

# IN THE HIGH COURT OF SINDH, KARACHI

## **Criminal Revision Application No.63/2013**

Applicant: Muhammad Saeed through Ms. Humaira Nadeem Rana, Advocate.

Respondent No.1: Muhammad Farid through Mr. Sadat Hassan, Advocate.

Respondents No.2&3: Abdul Raheem and Mehboob Alam through Mr. Saifullah, Advocate.

Mr. Ali Haider Salim, appearing on behalf of State.

Date of hearing: 25.02.2015

Date of Order: 25.02.2015

## **ORDER**

**ABDUL MAALIK GADDI, J:-** This Criminal Revision Application has been preferred by the Applicant Muhammad Saeed against the order dated 21-03-2013 passed by the learned IV-Additional Sessions Judge, Karachi West, in Direct Complaint No.53/2012, whereby the application under Section 3, 4, 5 & 7 of the Illegal Dispossession Act, 2005, filed by the Applicant/Complainant was dismissed.

**2.** Brief facts for the disposal of this Criminal Revision Application are that the Applicant filed complaint under Section 3, 4, 5 & 7 of Illegal Dispossession Act, 2005 against the Respondent No.1 to 3 stating therein that he is the owner of plot No.KS-1427, Survey No.3250 constructed upon two rooms situated near Noor Mustafa Masjid, U.C. No.5, Keamari Town, Karachi which was purchased by the Applicant through sale agreement dated 06-08-2004 from the Respondent No.4 and at the time of purchase of the said plot, the Respondent No.1 was in

possession as tenant. Thereafter according to Applicant, the Respondent No.1 has handed over the property in question to Respondent No.2 & 3, who both belongs to land mafia so also group of land grabber, therefore, Applicant filed application under Section 22-A Cr.P.C. against the Respondent No.1 before the District and Session Judge Karachi, West but the said application was dismissed. Thereafter, Applicant filed the Direct Complaint No.53/2012 against the Respondent No.1 to 3 for restoration of possession which was dismissed. Hence this case.

**3.** I have heard Ms. Humera Nadeem Rana, Advocate for the Applicant, Mr. Sadat Hassan Advocate for the Respondent No.1. Mr. Saifullah Advocate for Respondent No.2 & 3, Mr. Ali Haider Salim, APG and perused the record.

**4.** It is contended by the learned counsel for the applicant that the impugned order dated 21-03-2013 passed in hurry and the same is without merit and the learned trial Court did not consider the version of the Applicant while passing the impugned order and there are errors in it, therefore, the order is liable to be set aside. She further submits that property in question is situated in Katchi Abadi and Applicant purchased the same through sale agreement dated 06-08-2004 from Respondent No.4 and at that time, Respondent No.1 was in possession, thereafter, he handed over the said property to Respondent No.2 & 3, who belongs to land mafia group, therefore, according to her, the case of the applicant falls within the ambit of Illegal Dispossession Act, 2005 but the trial Court through impugned order, refused to take cognizance. In support of her claim she has referred various sections of Illegal Dispossession Act, 2005.

**5.** Mr. Sadat Hassan, Mr. Saifullah Advocates for the Respondents and the learned APG have refuted the contention advanced by the learned counsel for the applicant and have contended that the Applicant is neither the owner of the property in question nor lawful occupier of the said premises, as such he is not entitled for any protection/relief under the provisions of Act, 2005. In their support they have placed their reliance upon the case of (1). Waqar Ali and others V/S The State through Prosecutor/Advocate-General Peshawar and others reported in PLD 2011 Supreme Court 181 (2). Shahabuddin V/S The State reported in 2010 P Cr. L J 422 and (3). Nazir Ahmed V/S Asif and 4 others reported in PLD 2008 Karachi 94.

**6.** Admittedly the Applicant is claiming his ownership over the suit property on the basis of unregistered sale agreement dated 06-08-2004 executed by the Respondent No.4 in favour of the Applicant and there is nothing on record to show that Respondent No.4 was the owner of the premises in question, therefore, the ownership of Applicant and Respondent No.4 is in dispute. Property is situated in Katchi Abadi. It further appears from the record that the Applicant/Complainant has not been forcibly dispossessed from the disputed property. When confronted with the legal and factual position, learned counsel for the Applicant submits that the Applicant has no registered document of the ownership of the premises in question, therefore, under the circumstances, Applicant cannot seeks relief under the Provisions of Act, 2005. It may be mentioned here that Applicant had also filed Criminal Miscellaneous Application No.1260/2012 before the District & Session Judge Karachi, West for registration of the case against respondents but the said Miscellaneous Application was also dismissed vide order dated 22-11-2012 by observing that the dispute in between the parties is of civil nature.

**7.** I have perused the impugned order but did not find any illegality or irregularity in the said order, I therefore, under the facts and circumstances of the case, find no merit in this criminal Revision application which is dismissed alongwith all listed Application with no order as to costs.

**JUDGE**

SHAHBAZ/P.A