

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application No.212 of 2023
Criminal Miscellaneous Application No.944 of 2023

| Date | Order with signature of Judge |
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Criminal Revision Application No.212 of 2023

1. For order on office objection at 'A'
2. For hearing of main case

Criminal Miscellaneous Application No.944 of 2023

For hearing of main case

22.12.2023

Mr. Samiullah Soomro advocate for the applicant in Cr. MA No.944/2023 and also files Vakalatnama on behalf of the applicant in Cr. RA. No.212/2023, which is taken on record

Mr. Talib Ali Memon, Assistant PG

Mr. Ghulam Mustafa Kolachi advocate for respondent No.1 in Criminal Revision Application No.212/2023

Applicant Mst Farah Neelofer has filed this Criminal Revision Application against the order dated 12.10.2023 passed by learned II-Additional Sessions Judge Karachi East in Criminal Complaint No.119/2023, whereby the complaint filed by the applicant has been dismissed on the premise that the complainant may avail the remedy before the competent Court of plenary jurisdiction.

2. The applicant is present along with her counsel, states that the impugned order is illegal, unlawful, and without lawful justification as the property has been occupied by the illegal occupants/respondents. She, therefore, prays for allowing the instant Revision Application. Learned counsel for the applicant submits that this Court vide order dated 30.11.2023 directed DIGP Karachi East to hear the parties and ascertain the actual position of the subject property and shall submit his report before this Court. Learned counsel submitted that the trial court erroneously held that the dispute between the complainant and respondent No.1 on the fulfillment of terms and conditions of sale agreement, and dispute needs to be resolved by the civil court having jurisdiction. He prayed for allowing both the applications with directions to police to register the F.I.R against the respondents and possession whereof be restored to the applicant and the case be remanded to the trial court for decision on merits.

3. The Applicant/complainant claims to be the lawful owner of House No. N-43, measuring 60 square yards situated at Block-13, KDA Scheme 36, Gulistan-e-Jauhar, Karachi which was purchased by the complainant from Jawedullah Khan and Hamadullah Khan through their attorney

Muhammad Ali in this respect a sale agreement was executed and signed on 07.02.2023. The complainant and her children had gone to Saudi Arabia for performing Hajj and her husband namely Khan Zegham Yazdan was alone in the above said house and on 20.06.2023 the private respondents along with their companions by taking advantage of this as well as knowing the sickness of her husband illegally occupied the above said house when the complainant's husband went for Isha prayer and after visiting his friend came back at 12:00 am night, he saw that the lock of the main door of the house was broken and was locked inside, he knocked the door, someone replied that be off from there and never turn back otherwise you would be killed and further advised him to calm quiet. It is alleged that all the household articles including 20 Tola gold ornaments, 05 thousand riyals and cash of Rs.50 lacs, and original documents of all family members are/were lying in the said house. The husband of the complainant informed the police through 15 helpline but the police did not come and advised him to visit the police station. Hence, her husband approached the SHO concerned to take legal action against the private respondents but no result was achieved. After the arrival of the complainant from Saudi Arabia after performing Hajj, she visited the respondents and requested them to hand over the possession of said house but they refused the same. As per the Applicant who is present in person, the respondents have no locus standi to control over the said property as they occupied the same illegally, and without due process of law, and the criminal complaint filed was erroneously dismissed on the wrong premises.

4. The aforesaid stance has been denied by the learned counsel representing the private respondents who are also present in Court with the narration that the complainant has no case at all as she filed Illegal Dispossession complaint based on sale agreement which is not a title document. Per learned Counsel, the complainant has never shown any documentary proof of her possession of the said property. He added that the said house is in the name of respondent No.1. A sale agreement was executed between the complainant and respondent No.1 through respondent No.2 but complainant violated the 2nd and 3rd paragraphs of the sale agreement and did not pay House Building Finance Corporation Loan amounting Rs.34,90,980/- and did not pay the remaining sale consideration amounting to Rs.70,09,020/- within 45 days as per the terms and conditions of this sale agreement. He submitted that the complainant had already filed a Criminal Misc. Application No.2750/2023 before the trial Court on the same facts and grounds was dismissed by the trial Court except protection was granted vide order dated 01.08.2023.

