

HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Cr. Appeal No.S-49 of 2014

[Ghulam Qadir & Ors versus Abdul Majeed & another]

DATE	ORDER WITH SIGNATURE OF JUDGE
Appellants	: Through Mr. Ahsan Gul Dahri advocate
Complainant	: None present
State	: Through Ms. Rameshan Oad A.P.G
Date of hearing	: 05.06.2023
Date of Decision	: 09.06.2023

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J. - Through captioned appeal, appellants have impugned the judgment dated 27.03.2014, passed by learned IIIrd Additional Sessions Judge Shaheed Benazirabad (**Trial Court**) in Sessions Case No.266 of 2013 [**Abdul Majeed versus Ghulam Qadir & Others**], arising out of complaint filed by respondent No.1/ Complainant under Sections 3(2) and 4 of Illegal Dispossession Act, 2005, whereby, they have been convicted and sentenced to suffer R.I for three (03) years each with directions to pay Rs.50,000/- each as compensation to Complainant and in case of default in payment of compensation, they have been further directed to suffer S.I for one month more.

2. Facts of the case in nutshell are that respondent No.1/Complainant filed a Complaint under Section 3(2) and 4 of the Act ibid before learned trial Court, alleging therein that he is owner of land bearing Survey No.630/4, 653/2 and 630/3-A to D admeasuring 09-2 acres in Deh Yakhtiar Taluka Sakrand District Shaheed Benazirabad (**subject land**) and his other brothers namely Abdul Rasheed, Parvez, Sajid and Abid Ali, who are minors, are co-owners in subject land. He further claimed that in the year 2011 the accused persons/appellants illegally occupied the subject land and such complaint was lodged by him with learned District and Sessions Judge Shaheed Benazirabad, which was assigned to learned 1st Additional Sessions Judge Shaheed Benazirabad, whereby all accused persons/appellants appeared and submitted their statement that they are not in possession of the subject land, hence the same complaint was withdrawn and possession was handed over to him by appellants; on 19.11.2011 again the accused persons/appellants forcibly occupied 03-00 acres out of subject land and also unauthorizedly encroached upon wheat and oil seed crop; that his father moved such application to Assistant Commissioner concerned, who called report from Mukhtiarkar concerned and such application stood disposed of with observation to approach competent Court of law, hence captioned complaint was filed.

3. After filing of complainant, reports were called from Mukhtiarkar as well as SHO concerned and statement of Complainant was also recorded by the trial Court. Then trial Court took cognizance of the offence and issued BWs against appellants/accused, who in compliance thereof, appeared and furnished requisite sureties. Thereafter copies were supplied to appellants/accused persons at Ex.01 and formal charge was framed against them at Ex.02 to which they pleaded not guilty and such pleas were recorded at Ex.03 to 07. In order to prove the charge, Complainant examined himself at Ex.08 and produced certain documents at Ex.08/A to 08/H, then statement of one private witness was recorded at Ex.09 while statement of Mukhtiarkar concerned was recorded at Ex.10, then Complainant closed his side at Ex.11 and the statements of accused persons/appellants, as required under Section 342 Cr.P.C were recorded at Ex.12 to 16, whereby they denied the allegations leveled against them by the Complainant, however, neither they produced any witness in their defense nor examined themselves on Oath. Thereafter, learned trial Court after hearing the learned Counsel for parties convicted and sentenced the appellants, as mentioned supra. Hence the appellants have filed this appeal against their conviction. It may be noted at this stage that all the appellants are on bail vide orders of this court.

4. Learned counsel for the appellants has contended that the appellants are completely innocent and have been falsely implicated in this matter by the complainant in the case who they have a title dispute with over the land that they were said to have forcibly occupied in collusion with the revenue officials; that learned trial Court also failed to appreciate that the complainant had also filed a similar complaint against the appellants before learned 1st Additional Sessions Judge Shaheed Benazirabad and same was dismissed as withdrawn; that Complainant had not produced any witness to prove the alleged incident and for any or all of the above reasons the appellants should be acquitted of the charge.

5. Despite service, no one effected appearance on behalf of Complainant/respondent No.1 and as such service was held good on the Complainant; however, learned A.P.G vehemently opposed the appeal and prayed for its dismissal.

6. I have heard the arguments of learned counsel for the appellants and learned APG and considered the record.

7. Admittedly civil litigation was proceeding in respect of the encroached land in question however such litigation has now been determined in favour of the Complainant and has reached finality. All the documents on record as provided by the revenue officials prove that the land which was occupied by the appellants was in the name of the Complainant or his son and has such there is no doubt that

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the land in question belonged to the Complainant and the appellants had no right to be on it.

