

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Revision Application No. S – 73 of 2018.

Date of hearing : 24.06.2019

Date of Decision : 24.6.2019.

Applicant : Mohammad Bux Chandio,
Through Mr. Zahid Hussain Chandio,
Advocate.

Respondents 1 to 4 : Through Mr. Muhammad Afzal
Jagirani, Advocate.

The State : Mr. Muhammad Noonari, D.P.G.

ORDER

Muhammad Faisal Kamal Alam, J: Through this Criminal Revision the Applicant has called in question the decision dated 7.12.2018, whereby the complaint filed by the present complainant was dismissed with the observations that nature of dispute is civil.

2. Relevant facts for deciding the present revision are that controversy between the present Applicant **(Muhammad Bux Chandio)** and Private Respondents No.1 to 4 is about an immovable agricultural property bearing survey No.113, 138 and 140 measuring 12 acres (approximately), falling in Deh Drib Chandio, Tapo Mirokhan-
the subject property.

3. The present Applicant had preferred a complaint before the learned Court of Sessions Judge, Kamber-Shahdadkot that the private Respondents herein are illegally occupying the subject property,

which belongs to the late father of the complainant / present Applicant, his brothers and other family members. It was further averred that since present Applicant and his family members shifted to Sibi Baluchistan, the Respondents took undue advantage of that absence and occupied the land.

4. The stance of the private Respondents is that they are in lawful occupation of subject property and the present Applicant has no title in his favour.

5. Mr. Zahid Hussain Chandio, Advocate for the Applicant while arguing this case has stated that the impugned order has been passed without application of judicial mind and primarily on the ground that the subject property was handed over to the present private Respondents in lieu of some compromise in a murder case, even though no document has been produced before the learned Trial Court. He stated that no investigation as envisaged in section 5 of the Illegal Dispossession Act, 2005 (the **Relevant Law**), has been done. The learned counsel has relied upon a judgment of Honourable Supreme Court reported in **2016 SCMR 1931 (Shaikh Muhammad Naseem v. Mst. Farida Gul)** and an unreported decision of this Court handed down in Criminal Revision Application No. 12 of 2017 (**Noor-ul-Huda versus Abdul Raoof and others**), wherein, the case was remanded, with the observation that, *inter alia*, since Applicant (of the referred case) has produced a copy of Village Form VII-B, which tentatively appears to be enough proof for taking cognizance for inquiry.

6. On the other hand, Mr. Muhammad Afzal Jagirani, Advocate representing the private Respondents has controverted the stance of

Applicant, primarily on the ground as already mentioned herein above and particularly that present Applicant even does not figure in the Assistant Commissioner's Report which is appended as Annexure "C" of the subject Revision (at Page-45 of the Court file). The learned counsel for Respondents states that no title document was produced by the present Applicant and he cannot being one of the purported legal heirs, can initiate proceeding of the nature. He concluded his arguments by stating that as observed in the impugned order, the Applicant should have first obtained a declaration in a civil suit. He has distinguished the case law cited by the Applicant's side on the basis of above submissions.

7. Arguments heard and record perused.

8. In response to the notice issued on the last date of hearing, Mukhtiarkar, Mirokhan (Mr. Pervaiz Ali Bhutto) is present along with the record. In his oral statement before the Court and on a specific query he has supported the Report of concerned Assistant Commissioner, dated 13.11.2018 filed before the learned Trial Court. He has further stated that part of subject property is in name of Darya Khan son of Shah Muhammad, regarding whom the Applicant claim is that he was the deceased father of the present Applicant. The above official further stated that the names of present Respondents are not mentioned in the original record produced today in Court and so also in the Report mentioned above of the Assistant Commissioner. The names of present Respondents are mentioned as 'occupier' of the subject property who are in cultivation possession for the past three years.

9. Perusal of the impugned order shows that it is primarily based on the two reports; first one is the aforementioned Report of Assistant Commissioner dated 13.11.2018 and the second report of area SHO. The first report has already been discussed herein above; **whereas**, the SHO Report is based on another criminal case being Crime No.98 of 2014 but the record whereof was never produced by the SHO: however, **another criminal proceeding was registered** against the present Applicant as Criminal Case No.155 of 2014 in Crime No.53/2014 which was filed by one of the Respondents herein. The learned counsel for the Applicant has placed on record, vide his Statement dated 21.06.2019, the judgment dated 09.03.2019, through which **the present Applicant has been acquitted in the said criminal case** and the learned Trial Court has made a pertinent observation in paragraph 14 of the above Decision (in Criminal Case No.155 of 2014), *inter alia*, that the present Applicant was not nominated as accused in the FIR of murder of daughter of one of the Respondent. Certain adverse observation is also there in the judgment of learned Trial Court in the above ancillary proceeding/ criminal case No.155 of 2014, that possibility cannot be ruled out about managing story on the part of prosecution.

10. Adverting to the case at hand; Section 5 of the above Relevant Law provides a procedure for investigation to be done by the Trial Court, which *inter alia*, in my considered view, has not been completely and effectively resorted to and followed, while passing the impugned decision. No doubt the Report submitted by Revenue

officials and SHO, are piece of the evidence as provided in above section 5 of the Relevant Law, but it also requires further probe, which was never done at the trial level.

11. Secondly, the issue that whether the name of present Applicant is not appearing in the current revenue record mainly on the ground that no "Foti Khata" has taken place after the demise of the father of the Applicant, is mainly a procedural lacuna, which is regularizable and not fatal; in this regard, the learned Trial Court should have gone for a deeper appreciation of fact to ascertain the above, rather than passing the impugned order merely on the reports, particularly, that of SHO, which is a mere statement without any supporting document.

12. Thirdly, the statement of present Respondents who were proposed accused before the Trial Court has been accepted as it is and without any further investigation, that the subject property was given to accused Zulfiqar/Respondent No.1, by way of penalty in lieu of some Sulah/ agreement in respect of murder of her daughter. Admittedly no such Sullah-nama / compromise agreement is placed on record either in the present proceeding nor the same was filed before the learned Trial Court.

13. The other inference that can be drawn from the statement of Respondent No.1 that the subject property was given to him in consideration of some agreement, on the contrary, supports the contention of Applicant, that the subject property belongs to him and his other family members and that is why the same was given to Respondent No.1, if at all that is the case.

14. Fourthly, the Reports mentioned above have not been appreciated by the learned Trial Court in its true sense, as the conclusion of report of Revenue official dated 13.11.2018 has clearly stated that present Respondents are only in cultivating possession.

15. The crux of the decision of the Hon'ble Supreme Court of Pakistan in the case of *Shaikh Naseem v. Mst. Farida Gul, (supra), inter alia*, is that scope of proceeding instituted under the above relevant law has been enlarged and the Honourable apex Court has gone to the extent that even the pendency of civil proceeding will not prejudice the proceeding under the above Relevant Law.

16. The other unreported cited decision is also relevant for the facts of present case in which the case was remanded back.

17. The upshot of the above discussion is that the impugned order has been passed, *inter alia*, by not exercising jurisdiction properly vested in the Trial Court and thus requires interference in the present proceedings and therefore, the same is set aside and case is remanded back to the learned Trial Court for decision afresh in terms of the discussion mentioned herein above. It is expected that the decision will be given within a period of two months from today and no unnecessary adjournments will be given to any of the parties hereto.

18. Observations contained herein above are tentative in nature and would not influence the trial proceeding and the decision should be given on merits.

Dated: 24.06.2019

JUDGE

Ashfaq