without



applying its judicious mind dismissed the complaint merely relying upon the reports of Mukhtiarcar and S.H.O concerned.

6. Per contra, learned counsel for the respondents No.2 to 5 has maintained that neither the applicants have any right and title nor even they have been dispossessed by the respondents from the land in question, as the respondents are in possession of the land in question being its owners, and they purchased the land in question from one Muhammad Ali Khan Sarki, who had purchased it from the relative of the applicants. He has further maintained that such fact was in the knowledge of the applicants much prior to the filing of the criminal complaint, which was rightly dismissed by the learned trial Court holding the same as not maintainable in law.

7. Learned A.G.P supporting the impugned order has asserted that it reflects from the report of Mukhtiarcar concerned that at no point of time the applicants and their ancestors were in possession of land in dispute, therefore, no question of their dispossession arises. He has further asserted that better course available to applicants is to seek their remedy from competent civil court having jurisdiction.

8. I have given due consideration to the contentions of learned counsel for the parties.

9. It may be observed that a complaint under the Act, 2005 can be entertained by the Court of Session only if some material exists showing involvement of the person(s) complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an organized or calculated efforts by some persons



operating individually or in groups to grab by force or deceit property to which they have no lawful, ostensible or justifiable claim. In order to constitute an offence under section 3(1) of the Act, 2005, the complainant should allege and show before the Court (i) that the complainant is the actual owner (or occupier i.e., in lawful possession) of the immovable property in question; (ii) that the accused has entered into (or upon) the said property; (iii) that the entry of the accused into (or upon) the said property is without any lawful authority; (iv) that the accused has done so with the intention to dispossess (to grab or to control or to occupy) the complainant.

10. The case of the applicants is that being ancestral property, they were in possession of land in question but they were dispossessed from it by the respondents No. 2 to 5 on 09.06.2015. In this regard enquiry report, submitted by the Mukhtiarcar (Revenue), Thul in compliance of order of trial Court on dated 25.4.2015, is not supportive to the allegation of the appellants. For the sake of convenience, the relevant portion of said enquiry report is reproduced herein under:

1. *That according to Revenue record vide entries No.3 & 22 dated 29.11.1984, Mr. Sajjan Daud Sarki (Grandfather of the complainant) was share holder of the agricultural land bearing survey numbers 127, 107, 119, 120, 143, 144, 145, 146, 149, 150, 165, 166, situated in Deh Khoso, Tapu Thul Purano, Taluka Thul. In the year 2013, the title was changed and transferred without possession in favour of the complainant & other, as reported by the Tapedar of the beat.*

2. *That out of above, the survey numbers. 127, 107, 119, 120 are cultivable and others are uncultivable, which are*




under the physical possession of Muhammad Nawaz and others (accused persons) who have purchased the land on possession basis from the other person named Mr. Muhammad Ali Khan Sarki, notable of the area.

(Emphasis supplied)

11. It is obvious that the record of rights was mutated in favour of applicants in respect of land in question without possession. Meaning thereby the applicants as well their ancestors were not in possession of land in question when the record of rights was mutated in their favour. The applicants also failed to bring on record any material to establish that at any point of time they were in occupation of land in question; hence, no question of their dispossession by the hands of respondents No. 2 to 5 arises.

12. For the foregoing facts and reasons, I am of the view that the learned counsel for the applicants on merit has failed to point out any illegality, perversity or nullity in the impugned order calling upon interfering by this Court; therefore, there appears no reason for this Court to interfere into the impugned order, which seems to be a legal order passed in accordance with law, as such this criminal revision application being devoid of merit is dismissed, accordingly.

13. Above are the reasons of my short order dated 21.10.2016.


27/10/2016
JUDGE