

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.22 of 2017

Lt. Col (Retd) Muhammad Ashfaq Hussain
Vs
Sajid Ali Qureshi & another

PSLA No.01 of 2017

Lt. Col (Retd) Muhammad Ashfaq Hussain
Vs
Sajid Ali Qureshi & another

Date of Hearing:	20.07.2020
Appellant By:	Mr. Ansar Nawaz Mirza, Advocate
Respondent By:	Mr. Muhammad Izzat Khan, Advocate

Ghulam Azam Qambrani, J: Both these Criminal Appeals have been directed against the Judgment dated 30.10.2015 passed by learned Additional Sessions Judge-II, Islamabad-East, whereby complaint under section 3/7 of the Illegal Dispossession Act, 2005 filed against respondent No.1/accused was dismissed by giving him benefit of doubt and was acquitted of the charge levelled against him.

2. Brief facts of the case are that the complainant/appellant filed complaint Under Section 3 & 7 of the Illegal Dispossession Act, 2005 against respondent No.1 with the assertion that the appellant was owner in possession of plot measuring 14-marlas comprising khasra no. 2010/1192, khata No. 182/328, khewat No. 199, khatooni No. 315 situated in Village Shakrial, Islamabad vide registered sale-deed No. 7931 dated 20.5.1978. The land was purchased by the appellant from one Ali Jan s/o Nadir and possession was also handed over to the appellant from khasra No. 2010/1192, khata No. 182/328, Khewat No. 199, Khatooni No. 315 with the specific boundaries mentioned in the registered sale-deed. In the year 2003, the appellant moved an application before the Tehsildar for measurement and demarcation of plot, on which Halqa Patwari and Girdawar on the orders of the Tehsildar visited the spot, took measurement and demarcated the plot as open plot of 13 marlas. That between the midnight of 19th & 20th, April, 2014, the respondent No.1 alongwith 25/30 persons entered the plot of appellant and took the possession and dispossessed the appellant from the said plot. The appellant alongwith his brother namely Muhammad Altaf Hussain and Mst. Robina Shaheen wife of appellant immediately visited the spot where the respondent No.1 alongwith his companions were present. The respondent No.1 and his companions did not allow the appellant and his family to

enter in the said plot. It is further mentioned that the accused/respondent No.1 belongs to a political party and also belongs to a qabza group who on gunpoint has illegally occupied the land of people and similarly he has dispossessed the appellant from his plot. After filing the private complaint, the learned Trial Court recorded cursory statement of the appellant and also summoned the report from concerned SHO, which was duly submitted in the Court after obtaining report from the revenue authorities and on the basis of preliminary evidence, learned Trial Court summoned the respondent No.1 to face the trial.

3. Charge was framed against the respondent No.1/accused to which he pleaded not guilty and claimed trial. On denial of the charge, complainant was directed to produce evidence.

4. For proving the charge, complainant Muhammad Ashfaq Hussain appeared as PW.1, Muhammad Altaf Hussain appeared as PW.2, Tariq Rauf SI appeared as Pw.3 who produced application Ex.PB, Inquiry Report Ex.PC & Interim Report Ex.PD in his statement and Sohail Maqbool PW.4 Tehsildar Settlement, Rawalpindi has recorded his statement on oath and also produced report of Halqa Patwari Ex.PE and his report Ex.PF regarding the ownership of the parties.

5. After closure of the prosecution evidence, respondent No.1/accused was examined under Section 342 Cr.P.C wherein he has categorically denied the prosecution allegation and took stance that he is owner in possession of his ancestral property since his forefather's time and the appellant/complainant has no right over the disputed plot regarding which civil litigation is also pending. No demarcation was legally conducted by the Revenue Officer and the so called demarcation was conducted in his absence. The sale-deed pertains to four khasra numbers i.e 2010/1192, 2195/1212, 2196/1212 & 1211. The so called demarcation was made only for one khasra Number i.e 2010./1112 and that was also done in his absence. He is in possession of the disputed land and the appellant/complainant has no possession at all over the disputed land and the allegation of dispossession of the appellant/complainant is totally false. He did not opt to record statement on oath as envisaged Under Section 340 (2) Cr.P.C. The learned Additional Sessions Judge-II-East, Islamabad after hearing the parties passed the impugned Judgment dated 30.10.2015, whereby acquitted the respondent No.1/accused from the charges levelled against him by giving him benefit of doubt.

