

IN THE HIGH COURT OF SINDH, SUKKUR BENCH AT SUKKUR

Cr. Revision Application No.S-34 of 2023

Petitioner : Muhammad Shareef
Through Mr. Abdul Mujeeb Shaikh,
Advocate

Respondent No.4 : Mehboob Ali through
Mr. Gulsher Mahar, Advocate

The State & Ors : Mr. Shafi Muhammad Mahar, DPG

ORDER

Date of hearing : 07th May 2024

Decision of decision : 17th May 2024

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ARBAB ALI HAKRO, J: The present Criminal Revision Application is preferred against the Order dated 22.02.2023, rendered by the learned V-Additional Sessions Judge, Sukkur (hereinafter referred to as “the trial Court”). The impugned order summarily dismissed the complaint filed by the Applicant, Muhammad Sharif, invoking Sections 3, 4, and 7 of the Illegal Dispossession Act, 2005 (hereinafter referred to as “the Act of 2005”).

2. To succinctly state the facts of the case, the applicant lodged a complaint in the Court of the District and Sessions Judge, Sukkur, on 09.2.2022, against respondent No.4, Mehboob Ali. The complaint was filed to initiate proceedings against respondent No.4 under Sections 3 and 4 of the Act of 2005. The applicant asserted ownership of Survey Nos. 612 and 807, situated in Deh Mubarakpur, Taluka Pano Aakil, District Sukkur (hereinafter referred to as “the disputed land”). Respondent No.4, a relative of the applicant, allegedly coveted the disputed land and pressured the applicant to sell it to him. It was further alleged that on 26.10.2021 at about 11:00 a.m., while the applicant and his witnesses were present at the disputed land, the proposed accused/respondent

No.4, along with eight unidentified individuals, forcibly dispossessed him of the disputed land. Consequently, he filed the complaint under the Act of 2005.

3. Following the admission of the aforementioned complaint, the learned trial Court summoned reports from the concerned Mukhtiarkar and Station House Officer (S.H.O), who subsequently submitted their reports after conducting an enquiry. Thereafter, the learned trial Court, after hearing the parties, dismissed the applicant's complaint vide impugned Order February 22, 2023. This dismissal led to the filing of the present criminal revision.

4. At the outset, the learned counsel for the applicant contended that respondent No.4 is a land grabber who has unlawfully occupied the disputed land. It is argued that the trial Court failed to acknowledge the applicant's ownership, as evidenced by the report from the concerned Mukhtiarkar. counsel further argued that the report from the concerned S.H.O lacked substantial evidence and suppressed the actual facts of the case and that the applicant's case was suitable for cognizance under the Act of 2005. Counsel believes that the learned trial Court erroneously determined that the dispute was of a civil nature and summarily dismissed the complaint without taking cognizance. Lastly, counsel added that it is established law that two parallel proceedings, civil and criminal, can be initiated simultaneously.

5. Conversely, the learned counsel for respondent No.4 contends that the Revenue Authorities have already cancelled the entry of the applicant in the Revenue record. The applicant appealed against this decision, but the appeal was also dismissed. Furthermore, the Assistant Deputy Commissioner-II (ADC-II) ultimately determined that fraud had been committed. No oral gift was proven, which would have justified the applicant's entry into the record of rights. The ADC-II concluded that a Jalsi Aam (public meeting) should be held, and the original/mother entry

was restored to include the legal heirs of their ancestors. Lastly, the counsel supported the impugned Order and contended that it does not require any interference by this Court.

6. While adopting the arguments advanced by the learned counsel for the respondent, the learned DPG supports the impugned order. He further added that there was a delay of more than one year in lodging the complaint as it reflects from the record that he was dispossessed from the landed property on 26.10.2021; however, a complaint under Sections 3, 4 & 7 of the Illegal Dispossession Act, 2005, was filed on 09.12.2022, which delay was not reasonably explained by the applicant as to why he remained mum during the aforesaid period.

7. The arguments put forth by the learned counsel representing both parties have been duly considered, and the record has been thoroughly examined with the invaluable assistance of both counsels.

8. Indeed, it is a well-established principle in law that civil and criminal proceedings can proceed concurrently. This is based on the understanding that these two proceedings serve different purposes and address various aspects of a dispute. In a civil suit, a party can approach the relevant civil Court to assert and protect their legal rights over a disputed property. On the other hand, a criminal complaint is concerned with punishing an offender for a crime they have committed. In essence, while a civil suit is aimed at determining and enforcing rights, a criminal proceeding is aimed at maintaining law and Order in society by punishing offenders. Therefore, although related, these two types of proceedings can run simultaneously without causing any legal conflict or contradiction.

