

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.

Crl. Appeal No.S-04 of 2024

(Barkat Ali & others Vs. The State & another)

DATE	ORDER WITH SIGNATURE OF HON'BLE JUDGE
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Date of hearing 13-05-2024.

Date of Judgment 27.05.2024.

Mr. Shabbir Ali Bozdar advocate for the appellant.
 Mr. Khan Muhammad Sangi, advocate for the complainant.
 Mr. Gulzar Ahmed Malano, Assistant P.G for the State.

J U D G M E N T.

*Adnan-ul-Karim Memon J:-*The applicants Barkat Ali, Shoukat Ali, and Sikandar Ali, and private respondent Liaquat Ali are real brothers who have a dispute over inherited property i.e. Survey No. 2/1(1-2) and others, whereas in survey No. 2/1, 2/3 and others respondent Liaquat Ali claims to be the owner of four (4) acres purchased by him independently and there is no right of inheritance in that land. However, he succeeded in filing a Criminal I.D Complaint No. 92 of 2022 before the learned Sessions Judge Ghotki against applicants/brothers under sections 3 & 5 of the Illegal Dispossession Act, 2005, who were tried and convicted by the learned Additional Sessions Judge(MCTC), Ubauro District Ghotki, to suffer R.I for 05 years and with a fine of Rs. 50,000/- (Fifty thousand). In default to pay the fine, the applicants suffer S.I. for 03 months more. A sum of Rs. 1,00,000/- (One lac) was also imposed upon the applicants as compensation payable to the complainant under Section 544-A Cr.P.C. It was further ordered that the possession of the illegally occupied land of the complainant be restored to him.

2. The applicants being aggrieved by and dissatisfied with the above judgment have filed the instant Criminal Appeal, inter alia on the ground that the respondent brother was not dispossessed from Agriculture Land bearing Survey No. 2/1(01—02) acres, and Survey No. 437/1 (01-28) acres situated Deh Jhangal Malik, Taluka Ubauro District Ghotki; that the trial Court failed to appreciate the evidence that the respondent brother admitted in his evidence that they

collectively had purchased the subject land from their sister Mst. Janul; also admitted that he was not aware whether his name was officially partitioned with his brothers; he also admitted that in Survey No. 2/1, the applicants were/are co-sharers; he also admitted that he obtained the land on lease from Survey No. 2 from applicant Sikandar; that he also submitted that in his complaint he mentioned the name of Mst. Soomari and Mst. Razia as co-accused; that Mukhtiarkar(Revenue) Taluka Ubauro, erroneously disclosed in his report that the applicants had possessed the land of the respondent illegally and owner of four (04) acres is Liaquat Ali, though he disclosed that as per V-F- No. VII, Entry No. 439 dated 16.06.2006, Survey No. 2/1 (01-02) and others foti khata badal of their father Sadiq mutated into his legal heirs accused Barkat Ali and others, the share of accused Barkat Ali is (04 acres).

3. Precisely the facts disclosed in the complaint filed by complainant Liaquat Ali are that he is the owner of agricultural land bearing survey No.2/1 admeasuring area (1-2) acres and survey No. 437/1 admeasuring area (1-28) acres situated at Deh Jhangal Malik Taluka Ubauro. It is further stated that the complainant purchased an area of 1-28 acres in survey No. 437/1 from Piyaro s/o Muhammad Usman Bhutto which is situated in Deh Jhangal Malik and is also co-sharer of (1-02) acres from survey No. 2/1 by way of inheritance of his father after his death. It is further stated that the appellants were not ready to deliver the inheritance share of the complainant were annoyed with him and were issuing him threats of forcibly dispossessing and grabbing his land. On 17.03.2022 at 1600 hours complainant along with his family members was present at the aforementioned land for harvesting the wheat crop where all the accused persons along with two unknown accused persons duly armed with lethal weapons came and started dispossessing the complainant party by pointing their weapons. On the refusal of the complainant party, the accused persons caused club blows to the complainant party. The complainant party being seriously injured rushed to Taluka Hospital Daharki for treatment from where they were referred to GMMC Sukkur for further treatment after discharge from the hospital and requested the accused persons to vacate his land which they vacated the land temporarily and told him that they would not permit him to cultivate the land with any crop. It is further stated that on 05.05.2022 at 10:00 am when the complainant along with P.Ws Rahim Bux and Zahid Ali was present on his above said lands and were preparing to cultivate cotton crop in the land, in the meanwhile, the accused Barkat Ali armed with Kalashnikov, Shoukat Ali armed with a repeater, Sikandar Ali armed with Kalashnikov and three

unidentified accused persons armed with pistols came over there along with two tractors and forcibly and illegally disposed the complainant from the disputed land and occupied the same. Thereafter complainant repeatedly requested the accused persons to vacate his land but they refused. The complainant approached the police but to no avail; hence complainant filed the complaint of illegal dispossession against the accused which after due process was brought on regular file and the case was registered against the accused for having committed the offence punishable under section 3(2) of the Illegal Dispossession Act-2005. The Bailable warrants were issued against the accused to appear before the court and face the trial. In the wake of warrants issued against the accused, they appeared and submitted their sureties. The copies of necessary documents were supplied to the accused on receipt at Exh.1. The formal charge was framed against the accused at Ex.2, to which they pleaded not guilty and claimed their trial vide pleas at Ex.2/A to 2/C respectively.

