

JUDGMENT SHEET
ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.210/2018

Mst. Folad Bibi

versus

Mohammad Jameel, etc.

Petitioner by: Raja Nisar-ul-Haq Abbasi, Advocate.
Respondents by: Malik Saqib Mehmood, Advocate for
Respondents No.1, 2, 4 & 5.
Date of Decision: 20.06.2019.

MOHSIN AKHTAR KAYANI, J: Through this criminal appeal, the appellant impugns order dated 09.11.2018 of the learned Additional Sessions Judge-III (East), Islamabad, whereby complaint of the appellant filed under Section 3/4 of the Illegal Dispossession Act, 2005 has been dismissed.

2. Learned counsel for appellant contends that appellant has filed a complaint under Section 3/4 of the Illegal Dispossession Act, 2005 regarding restoration of possession of her land measuring 01-Kanal and 01-Marla, bearing Khasra No.2674, Khewat No.601, situated in revenue estate of Bimber Trar, Islamabad; that the learned Additional Sessions Judge on perusal of report submitted by S.H.O. dismissed the complaint of appellant without even recording cursory statement of appellant, which is against the principles of law for not hearing the case of appellant on merits.

3. Conversely, learned counsel for respondents No.1, 2, 4 & 5 contends that the complaint filed by appellant neither disclosed any

cognizable dispute which could be settled through the Illegal Dispossession Act, 2005 nor the respondents ever interfered in the possession of appellant.

4. Arguments heard, record perused.

5. Perusal of record reveals that appellant filed complaint under Section 3/4 of the Illegal Dispossession Act, 2005 against the respondents for dispossessing her from her land measuring 01-Kanal and 01-Marla, situated in Khasra No.2674, Khewat No.601, in revenue estate of Bimber Trar, Islamabad. The said complaint was dismissed by the learned Trial Court through impugned order on the ground that both the parties are before the Civil Court for getting declaration to the extent of their respective claimed share in disputed khasra, while as per the report submitted by S.H.O., the appellant is owner to the extent of 03 sarsai. I have gone through the contents enumerated in the criminal complaint and observed that the *Khasra Girdawari* is in favour of appellant since the settlement of 1956/1957 and the possession was with the predecessor of the appellant and she was stated to be forcefully dispossessed. Essentially, the issue raised in this appeal requires at least a tentative assessment by the learned Trial Court, but surprisingly the cursory statement was not recorded and as such, the complaint as well as the report has not been perused by the learned Trial Court.

6. It is trite law that no bar existed for any party to choose to file a civil suit or a criminal proceedings against the dispossession as both the remedies were available and the Courts are there to protect the rights of

individuals. In order to proceed, the Trial Courts are bound to go through record as well as the cursory statement, especially when application of Criminal Procedure Code in terms of Section 9 of this Code is applicable. The Criminal Procedure Code provides the concept of recording of statement in terms of complaint under Section 200 Cr.P.C., wherein it has specifically been referred that the Court shall examine the complainant upon oath and the substance of examination shall be reduced to writing, which has not been adopted by the learned Trial Court in this matter, therefore, propriety demands that the learned Trial Court should have recorded the cursory statement at the first instance, whereafter the Court should proceed on the basis of record as well as while considering the cursory statement of complainant, although there is no bar for dismissal of complaint without recording of cursory statement, but the cursory statement is to be considered for the purpose of inquiry by the concerned court before taking cognizance in terms of Section 5(2) of the Illegal Dispossession Act, 2005.

7. At this stage, learned counsel for respondents has been confronted with the procedure laid down in Section 200 Cr.P.C., whereby no valid justification has been placed on record as to why the learned Trial Court has not recorded the cursory statement, therefore, the instant criminal appeal is hereby ALLOWED and the matter is remanded to the learned District and Sessions Judge (East), Islamabad to record the cursory statement of complainant and then decide the complaint in accordance with law as to whether the complaint is

maintainable or not. The parties are directed to appear before the learned Sessions Judge (East), Islamabad on 03.07.2019. Office is directed to remit the lower Court record to the concerned Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.