

152

IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

Case No. 03/22 of 2022 (IDA-Complaint)

Date of institution: 05.07.2022

Date of decision: 04.05.2024

Date of consignment:

Imran Khan son of Samin Gul resident of Quom Sheikhan, Tappa Samozai, Village Pitao Mela, Central Orakzai (Complainant)

Versus

Lahore Khan son of Lal Badsha and Ajmaeen Khn son of Ateem Badashah residents of Sheikhan, Tappa Samozai, Village Kingray presently Daran Upper Orakzai (respondents/accused facing trial)

COMPLAINT UNDER SECTIONS 3, 4 & 5
OF THE ILLEGAL DISPOSSESSION ACT, 2005

JUDGMENT

1. Brief facts of the case are that complainant Imran Khan has filed the instant complaint under sections 3, 4 and 5 of the Illegal Dispossession Act, 2005 against accused by alleging that he has Shari verdicts and court decrees about plots in his favour; that the accused have illegally and forcibly occupied his plot/land situated at Mishti Mela on Khatang Road near Ara machine, the suit property, for which a report was made to the police but in vain; that accused are strangers to suit property having no ownership proof with them but they have made forcible possession over the property few days ago and started constructions on it; that villagers have informed him about the unlawful diggings and constructions over there by the land grabbers, whereat, he asked them about the wrong doing, to which they issued him severe threats to kill; therefore, he has charged them u/s 3, 4 and 5 of The Illegal Dispossession Act, 2005 and prayed to punish them as per law and to restore him the possession of suit property.

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu

153

2. Statement of complainant was recorded on oath in support of his complaint, which was then sent to the local police for investigation. The local police on conclusion of investigation submitted the report to this court.
3. Accused were summoned, who attended the court. They were served with copies of complaint under section 265-C CrPC and formally charge sheeted under sections 3 of The Illegal Dispossession Act, 2005, to which they did not plead their guilt and claimed trial. In support of the charge complainant produced the following evidence.
4. Hayat Khan, the member of ADR was examined as PW-1, who stated that there was dispute over land/plot between Imran Khan (petitioner) and Lahore Khan (accused). He stated that initially, the petitioner has filed the application to local administration; the Assistant Commissioner referred the dispute among the parties to ADR for amicable solution; he and other jirga members Mufti Muhammad Jamil, Haji Izhat Gul, Mufti Muhammad Tahir and Mufti Yar Muhammad summoned the parties and investigated the matter but accused failed to produce any documents in his support of his stance before them and was reluctant to resolve the dispute on one or other pretext; therefore, in the light of documents, Shari verdicts and court orders, the verdict was passed in favour of petitioner; that accused forcibly started construction and the instant complaint was filed. PW-2 is the statement of Aqal Muhammad, who stated that elders of the Qom Mishti and Sheikhan approached Mufti Sher Muhammad of District Kuram for resolving the dispute pertaining to the subject land; the issue was resolved through Shari verdict over the same land, which is in possession of petitioner. Azmar Ali, focal person of AC Lower Orakzai was examined as PW-3, who produced the record of litigation under ADR which was conducted between the parties before AC Lower Orakzai and letter issued by AC Lower Orakzai

abdul basit
Addl. District & Sessions Judge
Orakzai at Baber Mela,
Hangu
1/05/2022

154


no. 239/AC/L dated March 10th of 2023, the record is Exh.PW 3/1 (consisting of 57 sheets). Mufti Shafiullah District Khateeb was examined as PW-4, who stated that the complainant and accused party came to him for resolving the issue between them on the basis of Sharia; that he directed both the parties to produced proof regarding their claims over the suit/disputed property; the present complainant produced all the documents/proof over the subject claim, while accused failed to produce any proof; therefore, he submitted the report dated 10.04.2022, Exh.PW 3/1. PW-5 is the statement of Naseeb Khan SI, who in the compliance of Court direction, visited the suit property and prepared site plan, Exh.PW 5/1, on the pointation of the complainant; that as per site plan, the accused has made construction over the suit property and in this respect he prepared comprehensive report, Exh.PW 5/2. Statement of Zahir Ali Record Keeper was recorded as PW-6, who produced the original record regarding Suit No. 303/1 instituted on 16.06.2020 decided on 21.01.2021, copy of Order sheets No. 37 and 38 along with judgment of learned Senior Civil Judge, plaint, written statement, Order-7 Rule-11 of Code of Civil Procedure, 1908 placed on file, Exh.PW 6/1 (consisting of 17 sheet); that he has also produced record regarding Suit No. 14/13 instituted on 10.02.2021 and decision on 19.03.2021, copies of which are Exh.PW 6/2. PW-7 is the statement of Sherin Khan, who is the marginal witness to the agreement deed/decision dated 26.07.2019, Exh.PW 7/1; he stated that accused is land grabber and had started illegal construction over the suit land. Muhammad Raees Khan was examined as PW-8, who stated that he has 8 shops in Mishti Mela; that accused suddenly came at night time and started illegal construction over the suit property belonging to petitioner. PW-9 is the statement of Muhammad Rustam, who stated that they were paying rent to