6. Learned counsel for the appellant/complainant has contended that since the year ,1978 the appellant is in peaceful possession of the disputed land as owner and had purchased the same land through a registered sale-deed from one Ali Jan s/o Nadir. Further submitted that in the year 2003, the land was demarcated by the Halqa

Patwari ; that the appellant during the course of trial produced oral as well as documentary evidence with regard to possession of the appellant, but the learned Trial Court failed to appreciate the evidence, therefore, the impugned order is not sustainable in the eyes of law; that the learned Trial Court did not even discuss the prosecution evidence qua the occurrence of illegal dispossession regarding which the complaint was filed, rather decided the case on wrong assumptions and question of title which is not in accordance with law on the basis whereof the impugned order warrants interference; that the learned Trial Court passed the impugned judgment against the facts and circumstances in arbitrary manner without appreciation of evidence thus mis-carriage of justice has occurred.

7. Conversely, learned counsel for respondent No.1/accused has contended that the respondent is owner in possession of the disputed land as the respondent is recorded owner in the record of rights and he being a co-sharer with the above said Ali Jan in the revenue record; that as per complainant's version 04 khasra numbers have been purchased by the complainant through above said Ali Jan, but no where the handing over of possession of a specific khasra number has been mentioned. Further contended that the complainant has purchased land from one Ali Jan, as per record of rights he was not sole owner of the above mentioned 04 khasra numbers rather in the above said khasra numbers, several others were also co-owners; that admittedly the above said co-owner Ali Jan could sold his own shares and possession of specific area to his extent could hand over to the complainant, but that too in presence of remaining co-sharers duly demarcated by the revenue authorities in accordance with law; that the complainant never remained in possession, therefore, question of illegal dispossession does not arise; that the documents mark A, mark DA, mark DB, mark DC, mark DD, mark DF, mark DH, mark DJ, mark DK-1 and mark DK-2; that appellant failed to produce any evidence for proving the allegation and also failed to bring on record any evidence against the respondent that he is a member of land maphia/qabza group. He lastly urged for dismissal of appeal.

8. I have heard the arguments of learned counsel for the parties and perused the material available on record.

9. Perusal of the record reveals that the appellant in support of his version himself appeared as PW.1 and he narrated the same facts which are mentioned in the contents of complaint filed under section 3 of the Illegal Dispossession Act and he has also produced the registry as Ex.PA. During cross-examination, he has admitted that 04 khasra numbers are mentioned in the registry and states that possession was given to him from one Khasra number. Further admitted that this fact is not mentioned in the said registry that possession was given to him in a particular khasra

number. He has further admitted that out of 04 khasra numbers, 03 khasra numbers were not demarcated and also admits that at the time of demarcation the accused/respondent No.1 was not accompanied them at the time of demarcation. He has shown his ignorance whether or not the respondent No.1 has ancestral ownership in the land in dispute. He further admits that in the complaint the fact has not been mentioned that he constructed a boundary wall from front side and foundation. PW.2 Muhammad Altaf, who is the real brother of the appellant/complainant. He has almost narrated the same story as stated by PW.1, but during cross-examination has stated that his statement was not recorded by the police. He also shown his ignorance that how many khasra numbers were mentioned in the registry purchased by the complainant. PW.3 Tariq Rauaf SI in his deposition has stated that on the direction of SHO, he visited the disputed plot alongwith complainant, at the spot he inquired the matter from some persons available there and recorded the statements of five witnesses namely Anjam Afshan, Muhammad Altaf, Asad Mehmood s/o Ali Jan Qureshi, Muhammad Ibrar and Muhammad Ishtiaq Hussain and also recorded the statements of eight witnesses produced by the respondent No.1/accused. He filed application Ex.PB to the Revenue officers and after getting the report from the revenue officials, he prepared and submitted report Ex.PC and Ex.PD. During cross-examination, he has admitted that the persons who were examined on the respondent's side proved that the plot belongs to the respondents as their ancestral property. This witness has clearly stated that there was no boundary wall on the disputed plot and has further stated that his report mainly based on the revenue reports which were prepared by the revenue authorities in the year 2003 and 2014 and has further admitted that he did not recorded statement of any of the revenue officials and has further stated that both the parties are claiming ownership and possession of the plot. PW.4 during cross-examination has admitted that he himself did not visit the plot for the purpose of pointation of disputed property. He has further admitted that the registered sale-deed bearing number 7931 dated 20.5.1978 was executed in respect of khasra number 2010/1192, 2195/1212, 2196/1212 and 1211, as per registry the land measuring 14-marlas was sold to the complainant in these above mentioned 04 khasra numbers. This witness has also admitted that officially partition in respect of above khasra numbers has not been conducted. Perusal of Ex.PA a sale-deed dated 20.05.1978 itself clearly shows that the vendor Ali Jan himself was not the sole owner of the above mentioned 04 khasra numbers, rather in khasra number 2010/1192 he had a share of 1/6, in khasra number 2195/1212, he was holding share 43/258, in khasra number 2196/1212 the share becomes 43/258 and in khasra number 1211 his share was 301/1806. In such manner, the vendor as per this deed, was owner of 1-kanal, 19-marlas, out of which he had sold only 0-14 marlas. The decisive question is that no where it has been mentioned

