

IN THE HIGH COURT OF SINDH CIRCUIT COURT HYDERABAD

Crl. Revision Application No.S-225 of 2018

Applicant Mst. Razia Begum d/o Kifayat Ali through
Mr. Talib Khan Bhatti, Advocate.

Private Respondents Mirza Moazzam and others through Mr.
Mushtaque Ahmed Arain, Advocate.

Official Respondents The State and another through Mr. Fayaz
Hussain Sabki, Assistant Prosecutor General.

Date of hearing **21.02.2022**

Date of order **11.03.2022**

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ORDER

SHAMSUDDIN ABBASI, J:- By means of this Criminal Revision Application filed under Section 435 and 439, Cr.P.C. the applicant has prayed for following reliefs:-

"To call for the R & P of Complaint No.410 of 2018 [Mst. Razia Begum Vs Mirza Mouzam and others] from the Court of learned IInd Addl. Sessions Judge, Shaheed Benazirabad and after examining its legality, propriety and correctness, set-aside the order dated 27.11.2018 and direct the learned trial Court to bring the above Complaint on file and issue process to the accused/respondents 3 to 6 and proceed against them and decide the same on merits after leading evidence".

2. Short but relevant facts of the case are that applicant is owner in respect of an area of 20 ghuntas out of Survey No.173/3 alongwith other lands, situated in Deh 32 Nasrat, Taluka Daur, District Shaheed Benazirabad by way of mutation in the revenue record Form VIIB. The respondents No.2 to 6 belong to Qabza Group (Land Mafia), who extended threats for forcible occupation of applicant's land. It was on 27.03.2016 the applicant alongwith her sons was sitting in her shop, adjacent to the said land, when at about 12:00 noon, the respondents No.3 to 7, armed with lethal weapons, and forcibly occupied the land in question. The applicant approached the nekmards and concerned police, but to no avail, hence she filed a complaint under Section 3[2] of Illegal Dispossession Act 2005 seeking reliefs as follows:-

"The complainant therefore humbly prays that this Hon'ble Court may be pleased to take cognizance of the offence under Illegal Dispossession Act 2005 against the accused and the Police of P.S. Gupchani be directed to arrest the above named accused and they

may be punished with imprisonment extending to 10 years and with fine and the possession of the above land be restored to the complainant”.

3. Reports were called from the concerned police station as well as Mukhtiarkar and based on such reports and keeping in view the pendency of suit, the learned Additional Sessions Judge-I, Shaheed Benazirabad dismissed the complaint vide order dated 27.11.2018. Aggrieved by such decision, the applicant preferred this criminal revision application.

4. Heard and record perused minutely.

5. The applicant claimed herself to be the owner in respect of an area of 20 ghuntas out of Survey No.173/3 alongwith other lands, situated in Deh 32 Nasrat, Taluka Daur, District Shaheed Benazirabad. According to the report of concerned police station both parties (complainant and proposed accused) are claiming their share in respect of disputed area of 20 ghuntas because of crossing over the road in between their lands. The record is also suggestive of the fact that civil litigation between the parties with regard to disputed area is pending before Civil Court. The concerned Mukhtiarkar vide his report dated 03.05.2016 also pointed out that the land in question was neither demarcated nor measured and a direction was issued to the Survey Superintendent, Khairpur to conduct demarcation of the disputed land in presence of both parties. In view of this background of the matter, I am of view that filing of complaint by the applicant in presence of civil suit earlier filed by her is an attempt to prosecute the private respondents through criminal proceedings with malafide intention and the learned trial Court has rightly observed that the matter relates to civil dispute and dismissed the complaint in the following terms:-

“Perusal of instant complaint alongwith reports of concerned Mukhtiarkar and P.S. makes it vivid that both the complainant and proposed accused are in possession of their respective shares, but due to crossing over the road in between their lands both the sides are claiming their share in respect of only 0.20 Ghuntas being part of their survey numbers already in their possession viz 173/3 & 166/3. As a matter of record F.C. Suit No.170/2016 is also filed by the complainant against the proposed accused and the same is pending adjudication before learned 3rd Senior Civil Judge, Nawabshah. The aforementioned suit is also with regard to the disputed 0.20 Ghuntas. The concerned Mukhtiarkar vide dated 03.05.2016 has filed report in this Court, which is available on record and per such report the

*Technical Staff of Survey Superintendent Khairpur is required to conduct demarcation of disputed land in presence of both the parties. Hence, **undisputedly**, disputed land is un-demarcated/unmeasured, therefore, in such like circumstances Civil Court of competent jurisdiction is right forum to adjudicate upon the shares, if any of both the parties.*

***Having** perused the above referred reports, I am of the considered view that the land is not demarcated by its means and bounds, however, due to non-demarcation of the subject land both the parties have put their claim on the subject land. As such, the main ingredient of Section (2) of Illegal Dispossession Act, 2005, is missing, and the proper remedy in **complaint is hopelessly misconceived and without prejudice to the civil rights of the parties the same is accordingly dismissed**".*

6. For what has been discussed above, I am of the considered view that no case attracting the provisions of Illegal Dispossession Act, 2005 has been made out. The claim regarding ownership and possession over the disputed area can only be sifted by adducing evidence in the pending suit. The learned counsel for the applicant has not raised any question of law that may require consideration by this Court in exercise of its revisional jurisdiction. The scope of revisional jurisdiction of High Court is limited and confined to correction of jurisdictional defect, patent illegality or irregularity affecting the merit of the case and not for substantiating its own finding. I find that the learned trial Court has passed the impugned judgment after due application of mind and careful appreciation of available material, hence calls for no interference by this Court while exercising its revisional jurisdiction. The applicant may pursue her suit pending before Civil Court and the learned Civil Court, which is seized of the matter, shall not be influenced by this order in any manner and shall decide the pending suit purely on merits and material made available before it without causing prejudice to either side.

7. This Criminal Revision Application No.S-225 of 2018 is bereft of merit stands dismissed in the foregoing terms.

JUDGE