Abdul Basit
District & Sessions Judge-II
Orakzai at Baber Mela,
Hangu
19/05/2024

155

Imran; that they were facing hardship due to interference of accused, whereas, the suit property belongs to Imran. Statement of Imran Khan, complainant, was recorded as PW-10, who stated that he is actual owner of the suit property, which has been decreed in his favour at different forums; that after merger of FATA, the same property was also decreed in his favor by learned SCJ and thereafter the learned District Judge Orakzai also decided the same in his favor; that accused has moved an application to DC for constitution of jirga/arbitrators and arbitrators were appointed with the consent of the parties but the accused failed to prove his ownership and illegally started construction over the suit property, whereat, the local shopkeepers also agitated the matter through media; that accused is a land grabber; therefore, he be punished and prayed to resolve his grievance.

5. On conclusion of prosecution evidence, the statements of accused recorded under section 342 CrPC, wherein, they have again denied from all the allegations, claimed innocence and alleged to have falsely been charged by complainant. They neither wished to be examined under oath nor did desire to produce evidence in defense.
6. Arguments heard and record gone through.
7. Perusal of record and arguments advanced by learned counsel for parties gone through & it is held that purpose of enacting The Illegal Dispossession Act, 2005 was to safe the properties of weak persons from the land grabbers etc.; therefore, when a person enjoying peaceful possession of his land is forcibly dispossessed therefrom or someone makes forcible possession over his land, then, the burden of proof that he was in lawful possession of the property and has been illegally and forcibly dispossessed therefrom is on him. Before parting with my findings, I would like to mention that it is a settled principle of law that civil disputes are decided on the basis of


 09/05/2024
Abdul Basit
 Addl. District & Sessions Judge-II
 Orakzai at Baber Mela,
 Hangu

156

preponderance of evidence and criminal cases are decided beyond shadow of reasonable doubt. There is admittedly no land settlement or revenue record of district Orakzai and the disputes between the parties are resolved on basis of oral evidence, possession over lands or agreement deeds, if any, brought before the *jirga* and now the courts; therefore, while deciding this case, the court has no other option but to base its findings on available record. In this case, complainant has just reported that accused have illegally and forcibly made possession over his lands/plots situated in the Mishti Mela and started constructions on it. The contents of complaint and the evidence led by complainant do not provide any detail/description about the suit property. Even, it does not provide the nature of constructions the accused have started over it. He has just relied on the verdicts passed in his favor and there is nothing on record that he was in possession of the suit property. The complainant did not mention the date and time of occurrence. Importantly, complainant has allegedly got knowledge about the occurrence from his villagers, who reported him that some land grabbers were digging the suit property, however, neither a sole villager has been appeared as a witness of the occurrence before the court nor complainant has disclosed his name and thus not only the best available evidence was withheld but it also infers that no one has witnessed accused making illegal possession over the suit property. Even, the witnesses, who have appeared in witness box, have also deposed evasively and did not utter a single word about the date and time of the occurrence. Hayat Khan (PW-1) was member of the ADR council, who has just added one sentence to show his standing with complainant but he was not witness of the occurrence rather he has stated that the verdict passed in favour of complainant was not unanimous. Aqal Muhammad (PW-2) is also the witness of Shari verdict; Azmat Ali (PW-3)

ayy
09/05/2024
Abdul Basit
Addl. District & Sessions Judge-II
Orakzai at Baber Mela,
Haragu

157

has just brought the ADR record before the court; and Mufti Shafiullah (PW-4) merely stated that he made efforts for resolution of issue between the parties at dispute, however, did not pass any verdict in favour of either party. Even, he has also not mentioned the boundaries of shops etc. in his report dated 10.04.2022. Likewise, Zahir Ali (PW-6) is also record keeper and did not utter a single word about the occurrence; therefore, statements of these witnesses are not of any help to the court. Similarly, Muhammad Rustam (PW-9) just stated that he was paying the rent to petitioners but he did not utter a single word about the illegal dispossession of complainant and making of forcible possession by accused over the suit property.

