

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Crl. Misc. Application No.172 of 2016

Date	Order With Signature Of Judge
<ol style="list-style-type: none"> 1. For orders on office objection flag-A 2. For hearing of Main Case. 3. For hearing of M.A. No.1089/2016 	

02.03.2017.

Mr. Jameel Ahmed Shah, Advocate for applicant
Mr. Mir Muhammad Jamali, Advocate for respondent No.1
Ms. Seema Zaidi, A.P.G.

ORDER

MUHAMMAD IQBAL KALHORO, J: Applicant is seeking quashment of the direct complaint bearing No.03/2015, filed under Section 3, 4 read with Section 8 of the Illegal Dispossession Act, 2005, pending before the II-Additional Sessions Judge, Thatta on the ground that there is a civil litigation between cousins of the applicant namely Ghulam Muhammad and Umar, who are in possession of the subject plot, and the applicant.

2. Record reflects that respondent No.1 has filed above stated complaint and in para No.3 thereof he has alleged that he had purchased a plot admeasuring 4840 sq. yards out of survey No.102 from his brother. On 01.04.2014 when he along-with witnesses was present at the said plot, the applicant along with 10 to 15 unknown persons came over there and occupied the said plot illegally. It appears that during pendency of the aforesaid direct complaint, the applicant filed an application under Section 265-K Cr. P.C. before the trial Court, which was dismissed vide order dated 29.10.2016, and while dismissing the said application the trial Court has observed that the applicant is in possession of the said plot, his counsel has admitted that he has no title documents to show his ownership of the said plot, and in view thereof the controversy between the parties could not be resolved unless the evidence is recorded.

3. I have heard both the parties and perused the material available on record.

4. Learned Counsel for the applicant has mainly argued that the applicant is residing with his cousins namely Ghulam Muhammad and Umar, who are in occupation of the said plot since 1997, as such, there is

no question that the said plot was occupied by the applicant in the year 2014 as alleged in the direct complaint. Learned counsel further in support of his contention has referred to the civil litigation pending between brother of the respondent No.1 and the cousins of applicant before this Court over the said plot.

5. On the contrary, learned Counsel for the respondent No.1 has argued that the applicant is admittedly an encroacher, which is evident from the record; that the relevant record of the plot was called from the Mukhtiarkar concerned and others government officials at preliminary stage of the Direct Complaint who have submitted the same mentioning clearly therein that applicant has encroached on the said plot.

6. The contention raised by the learned counsel for applicant that applicant is simply residing with his cousins over the said plot as co-resident and they occupied the same in the year 1997 cannot be appreciated unless the evidence of the parties is recorded and the relevant material is placed on record to find out the relevant facts. The admission of the learned counsel for the applicant that the applicant is residing on the said plot without any title documents is sufficient to prima facie establish existence of a case under provisions of Illegal Dispossession Act. It may be mentioned that mere pendency of the civil litigation over any property would not debar an owner or occupier of the property to launch a direct complaint against his illegal dispossession, because admittedly the scopes of the civil litigation and a direct complaint under Illegal Dispossession Act are quite independent and different to each other.

7. Learned A.P.G. has also supported the impugned order and states that an opportunity be afforded to both parties to present their case before the trial Court through evidence, so that the decision on merits could come. And I see no reason to disagree with the said suggestion. Accordingly, the instant CrI. Misc. Application is dismissed along with listed applications. The trial Court, however, is directed to expedite the trial and conclude the same preferably within a period of three (03) months.

JUDGE