

HIGH COURT OF SINDH, CIRCUIT COURT AT LARKANA

Criminal Appeal No.S-21 of 2026

(Alim and others v. Zulfiqar Ali and another)

Appellants: Alim, Nadir, Ahsan and Nisar through
Mr.Safdar Ali Ghouri, Advocate.

Respondent: The State through Mr. Aitbar Ali Bullo,
D.P.G. Sindh.

Complainant: Zulfiqar Ali through Mr. Muhammad Afzal
Jagirani, Advocate.

Date of hearing: 21.09.2026.

Date of Judgment: 12.10.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J. Through this criminal appeal, the appellants have called in question the judgment dated 04.06.2026 passed by the learned Additional Sessions Judge, Thul, in Sessions Case No.191 of 2026 arising out of Illegal Dispossession Complaint No.24 of 2025, whereby the appellants were convicted under Section 3(1)(2) of the Illegal Dispossession Act, 2005 (the “**Act**”) and each was sentenced to suffer rigorous imprisonment for one year and to pay a fine of Rs.100,000/-, with three months’ simple imprisonment in case of default. The learned trial Court further directed vacation of the property and its delivery to the complainant through the concerned SHO.

2. Briefly stated, the case of the complainant is that he was owner and occupant of a residential property measuring about 5300 square feet situated at Gola Muhalla, Thul, which, according to him, had devolved upon him through his ancestors. It was alleged that on 16.09.2025 at about 2:00 p.m., the appellants, armed with deadly weapons, entered the house, extended threats, removed the complainant and his family from the premises and took away five tolas of gold and Rs.60,000/- in

cash. According to the complainant, the appellants thereafter retained possession of the property.

3. Learned trial Court during trial examined PW-1 Zulfiqar Ali, the complainant and PW-2 Yasir Ali, his brother. The prosecution also relied upon certain reports of the Mukhtiarkar and police, utility bills, previous proceedings between the parties and alleged video material.

4. Learned counsel for the appellants contended that the conviction is the result of misreading and non-reading of material evidence and that the prosecution failed to establish the first and foundational ingredient of Section 3 that PW-1 Zulfiqar Ali was in lawful possession immediately before the alleged occurrence. He submitted that the judicial order dated 04.01.2021 passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Jacobabad, in Criminal Miscellaneous Application No.1143 of 2020, recording the 2018 agreement and the admission of PW-1 Zulfiqar Ali as to his signature, could not have been brushed aside as a minor discrepancy. He further pointed out the material variation in the dimensions of the property, the absence of independent witnesses, non-examination of the makers of the Mukhtiarkar and police reports and the failure to prove the alleged video in accordance with law. According to learned counsel, the prosecution retained the burden of proving its case beyond reasonable doubt and that burden could not be shifted merely because the appellants did not produce defence evidence. He, therefore, prayed for acceptance of the appeal and acquittal of the appellants. In support of his contentions, learned counsel has placed on record certain documents with regard previous proceedings between the parties through statement.

5. Learned D.P.G. Sindh supported the impugned judgment and submitted that PW-1 Zulfiqar Ali and PW-2 Yasir Ali consistently supported the occurrence and that their testimony was corroborated by the official reports and other material collected during the proceedings. He contended that minor

discrepancies concerning measurements or peripheral details could not discredit an otherwise consistent prosecution case. He, therefore, prayed for dismissal of the appeal.

6. Learned counsel for the complainant adopted the reasoning of the learned trial Court and contended that the appellants had admittedly taken possession of the premises and had failed to establish any lawful authority for doing so. He maintained that the earlier proceedings and video material corroborated the complainant's version and that the absence of independent witnesses was not, by itself, sufficient to discard the testimony of the complainant and his brother. He prayed that the appeal be dismissed and the conviction be maintained.

7. I have heard the learned counsel for the parties and examined the record with their assistance. The appellants have challenged the conviction primarily on the ground that the prosecution failed to establish, beyond reasonable doubt, the complainant's lawful possession immediately before the alleged dispossession and that the learned trial Court misread and failed to reconcile material documentary and oral evidence available on the record.