that out of which khasra number to the extent of his own share he entered into sale agreement and handed over the possession to the appellant. It is also crystal clear from the sale-deed Ex.PA that the vendor Ali Jan had some shares in above mentioned each khasra numbers meaning thereby that there were some other co-sharers also. There is no eye witness against the respondent that he illegally dispossessed the appellant. Furthermore, some witnesses namely Asad Mehmood S/o Ali Jan, Muhammad Ibrar and Muhammad Ishtiaq Hussain have not been examined by the prosecution.

10. The Illegal Dispossession Act, 2005 is a special enactment which has empowered the Court to get conduct a special investigation within a stipulated period of fifteen days. The learned Trial Court in accordance with law directed the SHO for conduct of an investigation. The police after investigation submitted report as Ex.PC & Ex.PD through PW.3 who during cross-examination stated that he cannot opine as to whether the disputed plot is the ancestral property of respondent No.1. Further has stated that both the parties are claiming the ownership and possession of the disputed plot, therefore, he cannot opine about the ownership of the disputed plot and also cannot finally opine as to whether the respondent was guilty of any offence. The statement of this witness has rendered the reports not beneficial to the appellant and on the basis of such sort of incomplete evidence, conviction cannot be based. On the other hand, the respondent/accused has also placed on record certain certified copies of the abstracts of jamabandi of Mauza Shakrial, District Rawalpindi. Mark DK-1 showing khewat number 199, khatooni no. 315, under khasra No.2010/1192 admeasuring 04-kanals, 04-marlas situated at Mahal Shakrial, District Rawalpindi is registered on the name of respondent. PW-4, Tehsildar, has also admitted that officially partition in respect of above khasra numbers has not been conducted.

11. It is well settled proposition of law that every criminal case has to be decided on its own peculiar circumstances and facts. The Honourable Supreme Court, in the dictum, reported as "Mumtaz Hussain vs. Dr. Nasir Khan and others" (2010 SCMR 1254), has provided guidelines for the Courts 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 govern or relates to authority over what is not in one's physical possession or to occupy, i.e holding possession , reside in or something.

12. Accordingly, it would be proper to examine the case in hand on the above touchstone. Evidently, the disputed land is un-divided among the remaining other co-sharer. It is legally presumed that every share holder of a joint holding would be deemed to be in joint possession.

13. Reliance has been placed on the case titled as “Zahoor Ahmad Vs The State & three others” [PLD 2007 Lahore 231], wherein it has been stated that:-

- (i) *The Illegal Dispossession Act, 2005 applies to dispossession from immovable property only by property grabbers/Qabza Groups/Land mafia. A complaint under the Illegal Dispossession Act, 2005 can be entertained by a Court of Session only if some material exists showing involvement of the persons complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an organized or calculated effort by some persons operating individually or in groups to grab by force or deceit property to which they have no lawful, ostensible or justifiable claim. In the case of an individual it must be the manner of execution of his design which may expose him as a property grabber.*
- (ii) *The illegal Dispossession Act, 2005 does not apply to run of the mill cases of alleged dispossession from immovable properties by ordinary persons having no credentials or antecedents of being property grabbers/Qabza Groups/land mafia, i.e. Case of disputes over possession of immovable properties between co-owners or co-sharers between landlords and tenants, between persons claiming possession on the basis of inheritance, between persons vying for possession on the basis of competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property.*
- (iii) *A complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the relevant property is being regulated by a civil or revenue Court.*

