

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

Criminal Appeal No.14 of 2020
Muhammad Farooq Khan
Versus
Sikandar Hayat Khan

Date of Hearing : 07.08.2020,
Appellant by : Mr. Imran Shaukat Rao, Advocate,
Respondents by : Mr. Muhammad Salman Munir,
Advocate and Mrs. Khadija Ali, State
Counsel.

FIAZ AHMAD ANJUM JANDRAN, J.- Through the instant criminal appeal under Section 8-A of the illegal Dispossession Act, 2005 ("Act of 2005"), appellant impugns the order dated 12.11.2019, passed by learned Additional Sessions Judge-VII, Islamabad West, whereby his complaint under Sections 3, 4, 7 & 11 of the Act of 2005("the complaint"), was dismissed by observing as under:

"In view of my above discussion and while placing my reliance upon the authority of Mumtaz Hussain (supra), I declined to take the cognizance of the present case/complaint and dismiss the same. However, after the decision in the civil litigation in his favour, the complainant can approach the Court, if so advised. The bail bonds of the respondent/accused are cancelled and surety is discharged."

2. Facts, relevant for the disposal of instant criminal appeal, are that on 30.11.2018, appellant filed the complaint with the averments that he is lawful owner of Shops No.1 & 2, Commercial Plot No.08, Mahnoor Arcade, Main Double Road, E-11/2, Islamabad ("disputed shops"); that on 03.11.2018, at about 10:00 am, respondent (Sikandar Hayat Khan) along with four unknown persons took over possession of the disputed shops illegally by using force and also extended threats of dire

consequences. The learned trial Court, after hearing the arguments of learned counsels for the parties, dismissed the complaint vide order dated 12.11.2019, being assailed through the instant criminal appeal.

3. Learned counsel for the appellant contends that the appellant is owner in possession of the disputed shops on the basis of title documents i.e. letters dated 30.04.2014, issued in his favour by the Services Cooperative Housing Society Ltd. Islamabad; that father of the appellant had no concern with the disputed shops; that the appellant had specifically alleged dispossession at the hands of respondents on 03.11.2018, therefore, impugned order is liable to be set-aside.

4. On the other hand, learned counsel for the respondent contends that the question of title of the disputed shops is subjudice before the Court of competent jurisdiction; that without ascertaining the actual ownership of the disputed shops, further proceedings are not warranted, therefore, appeal is liable to be dismissed. Learned counsel relied upon "Mumtaz Hussain V. Dr. Nasir Khan and others" (2010 SCMR 1254) and Sh. Mohammad Wasim V. Mst. Hameeda Gul (2016 SCMR 1931).

5. Heard the learned counsels for the parties and examined the record with their able assistance.

6. In order to ascertain as to whether any interference is warranted in the impugned order, record made available by the parties has been examined whereby it transpires that on 02.11.2018, respondent filed a suit for specific performance and permanent injunction against Sher Zaman, father of the appellant, on the basis of a agreement dated 31.10.2017, whereby the respondent sold a Plaza to said Sher Zaman, for consideration of

Rs.56,500,000/-; out of total sale consideration, father of the appellant paid Rs. 26,818,000/- while against rest of the amount, it was claimed that the disputed shops were given to the respondent through an undertaking dated 20.04.2018.

It is also matter of record that after the institution of suit by the respondent, referred to above, the appellant, on 24.01.2019, filed suit for declaration and permanent injunction against the respondent claiming himself to be the exclusive owner of the disputed shops. In Para-3 of the said plaint, the appellant reiterated the stance, made basis to file the complaint on the allegation of alleged dispossession at the hands of respondent while in Para-7 the possession of the respondent was also admitted though by terming the same as illegal.

Record further reveals that prior to filing of the complaint, appellant got registered FIR No. 501, dated 23.11.2018, on the direction of Ex-officio Justice of Peace, under Sections 448, 506 & 34 PPC, at P.S. Golra Sharif regarding the same allegation wherein the respondent was declared innocent.

In the suit filed by the respondent seeking decree for specific performance of agreement, the appellant had already joined the proceedings as defendant vide order dated 30.12.2018. The suit of the respondent and that of the appellant had been consolidated vide order dated 08.02.2020 and after framing of consolidated issues, the matter has been fixed for evidence.

7. It is thus obvious that before filing of complaint by the appellant on 30.11.2018, the respondent filed suit for specific performance of the agreement against the father of appellant on 02.11.2018 wherein under Para-3, the respondent claims to have given the disputed shops to the father of appellant against remaining sale consideration of

Rs.21,000,000/- and also claims to have possession of the disputed shops. The appellant thereafter on 24.01.2019, filed suit for declaration and permanent injunction regarding the disputed shops against the respondent. Besides this, the appellant had joined the proceedings in the suit of the respondent which was consolidated with that of the appellant vide order dated 08.02.2020. It appears that soon on the next day of filing of the suit filed by the respondent on 02.11.2018 wherein the respondent claims to have possession of the disputed shops under Para-3, the appellant came up with the stance of alleged dispossession on the very next day i.e. 03.11.2018.

8. In addition, it is noticed that in the FIR got registered by the appellant regarding the alleged incident of dispossession, the respondent was found innocent and his name was placed in column No.2 of the Challan.

9. In view of above, when the parties are in civil litigation prior to the filing of the complaint, wherein the respondent asserted to have title of the disputed shops with possession on the basis of undertaking dated 20.04.2018, in respect of sale transaction whereby he sold out a Plaza to the father of the appellant, the fact that the appellant himself filed a suit for declaration regarding the disputed shops and also joined the proceedings of the suit filed by the respondent and that the allegation of alleged dispossession at the hands of respondent has been found baseless during investigation in criminal case, the right course was to wait the outcome of the civil litigation.

10. The right of the appellant to have recourse under the Act of 2005, in the backdrop of the facts of the case, has been made subject to the decision of the civil litigation in his favour and was not debarred permanently to avail remedy under the Act of 2005. The impugned order,

therefore, does not suffer from any illegality or material irregularity warranting any interference. Consequently, the instant criminal appeal fails and is accordingly **dismissed.**

11. As per stance of the appellant, his father has deposited the balance amount of Rs.21,000,000/- in the Court pursuant to order dated 08.02.2020, therefore, the possession of the shops be relinquished. Although learned counsel for the respondent admitted this fact, however states that the amount, so deposited as a matter of fact, had to be deposited in the year 2017-18. In this view of the matter, the learned court, seized with the civil suits, referred to above, is expected to decide the said cases within a period of four months after the receipt of this order.

12. Before parting, it is deemed necessary to mention that the observations made hereinabove are meant and restricted only to resolve the controversy contained in the instant criminal appeal and shall have no impact upon merits of the case.

(FIAZ AHMAD ANJUM JANDRAN)
JUDGE

Imran

Announced in open Court on 31.08.2020

JUDGE