8. The question is not merely whether an occurrence took place between the parties on or around 16.09.2025. The question of decisive importance is whether the prosecution proved all the ingredients of Section 3(1) of the Act beyond reasonable doubt. The essential requirements of an offence under Section 3(1) of the Act are: *firstly*, that the complainant is the actual owner or occupier, i.e. in lawful possession, of the immovable property; *secondly*, that the accused entered upon the property; *thirdly*, that such entry was without lawful authority; and *fourthly*, that it was made with the intention to dispossess, grab, control or occupy the complainant's property. The statutory scheme likewise protects the lawful owner or occupier and provides for restoration only where illegal dispossession or grabbing in contravention of Section 3 of the Act is established. Thus, proof of an altercation, an

assertion of ownership, or the fact that the accused were subsequently found at the premises is not, standing alone, sufficient. The prosecution must establish the complainant's lawful possession at the relevant point in time and the unlawful nature and intention of the accused's entry.

9. In the present case, the testimony of PW-1 Zulfiqar Ali does not stand alone on an otherwise undisputed foundation. During cross-examination, PW-1 Zulfiqar Ali admitted the existence of previous transactions between his father and Muhammad Alim. This admission becomes significant when read with the judicial order dated 04.01.2021 passed by the learned Additional Sessions Judge-I/Ex-Officio Justice of Peace, Jacobabad, in Criminal Miscellaneous Application No.1143 of 2020. That order records the production of the agreement dated 21.07.2018 and, more importantly, records the following material circumstance: *"On query in open Court, Zulfiqar Ali admitted that he had signed the agreement as witness."* The same order further records the substance of the agreement whereby the house was agreed to be sold for Rs.21,00,000/-, with Rs.60,000/- as earnest money, monthly payments of Rs.50,000/- and an arrangement concerning possession. This is not a mere defence document introduced for the first time during trial. It is a circumstance appearing from an earlier judicial proceeding involving the present complainant. Its evidentiary significance lies not simply in the alleged sale transaction but in the fact that the previous Court recorded an admission of PW-1 Zulfiqar Ali regarding his signature upon the document. Against this background, the assertion of PW-1 Zulfiqar Ali in the present case that he remained the lawful occupant until 16.09.2025 required careful judicial reconciliation. The learned trial Court was required to answer a simple but fundamental question: if possession had been dealt with under the 2018 transaction and the complainant had himself admitted his signature as a witness, on what reliable evidence was it concluded that the complainant was nevertheless in lawful possession immediately before the alleged dispossession?

The impugned judgment does not provide a satisfactory answer. Instead, it proceeds on the assumption that the complainant's assertion of ownership and possession, supported principally by the testimony of PW-1 Zulfiqar Ali and PW-2 Yasir Ali, was sufficient and thereafter places substantial reliance upon the failure of the appellants to lead defence evidence. Such approach overlooks that the legal burden in a criminal case remains upon the prosecution. The evidential burden cannot be converted into a substitute for proof of the essential ingredients of the offence.

10. I have noted that the property is described differently in the record. The complainant's case and the testimony of PW-1 Zulfiqar Ali refer to an area of approximately 5300 square feet, whereas the 2018 transaction is described in the earlier proceedings in relation to a property measuring approximately 1800 square feet. The learned trial Court also referred to a Mukhtiarkar report indicating an area of approximately 4000 square feet. These differences could perhaps have been treated as insignificant if the identity of the property had been independently and conclusively established. But where lawful possession itself is in controversy and an earlier transaction concerning the premises is relied upon, the identity, dimensions and boundaries of the property assume material significance.

