

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

Cr.A No. 229-M/2019

Syed Zanon Mian and 04 others

Q. Versus

Mst. Misslunisa wife of Mian Sher resident of Kalakot, Tehsil Matta,
District Swat.

Present:

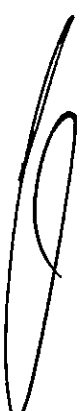
Mr. Masood-ur-Rehman), Advocate for
the appellants.

Muhammad Nabi, Advocate for respondent.

Mr. Asad-ur-Rehman, Advocate as Amicus
Curie.

Date of hearing: **10.09.2020**

JUDGMENT



ISHTIAQ IBRAHIM, J.- Through this appeal, the appellants have challenged the judgment dated 04.05.2019 of the learned Additional Sessions Judge, Swat at Matta whereby though they were acquitted in complaint u/s 3 of the Illegal Dispossession Act, 2005 filed by respondent/complainant Mst. Misslunisa but they were ordered to restore possession of her *shari* share.

2. Brief facts of the case are that the respondent/complainant filed a complaint u/s 3 of the Illegal Dispossession Act, 2005 (the Act henceforth) against the present appellants with assertions that she and appellants No. 1 to 3 are

successors of common predecessor namely Manjawar Mian. On the death of the said predecessor, his property devolved upon his legal heirs including the complainant whose name was duly entered in the revenue record. In order to grab her *shari* share, appellants No. 1 to 3 and father of appellant No.4 filed a civil suit against her which was dismissed till the august Supreme Court of Pakistan. Thereafter, the complainant separated her *shari* share through revenue Court and possession thereof was handed over to her in accordance with law which she retained since 18.03.2016 till 10:00 A.M of 21.03.2016. The complainant alleged in her complaint that on 21.03.2016 at 10: A.M when she alongwith her husband Mian Sher and witnesses Momin Khan and Abdur Rauf visited her landed property, they found appellant Syed Zanon armed with Kalashnikov whereas appellants No. 2 to 4 were holding mattocks and they were demolishing the boundary line of her land established by revenue Court. When they tried to stop the accused, the latter abused them and threatened them for life in case of not vacating the land. Thereafter, they demolished the intervening boundary line and illegally took into possession her *shari* share by merging the same into

their property. The occurrence was stated to have been witnessed by the aforesaid witnesses accompanying the complainant and her husband at the relevant time.

3. The trial Court sought report of the local police in the matter, on receipt of which formal charge was framed against the appellants to which they did not plead guilty. Prosecution produced six witnesses in support of its case whereafter the appellants were examined u/s 342, Cr.P.C but they professed innocence though they neither recorded their statements on oath nor opted to produce any witness in their defence. On conclusion of trial, the learned trial Court acquitted the appellants through the impugned judgment, however, directed that possession of the land be restored to complainant. Hence, this appeal.

4. Arguments heard and record of the case was perused.

5. The learned trial Court has observed in the impugned judgment that:

".... Therefore, the property to the extent of shari share of complainant, shall be restored to the complainant in terms of section 8 of the Illegal Dispossession Act, 2005, through Tehsildar, Girdawar Circle, Patwari concerned alongwith SHO P.S Kalakot. In case of any hurdle, resistance either by

accused or any other person on their behalf, the officer-in-charge (SHO) of the police Station Kalakot is directed to provide assistance as necessary for restoration of the possession of the property to complainant. Counsel of the complainant stated at the bar during arguments that if possession of the disputed property was restored to the complainant then complainant has no objection on the acquittal of accused because of relationship as sister and brothers inter se. Therefore the accused are acquitted of the charge leveled against them....."

The learned trial Court has passed the order for restoration of possession of the land to complainant in terms of section 8 of the Act, therefore, it would be appropriate to reproduce the said section for ready reference.

8. Delivery of possession of property to owner etc. (1) On conclusion of trial, if the Court finds that an owner or occupier of the property was illegally dispossessed or property was grabbed in contravention of Section 3, the Court may, at the time of passing order under sub-section (2) and (3) of that section, direct the accused or any person claiming through him for restoration of the possession of the property to the owner or, as the case may be, the occupier, if not already restored to him under Section 7.

(2) For the purpose of sub-section (1), the Court may, where it is required, direct the officer-in-charge of the police station for such assistance as may be required for restoration of the possession of the property to the owner or, as the case may be, the occupier.

Sub-sections (2) and (3) of section 3 of the Act referred to in section 8(1) above reads as under:

(2) Whoever contravenes the provisions of the subsection (1) shall, without prejudice to any punishment to which he may be liable under

any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of Section 544-A of the Code.

(3) Whoever forcibly and wrongfully dispossesses any owner or occupier of any property and his act does not fall within sub-section (1), shall be punished with imprisonment which may extend to three years or with fine or with both, in addition to any other punishment to which he may be liable under any other law for the time being in force. The person dispossessed shall also be compensated in accordance with provisions of section 544-A of the Code.

6. It is manifest from section 8 read with sub-sections (2) and (3) of section 3 of the Act that the Court in case of conviction of the accused can pass the order for restoration of the property but in the present case the learned trial Court, after recording evidence in the case, has acquitted the accused on one hand and on the other hand has ordered for restoration of possession of the land to complainant. In other words, conviction is *sine qua non* for handing over the possession u/s 8 of the *ibid* Act. Thus, findings of the learned trial Court are not in consonance with the above referred provisions of the Act as well as section 367, Cr.P.C requiring the Court to give specific findings for determination of a criminal controversy. So, the judgment of the learned trial Court, being illegal, is liable to be set aside.

7. When the learned counsel for the appellants, the learned A.A.G. and the learned *Amicus Curie* were confronted with the situation, they all agreed that remand of the case to trial Court has become imperative in the circumstances. Resultantly, this appeal is allowed, the impugned judgment is set aside and the case is remanded to learned trial Court with directions to hear the parties and thereafter pass an appropriate judgment strictly in accordance with law, without being influenced from its earlier order or by this order. The parties are directed to appear before the trial Court on 21.09.2020 and thereafter the learned trial Court shall do the needful within one month positively.

Office shall send record of the case forthwith to trial Court.

Announced.
Dt: 10.09.2020


JUDGE

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