

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr.Rev.Appl. No.197 of 2013.

Date	Order with signature of Judge
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For Katcha Peshi:-

Mr. Muhammad Zeeshan, Advocate for the Applicant, along with
Mst. Sitara Begum, the Applicant.

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08.01.2014.

Notice was ordered to be issued on 30.12.2013 to the respondent No.1 and as per bailiff report the same has been duly served but none is in attendance. In addition to this, notice was also sent through TCS by this Court which has also been duly served. The instant Criminal Revision Application has been filed against the order dated 26.11.2013 passed by the learned Additional Sessions Judge Karachi East, on an application under Section 7 of the Illegal Dispossession Act 2005 (Act XI of 2005) in Criminal Complaint No.05 of 2013 whereby the same has been disposed of in the following terms:

“Since the dispute with the parties over the property is pending before IIIrd Senior Civil Judge, Karachi East and the respondent has claimed in the suit that the applicant has sold out the property to the respondent and yet the sale deed not been executed for that he has filed suit for Specific Performance of Contract when the title is yet been disputed let the parties first decide their civil litigation thereafter in view of the decision and facts of the civil suit this application would be consider but at this stage if interim order is passed which would be defeated the case of either side and in ode to save he valuable right of the parties this application is time being disposed of”.

The learned counsel appearing for the Applicant contended that the civil dispute pending before the First Senior Civil Judge Karachi East in Suit No.1023 of 2011 was in respect of Specific Performance of the alleged Sale Agreement in respect of the First Floor of the property in question

claimed to have been entered and executed by the Applicant. Per learned counsel the learned Additional Sessions Judge has failed to appreciate that complaint under the Illegal Dispossession Act 2005, made by the present Applicant was in respect of the possession of the ground floor of the property in question which was taken over by the respondent No.1 without any lawful authority and due process of law. Learned counsel further contended that the report of Saudabad Police Station, Karachi has also not appreciated the fact, that as per the pleadings and the prayer made in the Suit, the respondent No.1 was never in possession of the ground floor of the premises in question. Learned counsel referred to the plaint and the Affidavit-in-evidence filed on behalf of the respondent No.1 before the learned Senior Civil Judge.

Despite service of the notice none is present on behalf of the respondent No.1 hence the matter is decided with the assistance of the learned counsel for the Applicant and record available before this Court. At the time of issuing of notice on 30.12.2013 a question was framed by this Court that “*whether in the circumstance when illegal Dispossession is alleged can the civil proceedings be used as a shield to avoid criminal liability*”. It appears from the record that the respondent No.1 has filed a Civil Suit in respect of Specific Performance of Contract, Possession and Injunction. In prayer clause-(b) the respondent No.1 has prayed as follows:

“to direct the defendant jointly and severally to handover the vacant and peaceful possession of ground and second floor of House No.G 84/1 Malir Colony Karachi to the plaintiff”.

Similarly in the Affidavit-in-evidence filed by the plaintiff in para-6 the following fact have been stated which is reproduced hereunder:-

“That the defendant Nos.1 to 9 also deliver the vacant possession of entire First floor of suit house to the plaintiff along with original allotment order of suit house and the defendants No.1 to 9 promised to deliver the vacant possession of ground floor of x (Sic) suit house but the defendant Nos.1 to 9 failed to fulfill their commitment”.

Similarly in the Affidavit-in-evidence of one Muhammad Iqbal who claims to be claimed an attesting witness of the sale agreement, the same stance has been maintained. Para-2 of the Affidavit-in-evidence is reproduced hereunder:-

“That I say that the plaintiff and defendant Nos.1 to 4 & 8 namely Sitara Begum, Shahid Meer, Arshad Meer, Rashid Meer and Azra Naz signed the sale agreement dated 14.2.2011 in my presence as well as in the present of other witness namely Muhammad Sahamim for the total sale consideration of Rs.29,00,000/- and at the time signing of sale agreement the plaintiff paid a sum of Rs.1,50,000/- to the defendants No.1 to 4 and 8. The first floor of suit house is in possession of plaintiff being the capacity of bonafide purchaser”.

It appears that the learned Additional Sessions Judge has disposed of the application under Section 7 of the Act, merely on the basis that since a Civil dispute is pending between the parties, therefore the same could not be entertained at this stage. Though it does not seem to be a correct view, but nonetheless, even in the Civil proceedings, the respondent No.1 has not said or claimed that he was ever in possession of the ground floor of the disputed property which is clearly reflected from the pleadings and the Affidavit in evidence reproduced above. At the relevant time, it is evident that the respondent No 1, was not in possession of the Ground Floor of the said property and hence the issue of Dispossession can be decided under the Act of 2005, independently of the Civil proceedings in so far as the claim of the Applicant with regard to unlawful and illegal Dispossession of the Ground Floor is concerned. Therefore it seems that the learned Additional Sessions Judge has not appreciated this aspect of the case.

Be that as it may, therefore the impugned order passed on 26.11.2013 is hereby set aside and the matter is remanded to the learned Additional Sessions Judge with a direction to Re-examine the matter in view of the above findings and so also call a fresh investigation report from the concerned SHO of P.S. Saudabad to ascertain the position as stated by the respondent No.1 in its pleadings. After such examination and investigation, the learned Additional Sessions Judge is directed to decide the application under Section 7 of the Act 2005 filed by the Applicant within a period of 30 days from the receipt of this order.

This criminal revision application stands disposed of in above terms.

Shahid

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