

ORDER SHEET

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

Cr. Rev. A. NO.S-100 OF 2011.

DATE

ORDERS WITH SIGNATURE OF JUDGE

FOR KATCHA PESHI.

06.04.2012.

Mr. Nihal Khan Lashari, Advocate for the Applicant.

Mr. Mohammad Iqbal Kalhoro, A.P.G. for the State alongwith
Ghulam Shabbir Mirjat Mukhtiarkar Revenue Tando Allahyar.

Respondent Mst. Sarwary present in person.

Through instant criminal revision application the Applicant has impugned the order dated 13th July 2012 passed by the learned Vith Additional Sessions Judge, Hyderabad, in criminal complaint No.46 of 2011.

Brief facts of the case as stated are that Applicant Mohammad Akram has filed the above complaint under section 3 & 4 of the Illegal Dispossession Act, 2005 before the Sessions Judge Hyderabad, against his ex-wife Mst. Sarwary d/o Ali Sher whom he had divorced on 11.11.2007. It is further stated that out of the said wedlock the Applicant had two daughters and two sons residing with the Applicant. It is further alleged in the complaint that the Respondent Mst. Sarwary alongwith others illegally occupied the house of the Applicant.

The learned VIth Additional Sessions Judge, Hyderabad, after calling the report from the Mukhtiarkar Goth Abad Tando Allahyar and hearing the Applicant dismissed the complaint in the following terms:-

“From the above contents of agreement it has come on record that Applicant himself permitted his ex-wife and children to reside in H.No.39. The matter is of civil nature. Moreover there is no date of acquisition, as such, there is no material for taking cognizance.

For the forgoing reasons the complaint in hand merits no consideration the same is dismissed.”

Learned counsel for the Applicant has submitted that the Applicant is willing to keep the children in the said house whereas the Applicant do not want the Respondent Mst. Sarwary reside alongwith the children on the ground that she is notorious lady and continuously causing harassment to him and his family whereas she has also adversely influenced the minds of his children. Counsel for the Applicant further state that the said house was initially in the name of his father whereas after his death he alongwith other legal heirs are the owners of the said house.

On the other hand Respondent present in Court alongwith the children states that after divorcing her the applicant entered into an agreement in writing whereafter she was residing alongwith her children in the said house and no act of trespass or illegally occupying the subject house has been committed by her.

From the perusal of the impugned order and the arguments advanced by the counsel for the Applicant and the submissions made by the Respondent Mst. Sarwary it appears that on account of matrimonial dispute between the parties the Applicant filed the complaint under section 3 and 4 of the Illegal Dispossession Act, 2005. However, since the ingredients of the said Act were lacking the learned VIth Additional Sessions Judge Hyderabad, has rightly dismissed the complaint.

I do not find any substance in the instant criminal revision application which is accordingly dismissed. However, the Applicant is at liberty to seek his remedy in accordance with law before the competent Court of jurisdiction.

JUDGE

A.