

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Revision No.47 of 2020

Muhammad Rafique, etc.
Versus
Tasadaq Hussain, etc.

Petitioner By: Sayyed Murtaza Ali Pirzada, Advocate.

Respondent By: Mr. Asif Irfan, Advocate.

Date of Hearing: 02.02.2022

ARBAB MUHAMMAD TAHIR, J:-Through the instant petition, petitioners have challenged two separate orders of even date i.e. 09.10.2020, passed by the learned Additional Sessions Judge-III, Islamabad (East) whereby their application under Section 540 Cr.P.C, and objections upon the report of learned local commission were turned down.

2. Facts arising out of the instant petition are that on 28.11.2016 petitioners filed complaint against the respondents under the Illegal Dispossession Act, 2005 (**'Act of 2005'**) claiming exclusive ownership of plot measuring 10 Marla, situated in Khewat No. 293-295 Khatooni No. 422-447, Mouza Humak Tehsil and District Islamabad. After the recording of evidence, on 07.02.2018 respondents filed an application for demarcation of the disputed property by revenue officials. On 12.04.2018, the petitioners also filed an application under Section 5(1) of the Act of 2005 for local inquiry. The application was allowed vide order dated 09.07.2018. The respondents filed written objections on the report of learned local commission along with the application under Section 540 Cr.P.C for additional evidence. Both the applications were rejected vide single order dated 09.10.2020, impugned through the instant revision petition.

3. The learned counsel contended that the petitioners are bonafide purchasers of the property-in-question; that the

petitioners have purchased the land from the respondents and the possession was also handed over to them; that there were different transactions between the parties; that the sale deeds pertaining to different lands having different Khewat and Khatooni numbers were duly executed and registered; that the parties turned inimical towards each other over the non-delivery of possession to the petitioners; that the petitioners were unaware of the civil suit filed by the respondents in the year 2012 and an ex-parte decree against them; that the respondent No. 1 also lodged a fake complaint against the petitioner No. 2 at Police Station Sihala, Islamabad for non-payment of sale consideration of plot and that FIR No. 130 dated 22.06.2012 was registered against the petitioner No. 2 which resulted in acquittal due to non-appearance of the respondent No. 1.

4. It was further contended that for the just and proper decision of the complaint, the documents annexed with the application under Section 540 Cr.P.C are vital, as the same relates to the land in question. The documents which the petitioners intend to get exhibited are Masavis/Shajra Kishtwar of the year 1956, 1957 of Mauza Humak, maintained at Tehsil record and registration deed No. 495, Khewat No. 206, Khatooni No. 343-366, Qitta No. 34. The learned counsel stressed that the said documents are necessary for the just decision of the case, while the report of learned local commission is vague, incomplete and contrary to the record.

5. On the other hand, learned counsel for the respondents argued that the complaint has been filed in the year 2016 and since then the respondents are facing the agony of trial. The petitioners are dragging the matter on one pretext or the other by moving frivolous applications; that the report of the local commission and the evidence led by the parties are enough for the fair decision of the matter; that the petitioners filed application under Section 540 Cr.P.C for calling of witnesses and placing of documents on record which was also dismissed with the annotations, that the application has been filed at belated stage, when the evidence from both the parties had been concluded and that the matter can be decided on the already available

evidence/record; that after filing of the instant revision petition by the petitioners, case is almost concluded and is fixed for final arguments but the petitioners are avoiding to get conclude the trial; that the documents have nothing to do with the case in hand as the same relates to Shajra Kishtwar for the year 1956-57; that the petitioners do not have any ancestral properties in the area, therefore, said documents are of no help to the petitioners while the rest of the documents were in their possession and could have been filed at the time of filing the complaint. The learned counsel concluded that the objections upon the report of the learned local commission were also raised to cause delay in conclusion of the trial as the evidence has already been concluded therefore, petition is liable to be dismissed.

6. Arguments heard, record perused.

7. At the inception, it is to be seen that as to whether first impugned order is inconsonance with the spirit of Section 540 Cr.P.C. Undoubtedly, the provisions of the Code of Criminal Procedure 1898 (V of 1898) are applicable to the proceedings under the Act of 2005 in terms of Section 9 of the illegal dispossession Act, 2005.

8. The Court cannot summarily dismiss an application for additional evidence by merely holding it a belated move rather the Court has to examine whether the examination of the witness or production of document is essential for just decision of the case. The object of the provision is that there should be no failure of justice on account of mistake of either party in bringing the valuable evidence on record. The provision is a general provision which applies to all proceedings, during inquiry and trial under the Cr.P.C.It empowers the Court to summon any witness, take additional document at any stage during the inquiry or trial. The discretion is to be exercised judicially, as the wider the power, the greater is the necessity for application of judicial mind. The Court has to keep in mind that while during the trial of the case, it has to find out truth to render judgment in accordance with law. For this very purpose the Court is competent enough to proceed under the said provision on its own motion. Reliance is placed upon "Ansar Mahmood v. Abdul Khaliq" (2011 SCMR 713), "Muhammad Murad

Abro v. The Sate through AG Balochistan" (2004 SCMR 966), "Dildar v. State through Pakistan Narcotics Board, Quetta" (PLD 2001 SC 384) and judgment from the Indian Jurisdiction in the case of "Iddar and others v. Aabida & another"(AIR 2007 SC 3029).

