

## **IN THE HIGH COURT OF SINDH AT KARACHI**

### **Criminal Acquittal Appeal No.363 of 2021**

Appellant : Syed Rehman Ahmed Zaidi through Raja Ali Asghar, advocate

Respondent No.1 : Mujahid Abbas through Mr. Muhammad Yousuf, advocate

Respondent No.2 : Through Mr. Siraj Ali Khan Chandio, Additional Prosecutor General Sindh.

Dates of hearing : **25.05.2023**

Date of Judgment : **01.06.2023**

### **J U D G M E N T**

**AMJAD ALI BOHIO, J.** The appellant in the present appeal is challenging the judgment delivered on 29.05.2021 by the IV-Additional Sessions Judge, Karachi, East. This judgment is related to Criminal Complaint No. 56/2016 filed under Sections 3, 4, and 8 of the Illegal Dispossession Act, 2005. In this judgment, the accused Mujahid Abbas was acquitted under Section 265-H(i) of the Criminal Procedure Code (Cr.P.C).

2. According to the allegations stated in the complaint, the property under scrutiny is a house located at House No. 473, Sector No. 35/D, measuring 120 square yards, situated in Korangi Township, Karachi. The property was jointly leased to the father and uncle of the complainant, namely Syed Rehan Ahmed Zaidi and Syed Imran Ahmed Zaidi, respectively, through a lease deed dated 22.10.1986. The complainant occupied 60 square yards, half of the property on the Eastern side, while respondent No.1 claimed to have purchased 60 square yards (half portion) on the Western side. Furthermore, it is mentioned that the complainant left an open space on the western side of the property to allow for air and light, which included the installation of an iron door, window, and a valve for a water tank between the two portions. The complainant further states that the complainant acquired the half portion from his uncle, Imran Ahmed Zaidi, through an agreement of sale deed dated 03.05.2005. At that time, respondent No.1 was a tenant occupying that portion and paying rent to the complainant until November, 2008.

3. However, respondent No.1 ceased making rent payments, which prompted the complainant to file Suit No.182/2008 seeking specific

performance, declaration, cancellation, and injunction against the legal heirs of his uncle, Imran Ali Zaidi. Unfortunately, the suit was dismissed. Subsequently, the appellant filed Civil Appeal No.46/2013, which was also dismissed by the learned IX-Additional District Judge, Karachi East, on 23.04.2016. During the pendency of the appeal, respondent No.1 forcefully trespassed into the aforementioned open space. As a result, the court's Nazir (court officer) visited the site and submitted a report stating that an area of 9.7 square yards was under the possession of respondent. Consequently, the appellant filed the aforementioned complaint.

4. Upon the submission of the aforementioned complaint, the concerned Station House Officer (SHO) was directed to provide a report in accordance with the provisions of Section 5 of the Illegal Dispossession Act, 2005. The learned IX-Additional Sessions Judge, Karachi East, acknowledged the complaint, registered it, and subsequently issued bailable warrants against respondent.

5. During the trial, respondent No.1 faced the charges framed against him on 09.02.2019. He pleaded not guilty and requested a trial at Ex-1 & 1/A respectively.

6. The complainant, Syed Rehman Ahmed Zaidi, testified as a witness (Ex-2) and submitted supporting documents, including a photocopy of the lease transfer of quarters with lease of plots (original seen and returned), a photocopy of the Sale Agreement dated 04.01.2008, the report of the Nazir, Executive Engineer KMC, the complaint under Section 3, 4, and 8 of the Illegal Dispossession Act, 2005, and the compliance report (Ex-2/A to 2/G). After presenting his evidence, the complainant concluded his case.

7. The statement of respondent No.1 was recorded under Section 342 of the Criminal Procedure Code (Cr.P.C), during which he denied the allegations. However, he neither testified on oath nor, presented any evidence in his defense.

8. Subsequently, the trial court rendered its judgment dated 29.5.2021, wherein the aforementioned complaint was dismissed. Dissatisfied with the decision, the appellant has filed the appeal in hand before this Court, seeking a review and reconsideration of the judgment.

9. Upon the service of notice, respondent No.1 appeared before the Court, represented by his counsel. The Court proceeded to hear arguments from both parties' counsel and thoroughly examined all the materials and evidence presented before it.

