

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Cr. Rev. Appln No. 158 of 2019

Date	Order with signature of Judge
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1. For hearing of main case.
2. For hearing of M.A. No.9805/2019

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13.10.2021

Raja Ali Asghar, advocate for the applicant  
Mr. Siraj Ali Khan, APG  
Mr. Aftab G. Nabi, advocate for respondents

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**AFTAB AHMED GORAR, J.**- Through this application the applicants have assailed the order dated 22.08.2019 passed by the VIth Additional District & Sessions Judge, Karachi (Central) whereby the complaint was registered against the applicants under the Illegal Dispossession Act, 2005 directing them to furnish surety in the sum of Rs.50,000/- each and also issued bailable warrants against them for their arrest.

2. Learned Counsel for the applicants submitted that the applicants have purchased the plot against which the impugned order under Illegal Dispossession Act was passed and warrants against the applicants were issued, which is illegal and needed to be set aside. He further contended that the possession of the plot in question was handed over to the applicants by a registered Attorney of seller. He also contended that the applicants are bonafide purchasers of the plot in question hence after construction of a house, they had been living there since last 11 years without any interruption. He submitted that both the parties had filed suits against each other i.e. civil Suit No.160/2006 was filed by the respondent and Suit No.161/2006 was filed by the applicant. Both the suits were consolidated and through a consolidated judgment, the suit of the respondent was decreed whereas the suit filed by the applicant was dismissed by IVth Senior Civil Judge, Karachi (Central). He submitted that applicant assailed those orders in Civil

Appeal No.143/2011 and Civil Appeal No.144/2011, same were also dismissed by the appellate Court. Consequently the applicant preferred IInd Appeal No.32/2015 and IInd Appeal No.33/2015 before this Court, which are pending adjudication. He further submitted that the report of the SHO is silent and no evidence has been provided by the police for the alleged trespass/illegal dispossession. He further added that there is unexplained delay of 11 years in filing this complaint which shows the mala fide on the part of the complainant. He has also contended that since counter suits in respect of the plot in question were also contested by the parties therefore, parallel proceedings under Illegal Dispossession Act were not maintainable. He prays that the impugned order dated 22.08.2019 is therefore liable to be set aside.

3. Learned Additional Prosecutor General submitted that admittedly the dispute over subject plot was going on between the parties in civil litigation, however there is no bar in filing the complaint under Illegal Dispossession Act, 2005 during pendency of suits. He submitted that no illegality or infirmity in the impugned order dated 22.08.2019 has been pointed out by the learned Counsel for the applicants therefore, the above order is passed according to law and the same may be maintained.

4. Learned Counsel for the respondent adopted the arguments made by the learned APG and further added that the applicants are encroachers and they have encroached upon the plot of respondent. He submitted that before initiating proceedings under Illegal Dispossession Act, 2005 report was called from the concerned SHO regarding encroachment on the said plot and thereafter proceedings were initiated against the applicants according to law. He submitted that no document of ownership has been brought on record by the applicants to show that they are the owners. He therefore, submits that the instant criminal revision application may be dismissed.

5. I have heard the learned Counsel for the applicants, learned APG duly assisted by the learned Counsel for the respondent and have gone through the record.

6. Record reveals that the applicants claim ownership of plot in question on the basis of a sale Agreement, which is not a registered document and the suit filed by the applicants in this regard was also dismissed on the same ground that the applicants failed to produce any document or any evidence to show that they are the bona fide purchasers. Mere placing an unregistered document i.e. agreement of sale on a stamp paper does not legally entitle them to be owner. It is further on the record that after filing the proceedings under Illegal Dispossession Act, 2005, the learned Court below also called report from the concerned SHO. Even with that statement the applicant failed to place a single document in his favour to establish his ownership. Record also demonstrates that the parties had filed suits against each other i.e. civil Suit No.160/2006 was filed by the respondent and Suit No.161/2006 was filed by the applicant. Both the suits were consolidated and through a consolidated judgment, the suit of the respondent was decreed whereas the suit filed by the applicant was dismissed by IVth Senior Civil Judge, Karachi (Central). He submitted that applicant assailed those orders in Civil Appeal No.143/2011 and Civil Appeal No.144/2011, same were also dismissed by the appellate Court. Consequently the applicant preferred IInd Appeals No.32 and 33 of 2015 before this Court, which are pending adjudication. It is also part of record that after dismissal of civil appeals, the respondent had filed Execution Application No.04/2015 before the learned executing Court/ VIIth Senior Civil Judge, Karachi (Central), which was allowed according to law vide order dated 07.10.2018 after hearing the parties on 07.2.2018 and writ of possession was also issued which was repeated on 15.02.20218 and the same were also served upon the applicant.

7. Record further reveals that the Learned IInd Additional Sessions Judge, Karachi (Central) issuedailable warrants in the sum of Rs.50,000/- against the applicant in Illegal Dispossession Act case and the applicant before filing this criminal revision application had filed an application for reduction of the surety amount before the learned IInd ADJ, which was allowed and surety amount was reduced from Rs.50,000/- to Rs.35,000/- but the applicant failed to furnish surety before the learned trial Court, had instead filed instant criminal revision application before this Court.

8. As far as the objection of the learned Counsel for the applicants that when civil litigation was pending between the parties for adjudication, no parallel proceedings could be initiated under Illegal Dispossession Act, 2005, it is settled principle of law that during pendency of civil litigation there is no bar to institute criminal proceedings against the wrong doer. Reliance in this regard is placed on the judgment passed by the Hon'ble Supreme Court Pakistan reported as ***PLD 216 SC 769***.

9. In view of above discussion, I am of the firm opinion that the instant criminal revision application does not merit any consideration and the same stands dismissed along with pending applications.

JUDGE