8. It is true that the first complaint filed by the Complainant in respect of such illegal occupation of the land in question by the appellants was withdrawn by the Complainant on 01.06.2011 on the basis of the statement that the appellants had never been on the land of the Complainant and would not so encroach in the future. However I find that the appellants violated this statement as when another **later** complainant was lodged by the Complainant the Mukhtiarkar Sakrand vide his report **dated 11.05.2012** (after the statement) found all the appellants to be in illegal occupation of the Complainant's land. A copy of his report is set out below for ease of reference;

OFFICE OF THE MUKHTIARKAR SAKRAND

No: Sett/131 of 2012
SKD Dated 11-05-2012

To,

*The Reader
3rd Additional Session Court
Shaheed Benazir Abad*

Subject: Complaint No.493/2012 Abdul Majeed V/s Gullam Qadir and Others.
Complaint under section 3 (2) of the illegal Dispossession Act 2005.

Reference: Yours Honourable Court No. Cr/3rd, ADJ/1793 Dated 30-04-2012

I have the honour to submit that the required report in respect of agriculture land comprising survey no 630/4, 653/2, 630/3-A to D, measuring 9-2 Ghunta situated in Deh Yakhtiar Taluka Sakrand has been called from the concerned Tapedar who after verification of the record has reported that the land measuring 9-02 Ghunta acres from survey no: 653/2 area 03-2 Ghunta, 630/3AtoD out of area 02-00 acre and survey no:630/4 out of area 01-00 acre Total area 06-02 Ghunta in the possession of Abdul Majeed S/o Mohab Ali Khaskheli and survey no: 630/4 out of area 03-00 acres in the possession of Ghullam Qadir S/o Noor Mohammad and others. Tapedar further reported that above survey nos: in the name of Khatedar Abdul Majeed S/o Ali Mohab and others vide entry no 280 village form Vii-B.

Photo state copy of report made by tapedar of the beat alongwith record of rights copy submitted herewith for the kind perusal of honourable court further action as deemed fit. (bold added)

Sd/- 11.5.12
MUKHTIARKAR
SAKRAND

9. The Complainant PW-1 Abdul Majeed who is the son of PW-2 Ali Muhib have fully implicated the appellants in forcibly grabbing their land in their evidence. They knew the appellants from before so identification is not an issue as they are related to them. They both gave their evidence in a straight forward manner which is on the same lines as each other and neither were dented on cross

examination and as such I find their evidence to be reliable, trust worthy and confidence inspiring and place reliance on the same.

10. The above ocular evidence is fully supported by the documents on record including the report of the Mukhtiarkar Sakrand which is reproduced above. Even when the Mukhtiarkar Sakrand Muhammed Salleem gave evidence under oath whereby he produced certain documents which were favorable to the Complainant's case he was not cross examined by counsel for the appellants which indicates that the revenue officials were not in collusion with the Complainant party otherwise he would be cross examined to that effect.

11. The appellants did not give evidence on oath and did not call any DW in their defence case and as such in the face of the overwhelming and reliable prosecution evidence, both oral and documentary, I disbelieve the defence case that the appellants did not illegally occupy the land of the Complainant especially as they had a motive to do so as they believed that the land should have been passed to them by there father which it was not.

12. Thus, I find that the prosecution has proved its case beyond a reasonable doubt against all the appellants and as such all their convictions are maintained however since they have had to endure the agony of appearing before this Court with the sword of Damocles hanging over their heads for the last 9 years whilst on bail all the sentences of each of the appellants are all reduced to RI for two (02) years with the compensation payable to the Complainant in respect of each appellant remaining in place and with the default provision remaining in place as per the impugned judgment. The appellants shall have the benefit of Section 382-B Cr. P.C and any remissions applicable to them under the law.

13. The appeals are dismissed except in terms of modification in sentences. The bail of all the appellants is recalled however they along with their counsel are all called absent without intimation despite this judgment being fixed for announcement today. Accordingly SHO PS Sakrand is **directed** to arrest all the appellants and return them to prison in order serve out the remainder of their sentences. A copy of this Judgment shall be sent to SSP Shaheed Benazirabad for compliance who shall submit his compliance report to this court within 14 days of the date of this Judgment.

14. The appeal is disposed of in the above terms.