

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT  
HYDERABAD**

Criminal Revision Application No.S-31 of 2019

Applicant(s): Bibi Faiza Sarhandi and others through Mr. Muhammad Aslam Bhatti, advocate.

Respondent: Pir Nisar Ahmed Sarhandi and others through Syed Muhammad Waseem Shah, advocate.

The State: Through Mr. Fayaz Hussain Sabki, A.P.G.

Date of hearing: 6.9.2021

Date of decision: 6.9.2021

**ORDER**

**KHADIM HUSSAIN TUNIO, J.-** Through instant criminal revision application, the applicants have challenged the order dated 08.02.2019, passed by the learned 2<sup>nd</sup> Additional Sessions Judge, Tando Muhammad Khan whereby Illegal Dispossession Complaint No.Nil/2020, filed under Illegal Dispossession Act, 2005 was dismissed.

2. Precisely, the facts of the case are that the applicants are the owners of agricultural land admeasuring 09-10 acres *viz.* piece of agricultural land measuring 8-33 acres out of 125-29 acres to the extent of 0.07 paisas share from the revenue survey numbers and also 17 ghuntas out of 1039 acres to the extent of 22 paisas share in Survey No. 2561 (1-13) and 2562 (0-26) situated in Deh Veearki Tapo-A Tando Saindad Taluka, District Tando Muhammad Khan. In the year 1997, on 13<sup>th</sup> of June, the applicants executed general power of attorney in favour of respondent No. 1, but it was cancelled on 28.04.1998. Concealing this fact, the respondent No. 1 allegedly sold the property in question to respondent No. 2 which was then sold to respondent No. 3 and 4. After receiving knowledge, FC Suit No. 173 of 2017 was filed against the said respondents/accused which is pending. Subsequently, the

applicants/complainants also filed Illegal Dispossession Complaint No. Nil/2020 against the respondents.

3. Reports were called from the Mukhtiarkar and SHO concerned and after hearing the counsel for respective parties, the trial court dismissed the complaint of applicants/complainants.

4. The learned Counsel for the applicant has mainly contended that the applicants are lawful owners of the disputed property; that the trial Court has passed illegal order and the same is liable to be dismissed; that no investigation has been conducted by the learned trial Court before passing the impugned order; that the impugned order is not sustainable in law. Therefore, he prays that the impugned order be set aside. In support of his arguments, he has referred the case law reported as *Atta Rasool and 3 others v. Haji Muhammad Rafique and 2 others* (2019 PCrLJ 1023), and *Haji Muhammad Usman v. Abdul Sattar and 7 others* (PLD 2011 Karachi 405).

5. Conversely, the learned counsel for the respondent No. 1 fully supported the impugned order while submitting that the Mukhtiarkar submitted the report and opined that both the complainants and the private respondents are joint owners of the disputed land which is still undivided; that the respective entries have been mutated in the revenue record by the concerned authorities. In support of his contentions, he has cited the case law reported as *Muhammad Qasim v. Station House Officer, Police Station Khudabad* (2016 MLD 1238). Learned APG while arguing in the same line supported the impugned order.

6. I have given due consideration to the arguments advanced by the learned Counsel for the respective parties, learned A.P.G and perused the record carefully with their able assistance.

7. At the very outset, the Court(s) shall always be competent to examine whether available material, *prima facie*, satisfies judicial conscious of the Court to take cognizance or otherwise. There can be no denial to the legal position that **cognizance** is always taken of an **offence**

hence before taking cognizance it shall always be the duty of *every* Court to examine whether commission of the **offence** is, *prima facie*, made out or *otherwise*. It may also be added that an act of taking *cognizance* or *otherwise* is a discretionary one. Every *discretionary* jurisdiction shall always include two ways powers i.e to **accept** or **decline**. Thus, I would conclude that if while examining material the court finds no reasonable grounds to proceed further, it (Court) shall always be competent to dismiss the complaint. Coming to the merits of the case, from perusal of record, it transpires that the land in question belongs to both the applicants and the private respondents. As per the Mukhtiarkar's report, according to entry No. 119 dated 11-9-2014 in Book No. 05747, the shares of the applicants/complainants were sold out by Nisar Ahmed (Respondent No. 1) on the basis of Power of Attorney to Ghulam Farooque through registered deed Number 1069 dated 25-4-2014 which was again sold out to Anwar Ali through registered deed No. 65 dated 13-1-2015 as per entry No. 141 dated 10-4-2015 in Book No. 05747. Perusal of record further contemplates that the Mukhtiarkar concerned and SHO have not supported the contention of applicants/complainants while submitting their reports during inquiry. It is now well settled principle of law that person who has lawful authority of ownership cannot be considered as dispossessor and grabber of the property. The object of legislation of Illegal Dispossession Act is to curb the activities of property grabbers. Preamble of Illegal Dispossession Act manifest that its aim and object is to protect the lawful owner and occupation from illegal dispossession of the property grabbers. There is no denial that the parties are co-sharers and hence in "*joint possession*" as it has not been partitioned or divided yet. Further, no legal proceedings have been filed for partition of the property in dispute. In absence of '**illegal possession**' or '**wrongful or forceful dispossession**' no offence within meaning of Section 3 of the Act could be said to have been made out. The applicant has failed to point out any illegality or irregularity, if any, committed by the trial Court while passing the impugned order. The impugned order is legal one and does not call for interference. Consequently, Illegal Dispossession Act, 2005 is only

applicable to the person who has taken the possession was not having a “*title*” thereto, secondly, that he has taken the possession by the “*use of force*”, thirdly, that he has taken over the property without the due process of law and fourthly, that such person or persons belonged to the group of land grabbers. Under such circumstances, reference is made to the case reported as *Muhammad Ismail and 9 others v. Abdul Jabbar and another* (2018 MLD 1462), *Ayub Khan v. The State* (2014 MLD 1021) and *Muhammad Aslam v. Imamuddin Ahmed and 7 others* (2013 MLD 1444).

8. Pursuant to the above discussion and circumstances, instant criminal revision application was dismissed vide short order dated 06.09.2021. These are the reasons for the same.

JUDGE

Ali Haider