8. Importantly, the complainant did not bring on record an iota of evidence that as to when, where and at what time accused have made invasion or made forcible possession over the suit property. He candidly admitted that there is no date and time about occurrence is mentioned in his complaint. Even, the order he has referred in is statement also pertained to the dispute regarding land and mountain and there was no mention of shops or markets or boundaries in it. He admitted that the decree of APA dated 24.11.2016 was also passed against Shah Mahnoor having availed the fact that it was not against the accused.

9. Investigation officer (PW-5) was entrusted to investigate the issue between the parties at dispute, who submitted investigation report, Exh.PW 5/2, according to which he though observed that respondent Lahore Khan has constructed three shops over the suit property and made forcible possession, however, this is strange to note that he relied on the solitary statement of complainant about identification of the suit property and did not bother to inquire from independent source except a secret information, which was not warranted under the law because the investigation officer was supposed to

all
09/05/2024

Abdul Basit
Addl. District & Sessions Judge-II
Orakzai or Bahar Nela,
Hangu

158

record the statement of each informer and person about the suit property and the occurrence but he failed to discharge his duty diligently and filed a pseudo report suggesting that suit shops appeared to him be the ownership of complainant, which report cannot be trusted. He admitted that he has not recorded the statement of any person about the ownership of suit property and his report was based on his personal opinion, which is of no value. He, even, admitted that he has not recorded the statement of any person, who has supported the version of complainant nor did he mention the date of occurrence nor did record the statement of any independent eye-witness of the occurrence, which makes the whole investigation proceedings a futile exercise.

10. Statements of Sherin Khan (PW-7) and Muhammad Raees Khan (PW-8) also do not provide any date and time of the occurrence or about the detail or description of the suit property. Even, the local police or investigation officer have not recorded their statements, which avails that they have been brought before the court by complainant to support him; therefore, their statements cannot be relied as well.


11. The crux of the above discussion is that complainant has failed to establish that he was unlawfully or illegally dispossessed from the suit property by the accused. There is nothing on record that as to who was in possession of the suit property at the time of alleged occurrence and whether complainant was actually dispossessed therefrom or not. Moreover, the nature of dispute between the parties at dispute appears to be more of title than criminal and in this respect civil litigation is already sub-judice between them before the proper forum. Besides, petitioner has failed to produce any evidence that accused belonged to a qabza group or land grabbers, the wisdom is drawn from case law reported in 2014 YLR 390 [Lahore].

aeef
11/11
09/05/2024
Abdul Basit
Addl. District & Sessions Judge-II
Orakzai of Baher Mela,
Hangu

152

12. If it is supposed that accused have entered into their lands, made forcible possession over the suit property and constructed shops over there, then, why did the complainant not approach to the police station and lodged the report against his illegal act instead of watching them to wait for unlawful dispossession from suit property as a silent spectator.
13. In the wake of above discussion, it is held that there exists reasonable doubts in the complainant story and according to settled principles of law when a doubt arises in a case, the benefit of it must be given to the accused being favorite child of law; thus, it is held that complainant has failed to prove the fact that he has been illegally and unlawfully dispossessed by the accused from the suit property, therefore, its benefit is extended to accused and they are acquitted from the charges leveled against them u/sections 3 of The Illegal Dispossession Act, 2005 and accordingly complainant is not entitled for restoration of suit land under section 7 of the Act *ibid*.
14. Since, accused are on bail, therefore, their sureties are discharged from the liability of bail bond. Case property, if any; be disposed of after expiry of period of appeal or revision.
15. File consigned to record room after necessary completion and compilation.

Announced
04.05.2024


Abdul Basit
Addl. Sessions Judge-II, Orakzai

CERTIFICATE

Certified that this judgment consists of eight (08) pages, those are signed by me after necessary corrections.

Announced
04.05.2024


Abdul Basit
Addl. Sessions Judge-II, Orakzai