

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.2300-2009

Qazi Humayun

Vs.

Additional District Judge, Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
------------------------------------	----------------------------------	--

04.03.2020	Mr. Babar Mumtaz, Advocate for petitioner. Mr. Majid Rashid, Advocate for respondents No.4 & 5.
------------	---

The petitioner, in the instant petition, is aggrieved of order dated 15.07.2009 passed by respondent No.1, whereby revision petition filed by respondent No.3, was allowed.

2. The facts, in brief, are that petitioner purchased land measuring 32 kanals 19 marlas situated in Khasras No.4621, 4618 including built up property and the trees and plantation thereon from respondent No.4 and others; mutations were entered in favour of petitioner on 11.07.2006 (mutations No.6409, 6410 and 6411), possession was also delivered to the petitioner on said date. Respondent No.3 filed an application under section 145 Cr.P.C. before respondent No.2 against the petitioner alleging therein that he had purchased 30 kanals 3 marlas of land from Khasra No.4618 along with share in Shamilat in Mouza Tumair, Islamabad and got possession in the year 1994. It was also alleged that petitioner namely Qazi Humayun belongs to Qabza Group and with the aid of respondents Nos.4 & 5, he illegally possessed the property in question. The referred application was dismissed by

respondent No.2 vide order dated 21.08.2008; revision petition was filed before respondent No.1, which was allowed and the matter was remanded for recording evidence and deciding the matter afresh vide the impugned order.

3. Learned counsel for the petitioner, *inter alia*, contended that under section 145 Cr.P.C., an application has to be filed within two months from the alleged illegality or dispossession, whereas in the instant case, it was more than said period. It was further submitted that it is trite law that dispute regarding title has to be initiated before the courts of plenary jurisdiction and respondent No.3 has done so accordingly. In support of his contentions, learned counsel placed reliance on cases reported as 'Muhammad Rafique Vs. Muhammad Siddique and another' (2001 P Cr.LJ 1515), 'Ch. Ghalib Hussain and another Vs. Muhammad Siddique and others' (2013 MLD 749), 'Muhammad Fareed Vs. The State and another' (2013 YLR 133), 'Shah Muhammad Vs. Haq Nawaz and another' (PLD 1970 Supreme Court 470) and 'Mukhtar Ahmad and others Vs. Haji Muhammad Saleem and another' (2013 SCMR 357).

4. Despite issuance of notices, no one entered appearance on behalf of respondent No.3 and as a result thereof, he was ordered to be proceeded exparte on 30.10.2018.

5. Learned counsel for respondents No.4 & 5 adopted the arguments by learned counsel for the petitioner and conceded the position.

6. Arguments advanced by learned counsels for the parties have been heard and

the documents, placed on record, examined with their able assistance.

7. The facts, leading to filing of instant petition, have been mentioned hereinabove therefore need not be reproduced.

8. It is trite law that proceedings under section 145 Cr.P.C. are not substitute for dispute regarding title before the courts of plenary jurisdiction. The learned revisional court fell in error while remanding the matter to record evidence. In this regard, inquiry was made and statements were recorded by respondent No.2 before dismissing application under section 145 Cr.P.C. and handing over the possession to the petitioner. It is *sine non qua* for moving an application under section 145 Cr.P.C. that aggrieved person should have been dispossessed within a period of two months but where the said period exceeds, application is not maintainable. The case law relied upon by learned counsel for the petitioner is instructive in the facts and circumstances. Reliance is placed on case reported as 'Muhammad Rafique Vs. Muhammad Siddique and another' (2001 P Cr.LJ 1515).

9. Admittedly, the proceedings regarding title are pending before the courts of competent jurisdiction and even on this score, application under section 145 Cr.P.C. is not maintainable. Reliance is placed on cases reported as 'Ch. Ghalib Hussain and another Vs. Muhammad Siddique and others' (2013 MLD 749), 'Muhammad Fareed Vs. The State and another' (2013 YLR 133), 'Shah Muhammad Vs. Haq Nawaz and another' (PLD

1970 Supreme Court 470) and 'Mukhtar Ahmad and others Vs. Haji Muhammad Saleem and another' (2013 SCMR 357).

10. In view of above position of law and facts, the order impugned in the instant petition, is not tenable.

11. For what has been discussed above, instant petition is allowed and the impugned order dated 15.07.2009 passed by respondent No.1 is set aside; consequently, application under section 145 Cr.P.C. filed by respondent No.3, is dismissed.

(AAMER FAROOQ)
JUDGE

Zawar