11. The evidence of PW-2 Yasir Ali also requires consideration with appropriate caution. PW-2 Yasir Ali supported the occurrence but, during cross-examination, could not state from which side the appellants entered and could not furnish the precise sides or dimensions of the property. He also acknowledged that no independent witness had been associated. His testimony may corroborate the occurrence to an extent, but it does not resolve the anterior question of lawful possession which is the foundation of the prosecution case. The absence of independent witnesses is not, by itself, fatal to a prosecution under the Act. Likewise, the fact that the witnesses are related does not render their testimony inadmissible. The difficulty here is cumulative: the

two principal witnesses are closely related; the previous judicial record creates a substantial question regarding the complainant's possession; the dimensions of the property vary materially; and the official reports relied upon by the trial Court were not proved through their makers in a manner enabling the defence to test their contents.

12. The reports of Mukhtiarkar and police therefore could not simply be treated as conclusive proof of the complainant's lawful possession. If the prosecution wished to rely upon such reports as substantive corroboration of the disputed facts, the makers or competent persons connected with their preparation ought to have been examined, particularly when the reports were being used to overcome the documentary circumstances emerging from the previous proceedings. The same distinction must be maintained regarding the alleged video footage. The order dated 14.10.2025 passed in Criminal Miscellaneous Application No.752 of 2025 may have justified registration of a case and investigation on a *prima facie* basis, particularly since that Court noticed video footage said to have circulated on social media. But a direction for registration of an FIR is not a finding of guilt after trial. *Prima facie* material sufficient for investigation cannot automatically be elevated to proof beyond reasonable doubt. Similarly, the Constitutional Petition bearing No.992 of 2025 filed before this Court in which the petitioners (Mst. Hurmat Khatoon and complainant Zulfiquar Ali) subsequently stated that the detainee had returned home and the matter was not pressed cannot be treated as an adjudication establishing the complainant's possession. The earlier 22-A proceedings are likewise not a substitute for evidence recorded and tested at trial.

13. The learned trial Court also placed reliance upon Article 122 of the Qanun-e-Shahadat Order and drew an adverse inference under Article 129 (g). Such provisions may have relevance where a fact is especially within the knowledge of a party, but they do not relieve the prosecution of proving the

foundational ingredients of a criminal offence. An adverse inference cannot be employed to fill a substantive evidentiary gap in proof of lawful possession, particularly where the record itself contains a prior judicially recorded circumstance requiring explanation. The prosecution's case is further weakened by the manner in which the earlier proceedings were treated. The order dated 04.01.2021 was not merely evidence of an unrelated quarrel. It concerned the same property and the same parties or connected parties and recorded a transaction which directly bears upon the question of possession. Once that document and admission came to the notice of the trial Court, it was incumbent upon the Court either to accept their legal effect or to give cogent reasons for rejecting or distinguishing them. The impugned judgment does neither.

14. It is also important to observe that the appellants need not establish a perfect civil title in their favour in order to obtain an acquittal. The Act does not require the accused to prove title beyond reasonable doubt. The prosecution must first establish that the complainant was the lawful owner or occupier and that the accused entered without lawful authority with the requisite intention. Where the prosecution's own evidence and the previous judicial record leave a reasonable doubt about that foundational fact, the accused are entitled to its benefit. I am conscious that the Illegal Dispossession Act is a special enactment and that its application is not restricted to professional or habitual land grabbers. The Supreme Court has expressly recognized its broad application to persons committing the offence described in Section 3 of the Act. The appellants therefore cannot succeed merely by describing the dispute as a "civil dispute". But that principle does not dispense with the statutory requirements of Section 3 of the Act. The issue here is not whether the appellants possess the credentials of land grabbers; it is whether the prosecution proved that their possession was unlawfully obtained from a complainant who was himself in lawful possession at the relevant time. Upon a cumulative assessment, I find that a reasonable doubt exists on

this central question. The following pieces of evidence are particularly material and were not adequately reconciled by the learned trial Court:

