

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application No.171 of 2023

| Date | Order with signature of Judge |
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1. For order on office objection at 'A'
2. For hearing of main case
3. For hearing of MA No.10080/2023

20.11.2023

Ms. Shaheen Fatima advocate for the applicants
Mr. Talib Ali Memon, Assistant PG
Ms. Rubina K. Durrani advocate for respondent No.1

Through this Criminal Revision Application under Section 439 Cr.P.C., applicants Faisal Khan and Mst. Urfia Khan have called in question the order dated 29.8.2023 passed by learned IV-Additional District & Sessions Judge Karachi West in Illegal Dispossession Complaint No.192 of 2021, whereby through an interlocutory application, the possession of property i.e House No L-036, Sector-Q, Sub- Sector-II, situated at Gulshan-e-Maymar, Karachi was ordered to be handed over to the private respondent, an excerpt whereof is reproduced as under:-

“7. For what has been discussed above, application in hand stands dispose of with directions to the proposed accused persons to immediately vacate the property in question and remove their articles within the seven days from the date of this order and hand over its vacant possession to the Nazir of this District and alternatively the District Nazir is hereby directed to get the vacant possession of the property and attach the same in compliance of this order with the help and assistance of the SHO concerned and Nazir is further directed that he will prepare inventory of the fixtures available in the property in question and after ensuring the compliance, he will submit his respective detail report before this court.”

2. The case of the parties is that in the aforesaid ID Complaint an application under sections 6 & 7 of the Illegal Dispossession Act, 2005, was moved by the complainant and he sought possession of the subject property. The trial court after hearing the parties directed the applicants to vacate the property and hand over its vacant possession to the Nazir of the District Court and alternatively, the District Nazir was directed to get the vacant possession of the property.

3. The applicants being aggrieved by and dissatisfied with the aforesaid direction have filed the instant Revision Application inter-alia on the ground that the learned court ignored the facts of the complaint while passing the order against the possession of the subject property and passing direction to vacate the subject property within 03 days, as the subject property is Benami property and the property actually purchased

and possessed by the applicants; that the learned trial court is not impartial which is against the law of natural justice, as the applicants are the legal and lawful purchaser and possessor to the subject property and the private respondent has illegally filed the I.D complaint against the applicants as such the impugned order dated: 29.06.2023 is liable to be set aside. The learned counsel for the applicant emphasized that the complainant is not the owner of the property as such the possession cannot be delivered to her. Per learned counsel, the report of the police is in favor of the applicants which is the main source of filling I.D Complaint. She further contended that the property in question had actually been purchased by the parents of the applicant and in good faith it was transferred in the name of the complainant who is the mother-in-law of applicant No.1 who along with other family member have been residing therein since her marriage with the son of complainant namely Waleed, who later on divorced her. It is further submitted that applicants are legally residing in the property in question and did not commit the alleged offense of illegal dispossession and the same is required to be proved through recording evidence. She prayed for setting aside the impugned order.

4. The learned counsel for respondent No.1 has submitted that applicants are trying to grab the property for keeping in their possession by taking different stances ie. firstly claimed that she is the wife of the son of the complainant but later on, a divorce deed come on record which refuted her such claim. Thereafter, applicant No. 1 claimed that as per the endorsement made on her Nikhnama, the property was gifted to her, therefore on a joint request of both the parties, the author of said Nikhnama Nikhanwan was called before the trial court, who appeared and filed his affidavit with the narration that said endorsement is fake and fraudulently made on the Nikhnama, even otherwise original Nikhnama produced by him was found by the trial court to be lacking from such kind of endorsement. She added that applicant No. 1 claimed that her parents had purchased the property in question, which was subsequently transferred in the name of the complainant who is her mother-in-law, but in this regard, failed to submit any previous title documents of said property, on the contrary as per verification report of the concerned department which reflects that complainant is the owner of the property in question. Per learned counsel, the complainant claimed that in the month of May 2017, when she reached to subject property, she saw that applicants occupied the house, when she asked about possession, they showed her fabricated documents of said property and threatened her with dire consequence compelling her to lodge the I D Complaint.

5. Learned counsel for the applicants states that some of the evidence is yet to be recorded and same needs to be concluded within a reasonable time as such she cannot be dispossessed from the subject property as the trial Court has not yet arrived at the final conclusion and before the conclusion, possession cannot be taken over. On the contrary, learned counsel for respondent No.1 states that the possession has not been handed

over to the owner and evidence is yet to be finalized; therefore, judicial propriety demands that the property be kept in the safe custody of the Nazir of learned trial Court and/or under his supervision.

6. In view of the above position, this Criminal Revision Application stands disposed of with directions to the learned trial Court to conclude the trial within four weeks and compliance report be submitted. Meanwhile, the management of the property shall be looked after by the trial Court.

JUDGE

Zahid/*