5. It appears from the record that the Investigating officer of P.S. Shahrah-e-Faisal Karachi submitted his report to the trial Court that respondent No.1 sold out House No.N-43, situated at Block-13, KDA Scheme 36, Gulistan-e-Jauhar, Karachi to the complainant in the sum of Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lacs). As per his report, the complainant paid Rs.45,00,000/- (Rupees Forty-Five Lacs) to respondent No.1, and the remaining amount was not paid by the complainant to respondent No.1. He has further submitted in his report that *Mohallah* people did not support the version of the complainant that respondent No.1 breaking the lock of the complainant's house. As per the version of respondent No.1, he has sold the house to the complainant through respondent No.2 based on the sale agreement, but the complainant has violated paragraphs No.2 and 3 of the sale agreement. She did not pay the House Building Finance Corporation Loan of Rs.34,90,980/- and also did not pay the remaining sale consideration of Rs.70,09,020/- within 45 days as per the terms and conditions of this sale agreement. DIGP Karachi East has submitted his report, an excerpt whereof is reproduced as under:-

“.....Conclusion:

The allegations made by complainant are found genuine as there is sufficient evidence found regarding the deal made between the parties. The pay orders of the remaining amount which have been shown by the complainant party suggest that they were ready to pay the remaining amount however, the owner side was reluctant to have the payment at once and they acted illegally by breaking the locks and driving out the husband from the property. It is requested that permission may kindly be granted to lodge FIR against the owner Muhammad Ali as initially he handed over the possession of the in question property to the complainant and later took it back without adopting proper legal procedure.”

6. The applicant Khan Zaikgham Yazdan filed Criminal Miscellaneous Application No.944 of 2023 against the order dated 01.08.2023 passed by the learned II-Additional Sessions Judge Karachi/ Ex. Officio Justice of Peace whereby his application under Section 22-A Cr.P.C. with prayer to direct the respondent-SHO to record his statement under Section 154 Cr. P.C. was disposed of in the terms that dispute between the parties was over the payment of remaining sale consideration, which is the civil nature dispute. The applicant, who is also present along with his counsel has submitted that even if there is no direction of the Court, the S.H.O. has no authority to refuse to record the statement of the complainant in the relevant register irrespective of its authenticity / correctness or falsity of such statement. He further submitted that S.H.O. has no authority to refuse to register FIR under any circumstances. He may refuse to investigate a case but he cannot refuse to record FIR. The check against the lodging of false F.I.Rs was not the refusal to record such

F.I.Rs, but the punishment of such informants under Section 182, P.P.C., etc. which should be, if enforced, a fair deterrent against misuse of the provisions of Section 154, Cr.P.C. He prayed that in terms of the observation of the DIG Police East Zone Karachi, the FIR against the private respondents be lodged. The aforesaid stance has been refuted by the learned counsel for the private respondents on the ground that this is a simple civil dispute between the parties arising out of a civil transaction of sale and purchase of the property as such no cognizable offence has been committed. He prayed for the dismissal of Criminal Miscellaneous Application No.944 of 2023.

7. Prima facie the parties are at loggerhead and the complainant has already instituted Criminal Illegal Dispossession Complaint No.119 of 2023 as such judicial propriety demands that both the parties record their statements before the trial Court so that truth may come out as the parties are raising claim and counter claims on the subject property, which is only possible if the complainant be able to prove her case before the trial Court on the issue of illegal dispossession from the subject property as at this stage no order for registration of FIR can be ordered in view of the civil transaction between the parties, however, at the same time the trial Court has to see whether the applicants were illegally dispossessed or otherwise.

8. In view of the above facts and circumstances of the case, let the trial Court take pains to decide the *lis* on merits by recording evidence of the parties and conclude the case within one month from the receipt of this order. Meanwhile, the trial Court shall take over the possession of the subject property and manage its affairs till the conclusion of the case. Both the Criminal Revision Application and Criminal Miscellaneous Application are disposed of in the above terms.

JUDGE

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