10. The counsel for the appellant has presented arguments stating that the trial court failed to consider the clear distinction made by the complainant regarding the possession of the property. According to the complainant, the legal heirs of late Imran Ahmed Zaidi occupied the eastern portion of 60 square yards, while the remaining 50 paisa share of the same 60 square yards on the western side was in the possession of the appellant. The counsel argues that the trial court's observation regarding the requirement for partitioning or dividing the property by its metes and bounds contradicts established legal principles. To support their arguments, the counsel cited relevant case law, including *Muhammad Ehsan v. the State* (2006 SCMR 1857), *Dildar Hussain v. Muhammad Afzaal alias Chala and 3 others* (PLD 2004 Supreme Court 663), *Sheraz Tufail v. the State* (2007 SCMR 518), and *Sikander Teghani alias Muhammad Bux Teghani v. the State* (2016 YLR 1098). They contend that these cases support the appellant's position and highlight the incorrectness of the trial court's judgment.

11. The counsel for respondent No.1 argues that the appellant filed the complaint with malicious intentions and without acting in good faith. They claim that the appellant's contradictory statements regarding the possession of the property indicate hidden motives. The counsel asserts that the appellant acknowledges respondent No.1's occupation of 60 square yards as a tenant of the appellant's uncle, and yet, also accuses respondent No.1 of occupying an additional 9.7 square yards of the appellant's portion. He argues that the appellant has not denied the fact that respondent No.1 purchased a share from the legal heirs of Imran Ahmed Zaidi, and both parties are in possession of the same portion they acquired through separate transactions. The counsel further argues that this fact was established during the civil litigation between the parties and admitted by the appellant during his testimony. Therefore, he contended that the trial court correctly decided the complaint and advised the appellant to pursue partition through appropriate legal channels. The

counsel relies on the cases of Muhammad Yar v. Muhammad Umer and 5 others (2022 YLR Note 100), Khadim Ali v. Hakim Ali and another (2021 YLR 1556), and Mohammad Haneef v. Barkat and 2 others (2021 YLR 732) to support their arguments.

12. I have considered the submissions of learned counsel for the appellant, respondent No.1, learned Additional Prosecutor General and have gone through the material brought on record.

13. Admittedly, the disputed property was transferred by KDA vide "Transfer of Quarters With Lease Of Plots", deed in favour of two brothers namely Syed Rehan Ahmed Zaidi (father of appellant) and Syed Imran Ahmed Zaidi. According to the appellant, 50 paise share (half portion) of the aforesaid property from eastern side came in their possession, whereas the remaining 50 paise share (half portion) on western side remained with Syed Imran Ahmed Zaidi. The appellant agitated that he purchased the remaining half portion from his uncle in the year 2005 through agreement of sale dated 03.05.2005, for which, he also filed Suit No.182/2008 but he failed to succeed. He also asserted that a portion admeasuring 09.7 square yards of his portion was occupied by the accused/respondent who claimed to have purchased the remaining half portion from legal heirs of deceased Imran Ahmed Zaidi through sale agreement dated 04.02.2008. Learned counsel for the appellant has not denied the fact about sale of half portion belong to his uncle Syed Imran Ahmed Zaidi by his legal heirs to the respondent No.1, but has contended that he has forcibly occupied an area admeasuring 09.7 square yards. It is admitted fact that since execution of the lease in favour of Syed Rehan Ahmed Zaidi and Imran Ahmed Zaidi, the disputed property has not been partitioned, therefore, unless and until the property in dispute is not partitioned through KDA authorities who executed the transfer of quarters with lease of plots, the possession of one co-sharer always deems to be the possession of all the co-owners as held in the case of Muhammad Afzal and another v. Muzafar Khan and 11 others (2020 PCr.LJ 721) wherein, it is held that all co-sharers are deemed to be owners of the land unless the land divided/partitioned in accordance with law. Since the appellant and respondent (after purchase of the half portion of the disputed property) are co-sharers, therefore, the facts of above quoted authorities relied upon by the learned counsel for the appellant are not relevant to the facts of above case in hand. Accordingly, the findings of

the trial Court while deciding the above complaint are justified and proper remedy available to the appellant to approach the competent forum for partition of the disputed property.

14. Consequently, in view of the above, the appeal in hand being without merits is dismissed.

JUDGE