

IN THE HIGH COURT OF SINDH AT KARACHI*Present: Omar Sial, J***Criminal Revision Application No. 207 of 2021**

Applicants : Abdul Salam & others
through Mr. Altamash Arab, Advocate

Respondent : Naveed Ahmed Siddiqui
through Mr. Basil Nabi Malik, Advocate

Date of hearing : 06-04-2022

Date of order : 18-04-2022

ORDER

Omar Sial, J.: I have very ably been assisted by Mr. Altamash Arab and Mr. Basil Nabi Malik. Both learned counsels argued their respective positions very well. Very broadly the dispute is that both parties to the litigation allege that the other party dispossessed it from a particular tract of land, the exact address and location of which, also forms one part of the dispute between the parties. The applicant says that he was in possession for 37 years before the respondent used un-savory tactics to dispossess him. The respondent, of course, has the contrary view. The dispute is in process of adjudication before the learned 2nd Additional sessions Judge, Karachi East. The learned trial judge on 11.09.2021, as a preliminary order, however, directed that possession of the property (which was the subject of the alleged dispossession) be taken from the applicant (who allegedly had dispossessed the respondent on 03.11.2020) and handed over to the respondent (who allegedly was the owner of that land). It was an interim order passed under section 7 of the Illegal Dispossession Act 2005. It is this order which has been challenged in Criminal Revision No. 207 of 2021.

2. Both learned counsels have argued extensively to show their respective interest in the land which forms the subject matter of these proceedings. In my view, both learned counsels did not take into account that proceedings under the illegal dispossession legislation are not a substitute to indirectly decide ownership in property disputes. The proper forum to seek an adjudication on ownership disputes will be the appropriate civil court. Sufficient guidance in this regard has

also been given by the Honorable Supreme Court in the case of **Shaikh Muhammad Naseem vs Mst Farida Gul (2016 SCMR 1931)**. The respective arguments of the counsels, for the sake of brevity, are not being reproduced but are reflected in my observations and findings.

3. It is absolutely clear from the arguments which have been raised before the court by the counsels that the parties are completely at odds on how events have unfolded and what their respective interests are in the property in question. What is prima facie evident is that the available record reflects on a tentative assessment that perhaps the impugned order of the learned trial court may have been a little pre-mature. Learned counsel for the respondent said that the property of the applicant was substantially far away from the property of the respondent. However, learned counsel agreed that there would have been no dispute between the parties had their properties been so far away and the fact that there is a dispute which brings them to court in itself suggests that common interests are claimed in a particular tract of land. Upon a tentative assessment, apart from the foregoing aspect, the record also reflects that the *mukhtiarkar* had reported that it was one Shafiq Khan who had been in possession of the land for nearly three decades when the dispossession is said to have occurred. This is against what the respondent alleges. There is a police report which appears to show that the respondent is the owner of the land in question. However, there is also prima facie evidence that the police officer who gave this report was proceeded against by the DIG for giving a false report.

4. The learned counsel for the respondent has cited a number of cases to support his argument that pursuant to section 7 of the Act of 2005 only a prima facie case has to be made out for an interim order handing over possession. I have not reproduced the cases cited by him as a bare reading of the law in itself shows that the argument of the learned counsel is correct. Where I most respectfully disagree with the learned counsel is that in view of the issues involved in this particular case, some of which are highlighted in this order, it was not clear that a prima facie case had been made out which would entitle handing over possession of the land to the respondent especially when there was prima facie evidence that the applicant party may have been in possession of the land for a substantially long time.

5. There was prima facie preliminary evidence that the applicant party had been in possession and doing business on the land for nearly three decades; the date of dispossession is not clear; the address and location of the property from where dispossession occurred is not clear; it is not at all clear as to how one single survey number i.e. 19 could be so small so as to encompass within it only 3800 square yards; the pending disputes between the parties and otherwise vis a vis title and occupation of land are some aspects of the case which makes me reach a different conclusion compared to the wisdom of the learned trial court. The above issues, and several others, should have been analyzed in greater depth by the learned trial court before handing over possession of the land. I am of the view that the learned trial court should have let the issue go to trial before possession was handed over. This by no way means that there cannot be situations where the learned trial courts should show a dynamic approach in order to provide quick justice to people and exercise its powers under section 7 of the Act. The present case perhaps, in my humble view, was not one of those cases.

6. I have intentionally refrained from recording certain observations in case they unintentionally impact the stance of either party at trial. While it is the learned trial court which will decide the case finally after it has analyzed the evidence produced, at this stage however I am of the view because of my observations given in the preceding paragraphs that it would be appropriate to allow the application. It is therefore ordered that the state of affairs and situation go back to as it was prior to the passing of the impugned order. The Deputy Commissioner shall ensure compliance and if any illegal or unlawful hurdle in the implementation of this order is created by anybody, the concerned SSP shall provide the necessary assistance to the Deputy Commissioner. A report to confirm implementation of the order should then be filed by the Deputy Commissioner before the learned trial court. This exercise should conclude within one week of the date of this order.

7. A copy of this order may be sent to the learned trial court, the office of the learned Advocate General as well as the offices of the Deputy Commissioner and S.S.P.

8. The CrI. Revision Application stands disposed of.

JUDGE