9. In the present case, the learned Trial Court turned down the application not only by perceiving it as an attempt to cause delay, but it was also observed, that the complainant through exhaustive evidence has already put his case before the Court, while a detailed report of the local commission regarding the property in question is also part of the present record before the Court. In addition, the petitioners have given the justification for presenting certain documents and examination of the witnesses, on the ground that the documents were not in their possession at the time of filing of the complaint, while the statements of the owners of the adjacent properties would also be essential to establish the actual position of the disputed land at site. It would not be out of place to mention that the site inspection was carried out in presence of the parties, while it is the duty of the petitioners to establish their claim of ownership or lawful possession at the relevant time. The relevancy of the documents sought to be tendered and examination of witnesses as proposed, would not be in the interest of justice as it will serve no useful purpose for adjudication of the matter purely in accordance with law on the subject as ample evidence has already been tendered by both the parties.

10. It is settled principle that the court cannot allow one of the parties to fill omissions in their evidence or extend a second chance to a party to improve their case or the quality of the evidence tendered by them. Any such step would smear the objectivity and neutrality of the court which is its hallmark. Such favored intervention, no matter how well meaning, strikes at the very foundations of a fair trial, which is recognized as a fundamental right under Article 10-A of the Constitution. Reliance is placed upon "Muhammad Naeem v. The State" (PLD 2019 SC 669). Accordingly, the application in terms of Section 540 Cr PC is held to be without any lawful justification and merits.

11. As regards objections upon the report of learned local commission are concerned, suffice it to say that the proceedings were conducted in presence of all the concerned, including the petitioners and it did not find mention any objection at the relevant time, which the petitioners have raised during the spot inspection. Even otherwise, it is the petitioners who have to establish their ownership or lawful possession at the time of alleged dispossession; therefore, there exists no reasoning to take view contrary to one taken by the learned Trial Court.

12-The fundamental object of the Act, of 2005 has been exemplified by a five members Bench of the Hon'ble Apex Court in the case of "Mst. Gulshan Bibi and others v. Muhammad Sadiq and others (PLD 2016 SC 769), in terms that the issues which fall for decision would be whether the offence against lawful owner or occupier, as described in the complaint, has taken place and whether it is the accused who has committed it without any lawful authority, while no past record of the accused needs to be gone into by the Court. The essentials to constitute an act as an offence under the illegal dispossession Act, 2005, it is obligatory for the complainant to enjoy lawful ownership or possession at the time of alleged dispossession, at the hands of the accused through an unlawful course. To determine the ownership or otherwise, of the subject matter in a complaint is not the exclusive job to be conducted, rather the complaint also covers illegal dispossession having lawful occupation of the disputed property. Thus, the underline principle for deciding a complaint under the Act of 2005, the complainant has to prove that the land was in his possession and that he was illegally and without due course of law was dispossessed from the said land with specific reference to time and date.

8. The illegal dispossession Act, 2005, is a special law, intended to curb illegal dispossession and is not parallel to proceedings in a civil suit. It is also a settled principle that there is no bar in simultaneous proceedings under the civil suit, criminal motion and the complaint under the Act of 2005. The Act of 2005 specifically envisages timeline for decision of the case. As per **Section 5(2)** of the illegal dispossession Act, 2005, or upon taking

cognizance of a case, the Court shall proceed with the trial on day to day basis, and shall decide the same within sixty days and for any delay, sufficient reasons shall be recorded. **Section 5(3)** stipulates that the Court shall not adjourn the trial for any purpose unless such adjournment is, in its opinion necessary in the interest of justice and no adjournment shall be granted for more than seven days. It is thus obvious that the proceedings under the Act of 2005 are summary in nature to be concluded within **sixty days** and in case there is any delay, it is obligatory for the Court to record reasons, in writing for such a delay while frequent adjournments are to be avoided as contemplated in Section 5(3) of the Act of 2005.

9. On examination of record, it is noted that the petitioners claimed to have purchased some properties from the respondents back in the year 2012, they allege dispossession at the hands of the respondents in May, 2012, while filed the complaint under the Act of 2005 on 28.12.2016. The petition was admitted on 16.02.2017 and notices were issued to the respondents to appear and defend the complaint. It appears that the respondents are facing the anguish of trial for the last 5 years and when the trial is at the verge of conclusion, petitioners attempted to commence a new round, by filing miscellaneous applications on one pretext or the other.

10. The petitioners through the complaint under the Act of 2005 have to establish allegation of dispossession, besides exclusive ownership of a particular piece of land. The conduct demonstrated by the petitioners lead to draw an inference that they intend to linger on the proceedings of a criminal complaint by moving numerous applications treating it like civil proceedings, which is not only against the spirit of the Act of 2005, where under proceedings warrant timely disposal, but also in violation of principle of natural justice and fair trial as envisaged in Article 10-A of the Constitution.

11. On consideration of the material placed on record together with the attending circumstances of the instant case, in my view, it would not be just to put the conclusion of the case at halt for further indefinite period as it has already consumed about

more than five years reaching at the verge of conclusion. The courts are not supposed to allow the proceedings continue for indeterminate period and made the parties to suffer the agony of protracted trial.

12. In view of above, petitioners have not been able to make out a case for meddling in the impugned orders, which, in the given circumstances are based upon correct appreciation of material placed before it, law on the subject and do not suffer from any illegality or material irregularity. Consequently, instant petition is **dismissed**. The learned Trial Court is directed to decide the subject complaint fortnightly from the receipt of this order in accordance with law on the subject without being influenced by the observations recorded hereinabove.

**(ARBAB MUHAMMAD TAHIR)
JUDGE**

AR.Ansari

Announced in open Court on ____February, 2022

JUDGE

APPROVED FOR REPORTING