

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.303 of 2025

Applicant : Ghuncha Gul through attorney
Samiullah Khan, Through:
Mr. Naveed Ali, advocate

Respondents Nos.1 & 2 : Muhammad Rizwan Dossul &
another, Through: Mr. Imtiaz Ali,
advocate

For State : Ms. Seema Zaidi, Addl. P.G. Sindh,
along with PI-Mazhar Ali Kango and
PI-Anees Abro of Police Station
Baloch Colony, Karachi

Date of hearing : 15.04.2026.

Date of Order : 23.04.2026.

ORDER

Jan Ali Junejo, J:-- Through this Criminal Revision Application under Section 439 Cr.P.C., the Applicant has called in question the legality, propriety and correctness of the Order dated 23.10.2025 (hereinafter referred to as the "*Impugned Order*") passed by learned Vth Additional Sessions Judge, Karachi South (hereinafter referred to as the "*Trial Court*"), whereby the complaint filed under Sections 3, 4 & 5 of the Illegal Dispossession Act, 2005 was dismissed at the threshold by declining to take cognizance. The Applicant seeks setting aside of the impugned order with a direction to the trial Court to proceed with the complaint in accordance with law.

2. Briefly, the facts as set forth by the Applicant are that he is the leasehold owner of property bearing Plot No.616, Mehmoodabad, Karachi, which remained in his lawful possession for decades through tenants occupying various shops and residential portions. It

is alleged that after loss of original title documents in February 2025, the Applicant obtained certified copies and subsequently discovered that Respondent Nos.1 and 2 had fabricated documents including an alleged General Power of Attorney and Sale Deed to claim ownership. It is further alleged that on 13.06.2025, the private respondents, along with armed associates, forcibly dispossessed the Applicant from the subject property. Various proceedings, including civil suits, FIRs and complaints, were initiated by both sides. The Applicant then filed a direct complaint under the Illegal Dispossession Act, 2005, which, after calling an inquiry report, was dismissed by the learned trial Court vide impugned order dated 23.10.2025.

3. Learned counsel for the Applicant contended that the impugned order is patently illegal and contrary to the settled principles governing the Illegal Dispossession Act, 2005. It was argued that the inquiry report submitted by the DSP Complaint Cell clearly established that the Applicant was in lawful possession and had been illegally dispossessed on 13.06.2025, yet the learned trial Court failed to act upon such conclusive findings. It was further contended that the mere pendency of civil litigation does not bar criminal proceedings, particularly when an act of illegal dispossession has been prima facie established. Learned counsel emphasized that the trial Court misdirected itself by treating the dispute as purely civil in nature, ignoring that criminality in dispossession is independently actionable. It was also argued that the trial Court erred in prematurely evaluating defence documents

and allowing proposed accused to participate at a pre-cognizance stage. Lastly, it was prayed that the impugned order be set aside and the complaint be remanded for trial.

4. Conversely, learned counsel for Respondents Nos.1 & 2 supported the impugned order and argued that no illegality or irregularity has been committed by the trial Court. It was contended that the property in question had already been sold by the Applicant to Respondent No.1 in 1988 through a sale agreement and registered power of attorney, and subsequently transferred to Respondent No.2 through a registered sale deed in 2023. It was further argued that the Applicant has concealed material facts and initiated multiple proceedings with mala fide intent to harass the Respondents. Learned counsel submitted that cross FIRs were lodged and civil suits are pending between the parties, including a suit wherein interim relief has been granted in favour of Respondent No.2. It was contended that the dispute is purely civil in nature involving title and possession, which can only be adjudicated by a competent civil Court. The inquiry report was termed as unreliable and allegedly procured through collusion. It was thus prayed that the revision application be dismissed.

5. Learned Deputy Prosecutor General, Sindh, after referring to the record, submitted that the matter involves both civil and criminal aspects. It was contended that although FIRs have been registered and are pending adjudication before competent Courts, the applicability of the Illegal Dispossession Act depends upon the determination of lawful possession and subsequent unlawful

dispossession. It was further submitted that the inquiry report indicates occurrence of dispossession, however, the trial Court has taken the view that such determination requires full-fledged evidence. Learned D.P.G. left the matter to the discretion of this Court while emphasizing that proper legal principles should guide the decision.

6. After hearing the learned counsel for the parties and perusing the available record, this Court finds that the core controversy revolves around whether the learned trial Court rightly declined to take cognizance under the Illegal Dispossession Act, 2005. At the outset, it is an admitted position that the Applicant has produced lease documents and asserted long-standing possession through tenants, whereas the Respondents rely upon a chain of documents including a General Power of Attorney and Sale Deed, which are under challenge in civil proceedings. Thus, the question of title is indeed sub judice before the competent civil Courts. However, the scope of the Illegal Dispossession Act, 2005 is distinct and limited to protection of lawful possession against illegal and forcible dispossession. It is now well settled that even where title is disputed, the Court is required to examine whether prima facie the complainant was in possession and whether such possession was disturbed through unlawful means.