1. PW-1 Zulfiqar Ali claimed possession of a property measuring about 5300 square feet and alleged forcible dispossession on 16.09.2025.
2. The earlier judicial order dated 04.01.2021 records the production of the agreement dated 21.07.2018 concerning the property, under which the transaction was stated to be for Rs.21,00,000/-, with specified payment terms and possession arrangement.
3. The same judicial order records that PW-1 Zulfiqar Ali, when queried in open Court, admitted that he had signed the agreement as a witness.
4. The learned trial Court itself referred to a report of the Mukhtiarkar indicating the property at approximately 4000 square feet, whereas the prosecution case was approximately 5300 square feet and the earlier transaction concerned approximately 1800 square feet.
5. PW-2 Yasir Ali could not specify the side from which the appellants allegedly entered and could not give the precise dimensions or sides of the property.

These are not merely discrepancies concerning peripheral details. They directly concern the identity of the property, the complainant's possession and the legality of the appellants' presence thereon.

15. Upon a careful and cumulative examination of the oral and documentary evidence, I am of the considered view that the learned trial Court failed to appreciate the prosecution case in its correct legal perspective. The material discrepancies concerning the identity and measurements of the disputed property, the previous judicial proceedings recording the complainant's admission regarding the agreement dated 21.07.2018, and the absence of satisfactory evidence reconciling the competing claims of possession have created reasonable doubt regarding the essential ingredients of the alleged offence. The earlier agreement,

admittedly witnessed by the complainant, does not by itself conclusively establish the appellants' title or lawful possession; nevertheless, it constitutes a material circumstance which could not have been disregarded without proper judicial examination. The learned trial Court also fell into error by placing undue reliance upon the appellants' failure to produce defence evidence, overlooking the settled principle that the prosecution must establish its case independently and beyond reasonable doubt. Neither the weakness of the defence nor the failure of the accused to establish an alternative claim of title can cure deficiencies in the prosecution evidence.

16. It is equally important to emphasize that the Illegal Dispossession Act, 2005, though enacted to provide an effective remedy against unlawful occupation and dispossession of immovable property, does not authorize conviction merely upon allegations of forcible occupation or the existence of a dispute between rival claimants. The statutory ingredients of the offence must be established through legally admissible, trustworthy and confidence-inspiring evidence. The protective purpose of the enactment cannot be extended so as to dispense with the fundamental safeguards governing criminal trials. Where the evidence gives rise to reasonable doubt concerning the complainant's relevant legal status in relation to the property, the alleged unlawful entry, or the requisite criminal intention, the accused cannot lawfully be convicted. In the present case, the prosecution has failed to remove such doubt. The benefit thereof must necessarily be extended to the appellants as a matter of right and not as a matter of grace or concession.

17. For the foregoing reasons, I am satisfied that the impugned judgment dated 04.06.2026 passed by the learned Additional Sessions Judge, Thul, in Sessions Case No.191 of 2026, arising out of Illegal Dispossession Complaint No.24 of 2025, suffers from material misreading and non-reading of evidence and cannot be sustained in law. Consequently, the

instant **criminal appeal is allowed**, the impugned judgment of conviction and sentence is set aside, and the appellants, namely, Alim son of Karim Bux Jaffri, Nadir, Ahsan and Nisar, all sons of Haji Chandio Jaffri, are acquitted of the charge under Section 3 of the Illegal Dispossession Act, 2005, by extending to them the benefit of reasonable doubt. Since the appellants are on bail, their bail bonds stand cancelled and their sureties are discharged from their respective liabilities.

18. As a necessary consequence of setting aside the conviction, the direction issued by the learned trial Court for vacation of the disputed premises and restoration of possession to the complainant is also set aside. It is, however, clarified that the observations and findings recorded herein are confined strictly to the determination of criminal liability under the Illegal Dispossession Act, 2005, and shall neither constitute a declaration of title or lawful possession in favour of either party nor prejudice their respective rights to seek appropriate relief before a competent civil forum in accordance with law. Any such proceedings shall be decided independently, on their own merits, without being influenced by the observations made in this judgment.

J U D G E

Approved for reporting.

