

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.23 of 2023

Applicant : Zulfiqar Ali Sajid Son of Allah Bux
Through Mr. Mehmood-ul-Hassan, Advocate.

Respondents 1 to 5 : The State
Through Mr. Fayyaz Hussain, DPG.

Respondent No.6 : Masum Raza son of Masood Hussain
Through Mr. Rana M. Ifitkhar, Advocate.

Date of hearing : 05.05.2025

Date of order : 09.05.2025.

ORDER

KHALID HUSSAIN SHAHANI, J. –The applicant Zulfiqar Ali Sajid, an overseas Pakistani residing in New York for the last 25 years, has preferred this Criminal Revision under Sections 435 read with 561-A CrPC, being aggrieved by the order dated 31.01.2023 passed by the learned Additional Sessions Judge-III, Karachi East. The impugned order dismissed his complaint filed under Sections 3(2) of the Illegal Dispossession Act, 2005 in a summary manner, allegedly without appreciating the material facts and documentary evidence placed on record.

2. Brief facts are that the applicant purchased Plot No. B-66, Block-8, Architect & Engineers Cooperative Housing Society, Gulistan-e-Jauhar, Karachi, in 1993 and constructed rooms and a boundary wall. He had installed a Sui Gas meter about 18 years back and was paying all utility bills. The property was entrusted to a watchman, who resided there with his family to safeguard it. On 27.10.2022, respondents (including unknown persons) allegedly armed with weapons forcibly entered and illegally dispossessed the watchman and his family from the premises. The applicant lodged complaints with SHO Gulistan-e-Jauhar and other authorities, and an inquiry report was filed. A comprehensive report dated 05.12.2022 from the Architect & Engineers Society and statements of two neighborhood witnesses supported the applicant's

version. It is claimed that the respondents have no legal title or lawful possession, and the applicant remains the rightful owner.

3. Learned advocate for applicant submitted that impugned order is arbitrary and contrary to law, passed in haste without properly evaluating the title documents, society's verification, utility bills, or evidence of forceful dispossession. The respondents acted without due process, committed criminal trespass, and posed threats to the applicant's lawful caretakers. The trial court misapplied its discretion by ignoring credible evidence and inquiry reports, thus denying the applicant's statutory protection under the Illegal Dispossession Act, 2005. The applicant seeks restoration of possession and an injunction against further illegal construction or third-party interest.

4. Conversely, learned advocate for respondent No.6 submitted that he is/was the lawful purchaser and occupant of the property through a registered sale deed. He contended that he has been in peaceful possession since 2002 and had not committed any act of illegal dispossession. It was argued that the applicant had not been in actual possession of the property at the time of the alleged incident, and therefore no offence under Section 3 of the Illegal Dispossession Act, 2005 was made out. He emphasized that the nature of dispute is purely civil, and the applicant is attempting to use criminal law to settle ownership/title issues that must be adjudicated by a civil court. He further argued that a Civil Suit No. 301/2023 filed by the applicant for declaration and possession before the Sr. Civil Judge-IV/Special Court for Cooperative Societies, Karachi Division Established under section 117 of the Sindh Cooperative Societies Act, 2020 has been dismissed vide judgment & decree dated: 26-03-2024. He emphasized the respondent No.6 also filed one Civil Suit No. 1831/2024, which is pending for adjudication.

5. While evaluating the complaint and submissions of both sides, it appears that the grievance sought to be ventilated by the complainant in the instant criminal proceedings stems from a dispute which is civil in nature and has already been comprehensively examined and adjudicated upon by the competent civil forum. It is an established

principle of law that where the foundational claim pertains to ownership or title over immovable property, the jurisdiction of the civil court is primary and conclusive; and once such court has rendered its findings after a full-fledged trial, the criminal forum cannot be permitted to be used as a parallel mechanism to re-litigate or reverse the outcome of civil adjudication.

6. In the present case, the complainant had already instituted Society Suit No. 301 of 2023 before the Special Court (Sindh Cooperative Societies), seeking declaratory and possessory reliefs with respect to Plot No. B-66/8, Block-8, measuring 400 square yards, situated within the precincts of the Architect & Engineering Employees Cooperative Housing Society. That suit was founded upon the complainant's assertion of a lawful agreement of sale allegedly executed in his favour by Gul Builders, along with proof of payment and ancillary documents, such as provisional allotment and possession letters. It was further claimed by the complainant that he remained in undisturbed possession of the said property for over two decades until allegedly being dispossessed by some of the respondents. However, upon a detailed appreciation of the evidence adduced before it, including oral testimony and documentary exhibits, the civil court vide judgment dismissed the said suit. The court categorically recorded findings to the effect that the complainant had failed to establish a valid title to the property. It was held that the alleged sale transaction, allotment, and issuance of possession letter emanated from individuals or entities who neither formed part of the legitimate management of the Society nor were clothed with legal authority to transact its immovable assets. Notably, it was observed that the documents presented by the complainant bore the signatures of persons associated with the so-called "Riffat Zaman Kayani" panel and "Gul Builders & Construction Co.", whose actions have already been declared unauthorized by the competent authority, the Registrar of Cooperative Societies, as well as by the Society Administrator appointed by the High Court in Constitution Petition No. D-795 of 1993.

7. The record further reveals, the complainant and his alleged predecessor-in-interest Imam Bux, are not reflected in the Register of Members, nor have they been issued any valid share certificate as per the Society's official record. The purported share certificate No. 2464, on the basis of which the complainant claims a transfer of plot, is shown to have been endorsed by unauthorized persons whose signatures have been declared to be forged or fictitious by the cooperative department. In fact, the alleged seller/respondent No.3 has not denied receipt of consideration; yet, the transaction itself is tainted by legal infirmities owing to lack of authority on the part of the vendor and absence of registration or sanction by the competent Society body.

8. I further note that the very issue of title and possession having been conclusively decided against the complainant by a civil court of competent jurisdiction, it is not open to the complainant to circumvent or undermine the said adjudication by resorting to criminal proceedings under the guise of allegations of criminal trespass, mischief, or illegal dispossession. The Supreme Court of Pakistan has repeatedly emphasized that criminal law cannot be used to settle scores or to exert pressure in civil disputes already determined by judicial forums. Once the civil court has found the complainant to be neither owner nor lawful possessor of the suit property, no offence can be said to be made out merely on the basis of his assertion of past possession, especially when that possession itself has been held to be unlawful or unauthorized.

9. In the circumstances, I find that ingredients of criminal culpability, as required to be satisfied for registration or continuation of criminal prosecution are conspicuously absent. Accordingly, I am of the unambiguous view that permitting the continuation of these criminal proceedings would not only result in a miscarriage of justice but would also amount to an abuse of the process of law. The criminal justice system is not intended to be employed as a tool to enforce or revive civil claims which have already been adjudicated and found to be without merit.

10. In view of the foregoing discussion, I find that the order passed by the learned trial court is well-reasoned, legally sound, and based on a proper appraisal of the record and applicable law. The findings recorded therein do not suffer from any factual or legal infirmity warranting interference in the revisional jurisdiction of this Court. The complainant has failed to make out a case for interference, particularly when the matter has already been adjudicated by the competent civil court, and the dispute is essentially civil in nature. Resultantly, the impugned order is hereby upheld and this criminal revision petition is accordingly dismissed.

J U D G E