9. In the case at hand, the applicant bears the burden of proof to establish, through the contents of the complaint, that he was in possession of the disputed land and was illegally and forcibly dispossessed by respondent No. 4, the accused. However, the reports submitted by the

concerned Mukhtiarkar and Station House Officer do not corroborate the incident as alleged in the complaint. The ownership of the applicant and the claim of respondent No. 4, asserting that he is the legal heir of Muhammad Yousif, is not under dispute. Respondent No. 4 has initiated subsequent proceedings by filing a Revenue Appeal. The entry, on the basis of which the applicant is claiming ownership, has been cancelled by the Revenue Authorities exercising their jurisdiction and powers. Currently, the title under which the applicant claims ownership is subjudice, and specific orders have been passed by the Revenue Authorities subject to finality under the Sindh Land Revenue Act or otherwise by the Civil Court to decide the title. Both parties are related to each other, and the disputed land is not exclusively owned by the applicant as there are several co-sharers in the disputed land, under which respondent No. 4 is also claiming his right, title, and interest. The reports of the Station House Officer and Mukhtiarkar indicate that respondent No. 4 has been in possession of the disputed land for a considerable period. There is no prima facie evidence to establish that the applicant was in possession of the disputed land and was illegally and forcibly dispossessed. On record, respondent No. 4 is also a co-sharer of the disputed land. It is a well-settled proposition of law that a co-sharer is presumed to possess every inch of the joint property. Therefore, the applicability of the Act of 2005 in this case would require extraordinary circumstances, which are notably lacking herein. The **ratio decidendi** of the Apex Court in the case of **Shaikh Muhammad Naseem v. Mst. Farida Gul (2016 SCMR 1931)** is a pivotal legal principle that addresses the concurrent jurisdiction of civil and criminal proceedings in cases of illegal dispossession of immovable property. The Supreme Court held that the presence of civil litigation regarding illegal dispossession does not preclude the maintenance of criminal proceedings under the **Illegal Dispossession Act, 2005**. This stance overruled the previous finding that suggested such criminal proceedings could not be sustained if there was pending civil litigation between the parties—a reasoning based on the Lahore High Court’s decision in **Zahoor Ahmed’s case (PLD 2007 Lahore**

231) and adopted by a three-member bench of the Supreme Court in **Bashir Ahmed's case (PLD 2010 SC 661)**. The Apex Court clarified that acts which incur civil liability as well as criminal penalties—such as those outlined in the **Illegal Dispossession Act, 2005**—allow for an individual to be tried under both civil and criminal proceedings, which are independent of one another. It was emphasized that once an offence is proven within the provisions of the **Illegal Dispossession Act, 2005**, the accused cannot evade punishment on the basis that related civil litigation is still pending. The Apex Court firmly stated that no individual is allowed to unlawfully dispossess an owner or lawful occupier of immovable property and subsequently attempt to impede criminal proceedings by citing ongoing civil litigation. Therefore, the Supreme Court concluded that criminal proceedings under the **Illegal Dispossession Act, 2005** are maintainable in law, regardless of any pending civil litigation, ensuring that the act of illegal dispossession is addressed through the appropriate criminal justice mechanisms.

10. The subject matter before this Court is enshrouded in a factual dispute concerning the disputed title held by the parties, which mandates an exhaustive examination and the meticulous documentation of evidence within the purview of a Civil Court. In this context, it is pertinent to invoke the jurisprudential wisdom of the Supreme Court of Pakistan as articulated in the case of **Allah Ditta v. Additional District Judge, Chiniot and 3 others (1996 SCMR 1779)**. The Supreme Court therein adjudicated that: *“This was a judgment in a criminal case and it is well-settled that a Criminal Court cannot decide question of title”*. In the legal context of this matter, the issue of illegal dispossession cannot be substantively addressed absent a definitive adjudication on the title of the subject land. It is the determination of title that predicates the legitimacy of possession, and without such judicial clarification, the discourse on illegal dispossession remains premature and speculative. In this context, it is pertinent to refer to the precedent set in the case of **Secretary to the**

Government of Punjab v. Ghulam Nabi (PLD 2001 SC 415). The Supreme Court of Pakistan, in this case, held that: -

“It hardly needs any elaboration that the superior Courts should not involve themselves into investigations of disputed question of fact which necessitate taking of evidence. This can more appropriately be done in the ordinary Civil Procedure for litigation by a suit. This extraordinary jurisdiction is intended primarily for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts.”

11. In light of the foregoing discourse, the determinations rendered by the trial court are devoid of any legal infraction or procedural anomaly that would warrant intervention by this Court. Considering the extant civil litigation amongst the contending parties over the disputed title and factual controversies, the present Revision Petition is thus adjudged to be devoid of substantive merit and is accordingly **dismissed**.

Faisal Mumtaz/PS

JUDGE