14. Perusal of the evidence transpires that there is no direct evidence against the appellants to attract the provisions of Section 3 of the Illegal Dispossession Act, 2005. So far as civil suit No. 912/2013 is concerned, the learned Civil Judge passed ex-parte judgment & decree against the appellants. It is an admitted fact that still the land in dispute has not been properly partitioned through the revenue staff and still no revenue record has been maintained in this regard about the partition in between the parties. The possession of one co-sharer always deems to be the possession of all the co-owners. No one can deny the possession of co-owner. The appellant/complainant failed to produce any evidence with regard to Qabza Groups/property grabbers and land mafia against the respondent/accused. The matter between the parties is of civil nature. The exercise in such matter would be abuse of process of law which cannot be allowed.

15. The interference of this Court would be warranted, if the reasoning of the trial Court in acquitting an accused is perverse, artificial or ridiculous. It is only in an exceptional case that this Court will interfere by setting aside the acquittal of an accused. In the instant case, the learned trial Court has properly appreciated the evidence available on record and acquitted the accused/ respondent through a well-reasoned order. The learned counsel for the appellant has also not been able to show that there has been any misreading or non-reading of evidence. Reliance is placed on the cases titled as “Muhammad Zaman versus The State and others” [2014 SCMR 749], “Muhammad Rafique versus Muhabbat Khan and others” [2008 SCMR 715], “Jehangir versus Amin Ullah and others” [2010 SCMR 491], “Mst. Askar Jan and others versus Muhammad Daud and others” [2010 SCMR 1604] and “Mst. Sughra Begum and another versus Qaiser Pervez and others” [2015 SCMR 1142].

16. In the case of Ghulam Akbar and another Vs. The State (2008 SCMR 1064), it has been held as under:-

“It is cardinal principle of criminal jurisprudence that the burden of proving the case beyond doubt against the accused securely lied upon the prosecution and it did not shift. Similarly, the presumption and probabilities, however, strong may be, could not take the shape of proof.”

In the case reported as **Sanaullah Vs. The State through Prosecutor General** (2015 P.Cr.L.J. 382 (Balochistan), it has been held that as under:-

“Rule of prudence, stipulated that prosecution had to prove its case beyond the shadow of doubt. Accused had not to prove his innocence, until and unless proved guilty. Benefit of slightest doubt would necessarily be extended in favour of accused and not otherwise.”

17. Keeping in view the above facts and circumstances, it transpires from the record that no material was available on record against the accused/ respondent, as such, the learned trial Court has rightly acquitted the respondent/accused through the impugned order.

18. It is important to note that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, as presumption of double innocence is attached in the latter case. Reliance is placed on the case of “*Inayatullah Butt v. Muhammad Javed and 2 others*” [PLD 2003 SC 562]. Until and unless the judgment of the trial Court is perverse, completely illegal and on perusal of evidence no other decision can be given except that the accused is guilty or there has been complete misreading of evidence leading to

miscarriage of justice, the Court will not exercise jurisdiction under Section 417, Cr.P.C. The appellant feeling aggrieved from the impugned order dated 30.10.2015, had filed W.P No.4164/2015 before this Court wherein, on 26.01.2017 in C.M No.2156/ 2016, this Court passed the following order:-

“Considering grounds in the application, it appears that the petitioner has inadvertently filed Writ Petition instead of acquittal appeal. The Writ Petition was filed within limitation. Therefore, while allowing instant C.M, the Writ Petition is converted into Criminal Acquittal Appeal. The petitioner is directed to file petition for leave to appeal as envisaged by law.”

19. The learned counsel for the appellant has not advanced any argument to justify the setting aside of the acquittal order. There is no misreading or non-reading of evidence nor the findings of the learned trial Court are patently illegal. The findings of acquittal, by no stretch of the imagination, can be declared as perverse, shocking, alarming or suffering from errors of jurisdiction and misreading or non-reading of evidence. The learned trial Court, after proper appraisal of evidence available on record, has rightly acquitted the respondent from the charge.

20. In the circumstances, there is no merit in these acquittal appeals, therefore, the same are hereby dismissed.

~~Ghulam Azam Qambrani~~ /
Judge

Announced in Open Court, on this 28th day of July, 2020.

Judge
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S.Akhtar