

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Revision Application No.S-170 of 2023.

Nabi Bux & others

v.

Abdul Sattar & others.

Applicant : Nabi Bux through Mr. Muhammad Jameel Khatri,
Advocate.

Respondent : The State through Mr. Nazar Muhammad Memon,
Addl: P.G a/w Mr. Riaz Ahmed (Mukhtiarkar
Revenue), Bulri Shah Karim.

Date of hearing : 14.05.2025.

Date of Decision : 14.05.2025.

O R D E R

Miran Muhammad Shah, J:- The applicants by way of instant Cr. Revision Application have impugned an order dated 26.10.2023 passed by learned Additional Sessions Judge-II, Tando Muhammad Khan in I.D Complaint No.19 of 2023, whereby complaint filed under Illegal Dispossession Act was dismissed.

2. It is contended by the learned counsel for the applicant that the order passed by the learned trial Court is against the law & facts; that the learned trial Court had failed to consider the contents of complaint filed under Illegal Dispossession Act, wherein the complainants clearly mentioned commission of offence, which had fully attracted the ingredients of Illegal Dispossession Act-2005, but learned trial Court in a hasty manner had passed impugned order, which is nothing but bad in the eyes of law; that the impugned order is result of misreading and non-reading of material available; that prima facie a case under Illegal Dispossession Act has been made out. He prayed that the application in hand may be allowed and learned trial Court may be directed to take cognizance against the respondents.

3. On the other hand, learned Additional Prosecutor General argued at some length and supported the impugned order passed by the learned trial

Court. He further contended that no ingredients of Illegal Dispossession Act are attracted hence, the application in hand being devoid of merits is liable to be dismissed.

4. Heard & perused.

5. For the sake of brevity, I feel it appropriate to reproduce the relevant portion of impugned order passed by the learned trial Court.

“Bone of contention between parties is a house which is situated near to house of complainants of instant complaint. Their claim is that it is their property and now on 28.09.2023 at 05-30 hours of evening proposed accused on gun point have occupied it. Proposed accused are present in the court and stated that Mst. Shahzadi is sister of Photo Khan and daughter of Mehmood and since last more than 50 years she is residing there. Photo Khan, the father of complainants No.01 to 03 and husband of complainant No.04 at first instant deprived her from due share of estate of her father Mehmood Khan and now complainants going to dispossess her from house in question. Representative of Mukhtiarkar Taluka Bulri Shah Karim is present in the Court and stating that disputed house is constructed over there since long even its some portion is also at BHADA land of government. SIP Irshad Ali of PS Taluka Tando Muhammad Khan submitted report and in open Court stated that they have inquired the matter at site and found that since period of more than 40 years subject house is there and no illegal dispossession as alleged in complaint on 29.08.2023 was taken place. Reports of Mukhtiarkar and SHO PS Taluka Tando Muhammad Khan also showing that no incident of dispossession as alleged on 29.08.2023 was taken place. Apart from above facts, a copy of judgment dated 22.02.2022 passed in F.C No. 114/2021 is attached by the complainant with their complaint and its perusal reveals that Mst. Shahzadi is sister of Photo Khan and wife of proposed accused No. 01 Abdul Sattar but she was deprived from her due shares by her brother Photo Khan from the property discussed in para No.2 of instant complaint. Here I am clear in my mind that no offence of illegal dispossession on 29.08.2023 as alleged in para No.9 of complaint was taken place thus instant complaint being devoid of merits stands dismissed.”

6. The Act prohibits anyone from entering or taking control of property without lawful authority, with the intent to dispossess, grab, control, or occupy it from the rightful owner or occupier, but here the case is different and from the face of facts narrated and reports received from concerned officials, it transpires that matter is purely of civil nature as earlier discussed

by the learned trial Court in its impugned order, which has been dragged into criminal litigation/jurisdiction. On this very subject property, the Suit has already been decided and decree has already been passed as per the documents filed by the applicants themselves. There is a mechanism provided under the Civil procedure. Nowhere the implementation of the civil decree is prescribed taking such matters to the criminal jurisdiction neither serves purpose nor provides any relief to the party concerned. Even in this case, a report of the Mukhtiarkar Bulri Shah Karim has been taken on record, which prescribes the details of the Khata and their ownership. The report clearly shows the ownership and deprivation of shareholders from their due share. It also shows the ownership of all concerned. However, despite all this for resolution of any dispute in this regard is solely to be decided by the Civil Court concerned and not by the Courts having jurisdiction of Illegal Dispossession Act, therefore, I am of the opinion that the impugned order passed by the learned Additional Sessions Judge-II, Tando Muhammad Khan does not possess any illegality, therefore, same is hereby **upheld**. The Cr. Revision Application in hand is hereby **dismissed** being not maintainable on the point of jurisdiction.

JUDGE

Ali.