

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
 JUDICIAL DEPARTMENT

Criminal Appeal No.715-P/2017
Roidad Khan
Vs
Zigrawar alias Aigre & others

JUDGMENT

Date of hearing **06.04.2018**

Appellant (s) by: _____.

Respondent(s) by: _____.

IKRAMULLAH KHAN, J:- By the impugned judgment, learned Court below, has dismissed the complaint filed Under Section 3 of the Illegal Dispossession Act, by the appellant on the ground that appellant had not proved his dispossession from the suit property.

2. Brief facts of the case are that appellant filed a complaint under section 3 of the Illegal Dispossession Act, 2005 against the respondents No. 1 to 7 to the effect that on 30.09.2012 at 12:00 noon respondents duly armed alongwith a Tractor came there and ploughed his land situated in Khata No.158 and 168 measuring 20 kanal and obtained forcible possession from him. The learned trial Court after recording the statement of appellant on oath,

the complaint was sent to the local police for investigation/inquiry. After completion of investigation, the local police submitted report before the learned trial Court and after framing of charge against the respondents the learned trial Court examined 05 witnesses. After close of prosecution evidence, statement of respondents were recorded u/s 342 Cr.P.C, wherein they opted not to be examined on oath or to produce defence evidence. After hearing learned counsel for the parties, the learned trial Court acquitted the respondents from the charges levelled against them by dismissing the complaint of the appellant vide impugned judgment dated 28.02.2015, hence the instant criminal appeal.

3. Learned counsel for appellant contended that learned Court below has not properly appreciated the evidence on record as the respondents had legally ejected from the suit property through process of competent Court and they had challenged their dispossession/ejectment before the Revenue Official, but their petition had also dismissed but this aspect of the case had not

brought under consideration by the learned trial Court below which has caused miscarriage of justice.

4. On the other hand learned counsel for the respondents argued that the impugned judgment has been rendered by a competent Court of law, thereafter proper appreciation of law and evidence on record; that the appellant had miserably failed to substantiate the allegations levelled against the respondents and failed to prove its case against the respondents.

5. I have heard learned counsel for the parties and gone through the record with their valuable assistance.

6. The record reveals that the suit property and other non-disputed property had remained bone of contention because one Abdul Wahab and respondent namely Zigravar which culminated in favour of Abdul Wahab.

7. It would be pertinent at this stage, to give reference to one out of several cases in which during course of execution the respondent namely Zigravar was officially dispossessed from the suit

property as well as other undisputed property. It was the case of appellant bearing No.669/9 dated 06.06.2002, wherein after partition of joint property owned by Abdul Wahab and others, the suit property was entered in the name of Abdul Wahab as exclusive owner and thereafter the possession was also delivered to Abdul Wahab on 01.07.2009.

8. Respondents being aggrieved by the execution of order of Revenue Officials dated 01.07.2009, preferred an application for restoration of the suit property on the ground that they were tenant at will, over the suit property, could not be ejected without due process of law. The same application was finally dismissed by Senior Member Board on 02.01.2010. Respondents, thereafter knocked the door of learned Sessions Judge, Mardan for redressal of his grievance under Section 3 of the Illegal Dispossession Act, against legal heirs of Abdul Wahab namely Fazal Wahab etc, which was dismissed by learned Additional Sessions Judge-II, Mardan vide its judgment dated 10.09.2009.

9. The application for restoration of possession moved before the Revenue Authorities

and the complaint u/s 3 of the Illegal Dispossession Act, preferred by respondent namely Zigravar, in very clear terms, reveals that although he was tenant at will over the suit property, but during course of execution proceeding, initiated by legal heirs of Abdul Wahab, respondent namely Zigravar was ejected and the possession of the suit land was delivered to legal heirs of Abdul Wahab.

10. The legal heirs of Abdul Wahab namely Fazal Wahab etc sold out their whole property except a few kanal to various persons and the suit property was sold to the appellant namely Roidad Khan, pursuance to compromise effected between the appellant and vendors of the suit property dated 13.12.2013 duly placed on record of Civil Revision No.491/2013 subjudice before this Court.

11. All the above mentioned cases and others record, the attested copies were duly placed on record of the present case, which had also been discussed by the learned trial Court below, but at the end, it was held that appellant was not illegally dispossessed

from the suit land. Respondents were under their legal obligation to prove their legal possession over the suit land, where, they were already ejected from the suit land, in pursuance of execution of order of Revenue Official, through assistance of local police and respondents have also challenged their ejection through competent Court of law, but in vain. However, respondents have not claimed to be in or over the possession of the suit land.

12. In such state of affairs, where appellant claimed to be illegally dispossessed and the same allegation is supported by the statement of Inquiry Officer, while on other hand, respondents had not come with any legal plea to protect the possession of the suit land, then the learned trial Court was under its legal obligation that at least made direction under Section 8 of the Illegal Dispossession Act, to deliver back the possession of the suit land to appellant which reads as:-

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 any time of passing order under sub-section (2) 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 maybe, 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.

13. The above mentioned provision of law, in unequivocal terms, describe that if the Court finds that an owner or occupier of the property was illegally dispossessed or property was grabbed in contravention of section 3 of the Act, the Court may pass direction for restoration of the property.

14. It is proved by the complainant/appellant that he had been illegally dispossessed by the respondents, as the property under consideration, had not reportedly, in possession of the appellant, while during course of inquiry, no any other person except the respondents were found in

possession of the property, however, during course of trial of the case, respondents had denied therefrom the commission of the offence under section 3, but never in explicit terms had disclosed that the property was not under their possession. In case, respondents had not illegally dispossessed the appellant, then by passing any direction in regard to restoration of possession of the property to appellant, they shall not raise any objection on restoration of the possession of the property, under consideration in instant appeal.

15. Therefore, for the aforestated reasons, this appeal is disposed of in terms that property under consideration, shall be restored to the appellant in term of section 8 of the Illegal Dispossession Act. The impugned judgment is modified to such extent and the case is remanded to learned trial Court to proceed in term of section 8 of the Illegal Dispossession Act, in order to deliver the property to appellant. In case of any hurdle, resistance either by respondents or any other person on

their behalf, the learned trial Court shall exercise its jurisdiction under sub-section (2) of section 8 of the Act, in order to direct the officer-in-charge of the concerned police station for such assistance necessary for restoration of the possession of the property to the appellant.

Announced.

06.04.2018.

J U D G E

(SB) Hon'ble Mr. Justice Ikramullah Khan