

CRIMINAL REVISION APPLN.NO.S-1676 OF 2012

Petitioner : Muhammad Aslam, through Mr.Iftikhar Ali
Arain, Advocate

Respondents : Respondent No.1 to 6 through Mr.Soomardass
R. Parwani, Advocate

Respondent No. 7 & 8 through Mr.Aga Ather
Hussain, Asstt.AG

Date of hearing : 28.09.2012

Date of Decision : 28.09.2012

ORDER

SALAHUDDIN PANHWAR---J., Applicant Muhammad Aslam has assailed Order dated 11th May 2012 passed by the IInd-Additional Session Judge, Ghotki, whereby; Direct

Complaint No.48 of 2011, filed by the applicant under Section 3 / 4 of the Illegal Dispossession Act 2005 was dismissed.

2. Relevant facts are that on 05.09.2011, applicant and other co-sharers along with hari (Peasant) Barkat Ali were available at their lands; all of sudden proposed accused / respondent Nos. 1 to 4 armed with K.K; accused No.5 and 6 armed with pistols and 5/6 unidentified persons tried to take illegal possession of the agricultural land bearing S.No.84/1 and 84/4; total area (7-37 acres) forcibly; accused / respondent disclosed that they have purchased the in-question land therefore; their possession is legal if any one will raise objection; will face the consequences. According to complaint, an agricultural land owned by Muhammad Saddiq, Muhammad Ibrahim, Muhammad Aman and Muhammad Ali is undivided agricultural land; one co-sharer namely Muhammad Saddik illegally had sold out his own 20 paisa share which is 6.13½ acres from block 83/1 to 4 and block 84/1 to 4 from undivided property through registered sale deed and possession was handed over to proposed accused No.2 by Muhammad Saddik.

3. Learned counsel for applicant has inter-alia contended that impugned order is illegal as while deciding application, moved under section 7 of the Act for interim relief, the trial court was not competent to dismiss the complaint; respondent illegally occupied 1-20 acres. Whereas; he has purchased the share of his brother which was 6-13 acres and forcibly occupied more area; charge was framed therefore, without recording evidence impugned order is also not maintainable under the Law.

4. Learned counsel in support of his contention has relied upon 2009 P.Cr.L.J 491, 2010 P.Cr.L.J 422, 2010 PLD SC 725, PLD 2009 Karachi 65, PLD 2007 SC 423, PLD 2009 Karachi 65, 2009 P.Cr.L.J 491, 2011 P.Cr.L.J 666, PLD 2007 SC 2423, 2010 S.C.M.R 1254.

5. Conversely, learned counsel for the respondent has argued that respondent No.1 is co-sharer; subject matter is un-partitioned agricultural land; respondent has purchased the subject matter land through registered sale deed and sale agreement of the subject matter land; respondent filed suit for Specific Performance, Declaration and Permanent Injunction on 22nd November 2011 whereas; above complaint is filed by applicant on 25th November 2011 therefore, civil suit was filed prior to this case; wrong application of Section 203 Cr.P.C in impugned order will not debar the respondent from his legal right. He has relied upon 2010 S.C.M>R 1523, 2007 PLD Lahore 2031, PLD 2010 SC 661, 2012 S.C.M.R 229, 2012 S.C.M>R 1533.

6. Learned counsel for State has adopted the arguments of respondents.

7. I have heard the arguments, as advanced by respective sides and have carefully examined the available material.

8. Candidly Para No.2 of the complaint filed by the applicant discloses that subject matter land is agricultural and un-partitioned one and in Para No.3 of the complaint it is mentioned that co-sharer Muhammad Siddique brother of applicant illegally had sold his own share of 20-paisa which is 6.13½ from block 83/1 to 4 and block 84/1 to 4 from undivided property to the proposed accused No.2 and possession was handed over to him by the seller further in Para-4 he has disclosed that on 05.09.2011, respondents being armed forcibly occupied 7-00 acres 20-ghunta's. Whereas; it is also matter of record that respondent No.1 has filed suit for Specific Performance of Contract on 22.11.2011 which pertains to the same area which is subject matter and complaint was filed on 25.11.2011.

8. Learned counsel has relied plethora of cases which pertains to the interpretation of Illegal Dispossession Act and applicability in various prospect. No doubt, it is settled proposition of law that this act was enacted in order to curb the activities of land grabbers and Qabza Mafia, who are nowadays are working in very organized manner and occupying the abundant, open, belong to government and weak persons. This has been the objective of the Act whereby this criminal speedy remedy was provided to rescue the legal occupants but in these days it is surfaced that every person if he is out of possession of any property in any manner is trying to approach the court (s) while attempting to make a case of criminal nature so as to avail remedy by this enactment. Since it is well settled proposition of law that every criminal case has to be decided in its own peculiar circumstances Since the Honourable Supreme Court of Pakistan, in the case law, reported as 2010 SCMR 1254 has provided guidelines for the Court (s) to

examine attracting of Provision of Section 3 of the Illegal Dispossession Act, 2005 while holding that Court is required to examine as to whether property was an immovable property; secondly that the person was owner or the property was in his lawful possession; thirdly the accused entered into or upon the property unlawfully; fourthly that such entry was with intention to dispossess i.e ouster, evict or deriving out of possession against the will of person in actual possession or to grab i.e capture, seize suddenly, take greedily or unfairly, or to control i.e to exercise power or influence over regulate or governs or relates to authority over what is not in one's physical possession or to occupy i.e holding possession, reside in or something.

9. Accordingly, it would be proper to examine the case in hand on the above touch-stone. What the complaint of the complainant / petitioner himself speaks is that applicant himself admits that the subject matter property is undivided one hence in such like event it is legally presumed that every share holder of a joint holding would be deemed to be in joint possession, therefore, co-sharer Mohammad Siddique, brother of applicant, cannot be legally presumed to be not in possession of such joint holding, who undisputedly sold out the share to accused / respondent through register sale deed hence the accused / respondent, legally to be presumed, to be standing in the foot of such co-sharer. Without prejudice to this the complainant / applicant has further admitted in his complaint that the possession was handed over to the respondent by the Seller who was co-sharer with the applicants. Since the complainant / applicant himself admits about delivery of possession to the accused / respondent by an admitted co-

sharer then the complainant / applicant is not legally justified to allege that the accused / respondents occupied illegally because admittedly the co-sharer, brother of the complainant / applicant, put accused / respondent in possession of subject matter after execution of register sale deed for such subject matter. Further, it is also a matter of record that admittedly suit for Specific Performance was filed before this complaint. Thus what becomes evident on record is that accused / respondent was put in possession by an owner (co-sharer), accused/ respondent possessing subject matter under a register document and that applicant / complainant was not in possession of the subject matter at the time of alleged dispossession because admittedly prior to such date the possession of the subject matter stood delivered to accused / respondent by brother of applicant / complainant, namely Mohammad Siddique, a co-sharer in joint holding. Thus keeping in view the guide-lines, provided by the honourable Supreme Court of Pakistan in the case law, referred above, I am of the considered view that provision of Section 3 of the Act is not applicable to the instant case and learned trial Court was well justified in dismissing the complaint of the complainant / applicant. Before parting needless to say that mere framing of the charge would not debar the Court of law from exercising jurisdiction under section 249-A / 265-K Cr.P.C because the language of the provision clearly speaks that the acquittal can be at any stage of the case where the court comes to conclusion that there is no probability of accused being convicted of any offence.

9. As discussed above, this revision application is not maintainable. By short order dated 28.09.2012 this revision application was dismissed; these are the reasons for the same.

J U D G E

Brohi