

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Criminal Appeal No.452 of 2010
CrI. Revision Application No.174 of 2010

Appellant	Ghazanfar Rehman son of Shaikh Aziz- ur-Rehman through M/s. Salahuddin Khan Gandapur and Safeeruddin Khan Gandapur.
Complainant	Abdul Bari S/o. Abdul Sami (Late) through Mr. Muhammad Hanif Kashmiri, Advocate.
The State	Through Mr. Muhammad Iqbal Awan, Additional Prosecutor General.
Date of Judgment	16.01.2024.

J U D G M E N T

MOHAMMAD KARIM KHAN AGHA, J.- Accused Ghazanfar Rehman son of Shaikh Aziz- ur-Rehman was tried in the Court of IIIrd Additional Sessional Judge Karachi South for offence under section 3 & 4 of Illegal dispossession Act, 2005 and vide judgment dated 11.10.2010 the accused was found guilty of the offence under section 3 & 4 of Illegal dispossession Act, 2005 and was convicted and sentenced to undergo R.I. for two years and to pay fine of Rs.100,000/- and in case of default, the accused shall suffer S.I. of six months more.

2. The brief facts of the case are that complainant Abdul Bari S/o Abdul Sami has filed complaint through his counsel under Section 3 & 4 of Illegal Dispossession Act, 2005 alleging therein that Mst. Amtul Saboor Begum W/o Haji Zamir Ahmed Shaikh was the sole, absolute and lawful owner in possession of Flat No.B-2 of the building constructed on plot No.32-C situated at Stadium Lane No.3 Phase-V Pakistan DHA Karachi which was registered and executed through Sub-lease Deed. He further added in the complaint that Mst. Amtul Saboor was expired on 02.01.1998 at UK and her dead body was brought at Karachi and she had left many persons as her legal heirs those are living abroad and her son namely Shafat Ahmed Shaikh had appointed the complainant for management, supervision, control and administration in

respect of above said flat. He further added that the said flat closed for many years as circumstances above but complainant was used to visit the said flat from time to time and the same was in his possession. He further added that on 18.04.2009 complainant visited the said flat and found the locks broken and the said Flat was lying in possession and occupation of some other person who has illegally un-authorizedly with malafide intention without any legal authority removed air-condition fridge/freezer kitchen utensils beds etc. which were lying therein and had illegally occupied the same. He then informed the situation to Mr. Shafat Ahmed Shaikh, who came there and made inquiries himself and then submitted written complaint to SHO PS Darakhshah on 16.05.2009 but no action had been taken on such application then he filed another application on 14.07.2009. Hence he filed this Misc. Application with prayer to entertain the above complaint. The same may please be sent to the SHO PS Darakhshah with direction to make proper investigation and to record the statements of the parties. The statements of the respective witnesses were recorded and thereafter submitted such report of the said inquiry before the Court for the purpose of further action and the said flat may please be handed over to the complainant with direction to accused to deliver the physical vacant possession of the same to complainant failing wherein the complainant may be put into possession of the aforesaid flat through the SHO PS Darakhshah.

3. After receiving the complaint, the notice was issued to the SHO PS Darakhshah who was directed to investigate the matter and then submit the report. After conducting investigation he has submitted his report in which he has stated that he has inquired from mohalla people who informed him that the above named accused has broken the locks and then illegally occupied the said flat. Thereafter complaint of the complainant admitted and bailable warrants against the respondent/accused had been issued in the sum of Rs.25,000/-.

4. The charge was framed against the appellant to which he pleaded not guilty and claimed trial.

5. The complainant in order to prove his case examined 04 Prosecution Witnesses and exhibited various documents and other items. The accused in his section 342 Cr.P.C. statement denied the allegations leveled against him and claimed that he was the lawful owner of the property in dispute. He gave evidence under oath and also called 02 DWs in support of his defence case.

6. After hearing the parties and appreciating the evidence on record, the trial court convicted and sentenced the appellant as set out earlier in this judgment; hence, the appellant has filed this appeal against his conviction.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment and as such there is no need to reproduce the same in order to avoid duplication and unnecessary repetition.

8. After initial reading out the evidence, learned counsel for the appellant stated that the appellant present in Court on bail would plead guilty to the charge and sought only reduction in sentence to some reasonable extent based on the following mitigating circumstances:-

- a) That the appellant was first time offender and is capable of reformation.
- b) That the appellant had a large family to support.
- c) That by accepting his guilt the appellant has shown genuine remorse and saved the time of this Court.

9. Based on these mitigating circumstances mentioned by the appellant, learned Additional Prosecutor General Sindh and learned counsel for the complainant on instructions of the complainant had no objection to the reduction in sentence to some reasonable extent.

10. I have gone through the evidence on record and find that the property in question was initially owned by Mst. Fauzia Saleem and was sold to Mst. Amtul Saboor Begum who latter expired in England and the property passed to her legal heirs. The Sale Deed produced by learned counsel for the appellant appears to be forged. It is also an un-registered document and as such the appellant has no title documents, as such the prosecution has proved the case beyond any doubt that the property belongs to Mst. Amtul Saboor Begum and the conviction of the appellant is maintained.

11. With regard to sentence based on the mitigating circumstances mentioned above and the no objections given by the learned Additional Prosecutor General Sindh and learned counsel for the complainant the sentence of the appellant is reduced to the time already spent in jail. The fine imposed on him is waived off. The bail bond of the appellant Ghazanfar

Rehman is discharged and he is free to go. The property in dispute bearing Flat No.32-C, situated at Stadium Lane No.3, Phase-V, Defence Housing Authority is said to be in the possession of the Nazir of this Court. It is made clear that the property was originally owned by Mst. Amtul Saboor Begum who has now expired and the property has now vested in her legal heirs Shafaat Ahmed Shaikh being son of the deceased Mst. Amtul Saboor Begum and others and as such the Nazir of this Court is directed to hand over possession of the aforesaid flat to the complainant Abdul Bari who holds the Power of Attorney of the legal heir Shafaat Ahmed Shaikh who shall retain the property on behalf of Shafaat Ahmed Shaikh subject to rights of any other legal heirs which there may be, upon proper verification of the Power of Attorney and in accordance with rules.

12. Learned counsel for the complainant withdraws his Criminal Revision Application No.174/2010 which is dismissed as withdrawn. The appeal is disposed of in the above terms.

JUDGE

M. Arif