7. This Court further finds that one of the principal grounds weighed with the learned trial Court in dismissing the complaint was the pendency of civil litigation between the parties and the alleged requirement of adjudication of title by a Civil Court. Such

reasoning, with utmost respect, is legally misconceived and contrary to the express scheme of the Illegal Dispossession Act, 2005. There is no provision under the Illegal Dispossession Act, 2005 which bars initiation or continuation of proceedings merely on the ground that civil litigation regarding title or possession is pending between the parties. On the contrary, the legislative intent is clearly to provide immediate and efficacious remedy against unlawful dispossession, irrespective of parallel civil remedies. In this context, Section 3(2) of the Illegal Dispossession Act, 2005 is of pivotal importance, which provides that punishment under the said Act shall be *“without prejudice to any punishment to which the offender may be liable under any other law for the time being in force”*. The use of the expression *“without prejudice”* unequivocally manifests that proceedings under the Act are independent and in addition to any other civil or criminal proceedings. Thus, the existence of civil litigation cannot operate as a legal bar to the assumption of jurisdiction under the Act. The learned trial Court, therefore, fell in patent error by treating the pendency of civil suits as a determinative factor to decline cognizance. It is a settled proposition of law that civil and criminal proceedings can proceed simultaneously, particularly where allegations disclose elements of criminality such as forceful dispossession. The remedy under the Illegal Dispossession Act is aimed at protecting possession and curbing illegal occupation, which operates in a field distinct from adjudication of title by Civil Courts. Reliance in this regard is placed on the dictum laid down by the Honourable Supreme Court of Pakistan in the landmark judgment of *Shaikh Muhammad Naseem*

v. Mst. Farida Gul (2016 SCMR 1931), wherein it was observed that: “In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immovable property is pending between the parties, the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in *Zahoor Ahmed's case (PLD 2007 Lahore 231)*, reasoning of which was adopted by three member bench of this Court in *Bashir Ahmed's case (PLD 2010 SC 661)*. We are of the view that such a finding is also not sustainable in law. Any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other. Once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossession Act, 2005 then he cannot escape punishment on the ground that some civil litigation on the same issue is pending adjudication between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceedings initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending in any Court, where an offence, as described in the Illegal Dispossession Act, 2005, has been committed, the proceedings under the said Act can be initiated as the same would be maintainable in law”.

8. In the present case, the inquiry report submitted by the DSP Complaint Cell, as acknowledged even in the impugned order, clearly indicates that the Applicant was in possession and was dispossessed on 13.06.2025. Once such a finding was available on record, the learned trial Court was required to tentatively assess the material for the purpose of taking cognizance, rather than conducting a deeper appreciation of defence evidence. Section 5 of the Illegal Dispossession Act, 2005 pertains to “investigation”, “procedure”, and “local inquiry”, and is reproduced hereunder:

5. Investigation and procedure.__(1) Upon a complaint the Court may direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court:

Provided the Court may extend the time within which such report is to be forwarded in case where good reasons are shown for not doing so within the time specified in this subsection 1 [:]

Provided further that whenever a local inquiry is necessary for the purpose of this Act, the Court may direct a Magistrate or a revenue officer in the district to make inquiry and submit report within a period as may be specified by the Court. The report of the Magistrate or revenue officer, as the case may be, shall be construed as evidence in the case.

It further provides that the Court may direct a Magistrate or a revenue officer of the district to conduct an inquiry and submit a report within the period specified by the Court. In circumstances where the Court, seized of such a complaint, is not satisfied with the police report, it is vested with the authority to order a local inquiry through a Magistrate or revenue officer, or even to direct further investigation by another police officer, subject to the condition that such direction is necessary for the purposes of the Act, 2005.

9. The reasoning adopted by the trial Court that the matter is purely civil in nature does not align with the settled principle that

civil and criminal remedies can proceed simultaneously. The existence of civil suits or competing claims of ownership does not *ipso facto* negate criminal liability arising from acts of forceful dispossession. Furthermore, the trial Court appears to have placed undue reliance upon the defence version and documentary claims of the Respondents at a stage where only a prima facie assessment was required. Such an approach amounts to pre-judging the matter without recording evidence, which is not permissible at the stage of taking cognizance.

10. It is also significant that the Act of 2005 was enacted to curb the menace of land grabbing and unlawful dispossession. Therefore, where allegations supported by preliminary inquiry indicate use of force or unlawful occupation, the Court ought to proceed with the complaint so that evidence may be recorded and truth determined through trial. In view of the above, this Court is of the considered opinion that the learned trial Court has failed to exercise jurisdiction vested in it by law and has dismissed the complaint on erroneous premises, thereby causing miscarriage of justice.

11. For the foregoing reasons, the Criminal Revision Application is allowed. The impugned Order dated 23.10.2025 passed by the learned Vth Additional District & Sessions Judge, Karachi South is hereby set aside and remand the matter to the learned trial Court with direction to assume cognizance of the complaint under the Illegal Dispossession Act, 2005, and thereafter proceed in accordance with law after providing an opportunity of hearing to the parties. It is clarified that observations made herein are tentative in nature and shall not prejudice the case of either party during trial.

12. Before concluding this Order, it is appropriate to observe that the Applicant and his learned counsel have expressed a lack of confidence in the learned trial Court. Therefore, without delving into the merits of the allegations, the learned District & Sessions Judge, Karachi-South is directed to either hear and decide the aforesaid complaint personally or assign the same to another learned Additional Sessions Judge of the District for further proceedings in accordance with law.

JUDGE