4. At the trial prosecution examined complainant Liaquat Ali at Exh.3 who produced the certified true copies of entry No. 4 dated 06.01.2006 and entry No. 452 dated 12.12.2006 at Exh.3/A and 3/B and complaint at Exh.3/C respectively. PW Zahid Ali was examined at Exh.4. PW.3 Rahim Bux was examined at Exh. 5. PW.4 ASI Muhammad Haneef who conducted the inquiry was examined at Exh.6. He produced the report at exh.6/A and statements of parties at Eh. 6/B. PW.5 Tapedar Shahmeer was examined at Exh. 7. He has produced an authority letter at Exh.7/A and the report of Mukhtiarkar at Exh.7/B respectively.

5. The statements of appellants under section 342 Cr.P.C. are recorded at Ex.9 to 11 respectively. In their statements, the accused have denied the prosecution allegations and have stated that they are innocent and have been falsely implicated in the case. They have taken the plea that actually in the year 2009 complainant and accused Shoukat Ali obtained the loan from ZTB Ltd. Ubauro, and from the said loan amount they had purchased the land jointly from Piyaro s/o Muhammad Usman Bhutto. They have further stated that they are in lawful possession of the suit land and have not illegally occupied the same. In support of their version accused have produced the copy of FIR bearing crime No. 45/2022 at Exh.9/A and receipts of taking the loan from Exh.11/A to 11/E respectively. The accused, however, have neither expressed to be examined on oath under section 340 (2) Cr.P.C., nor named any person to be examined as their defense witness.

6. Learned counsel for the applicants has argued that there is no evidence at all to show that the accused have forcibly or illegally occupied the land of the respondent/complainant perforce. He has further argued that the ingredients of the Illegal Dispossession Act-2005 are not attractive as the applicants have not illegally occupied the subject land, nor dispossessed the complainant without due course of law. He has further argued that the applicants are co-sharers, co-purchasers of the subject land and are also in possession of the same by way of private partition that took place between the parties. The applicants have committed no offense. The applicants are neither land grabbers nor possess such antecedents which is the basic requirement for the case of illegal dispossession. He prayed for setting aside the conviction awarded by the learned trial Court.

7. Learned counsel for the respondent/complainant has argued that the prosecution has fully established that the accused are in illegal occupation of the land belonging to the complainant. He has further argued that the SHO and Mukhtiarkar have also reported that the accused have illegally occupied the land of the complainant. He has further argued that even during the lengthy cross-examination the learned counsel for the appellants has not denied that the appellants do not own the land belonging to the complainant. He has also argued that no documentary proof in support of the plea of joint purchasing the disputed land has been brought on record by the accused which fully proves that the accused are admittedly in possession of the disputed land of the complainant and have committed the offense punishable under section 3(2) of the Illegal Dispossession Act 2005, therefore, the accused may be convicted according to law, complainant be provided compensation as well as he may be restored possession of the disputed land occupied by the accused persons perforce. As per learned counsel complainant Liaquat Ali in his deposition has deposed that he owns agricultural land bearing survey number 2/1 (1-02) acres, survey No. 437/1 (1-28) acres, situated in Deh Jhangal Malik Taluka Ubauro. He has further deposed that he had purchased the above-mentioned land in the year 2010 from one Piyaro s/o Muhammad Usman Bhutto. He has further deposed that survey No. 2/1 is his ancestral property. On 17.03.2022 at about 0400 hours he was cutting the wheat crop along with his witnesses Zahid Ali, Rahim Bux and his wife, where at that time accused Barkat, Sikandar, Shoukat armed with lathies and two unknown accused persons duly armed with weapons came over there. He has further deposed that the accused persons caused him and his wife lathi blows and thereafter they went to police station Reti, obtained the letter for

treatment, and then went to Taluka Hospital Daharki for treatment. Due to serious injuries, they were referred by the medical officer to GMMC Sukkur. He has further deposed that they remained under treatment at GMMC Sukkur for 5 to 6 days and then returned to PS Reti, but the police did not register his FIR. On 05.05.2022 at about 10:00 am he, his son Zahid Ali, and Rahim Bux were working on their land, where accused Barkat armed with Kalashnikov, Shoukat armed with a repeater, Sikandar armed with Kalashnikov and three unknown accused who were armed with pistols came over there along with two tractors and started plowing the land on the force of weapons and occupied the same. They gave the names of Almighty Allah and Rasool (SAW) to the accused, but they refused. He has further deposed that on 15.08.2022 he made such application to the SSP, but the police did nothing and then he filed the complaint before the Court which was also dismissed. He has further deposed that the applicants have illegally occupied his land and have taken away three crops from the land and are in illegal possession, therefore, he may be restored possession of the land and so also awarded compensation for the crops. He prayed for dismissal of the instant Criminal Appeal.

8. We have heard the learned counsel for the parties and perused the record with their assistance.

9. At the outset I intend to see whether the case of the parties falls within the ambit of Sections 3 and 4 of the said statute or otherwise, which defines the offense thereunder. Section 4 stipulates that any "contravention of Section 3 shall be triable by the Court of Session on a complaint. It also provides that the offense under the Act shall be non-cognizable. Section 5 empowers the Court to direct the police to make an investigation. It is clear from Section 3 *ibid* that to constitute an offense thereunder the complaint must disclose the existence of both, an unlawful act (actus-rea) and criminal intent (mens-rea). Besides **the Illegal Dispossession Act, 2005 applied to the dispossession of immovable property only by property grabbers/Qabza Group/land mafia.**

10. A complaint under the Illegal Dispossession Act, 2005 can be entertained by a Court of Session only if some material exists showing involvement of the persons complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an organized or calculated effort by some persons operating individually or in

groups to grab by force or deceit property to which they have no lawful, ostensible or justifiable claim.

11. In the case of an individual, it must be the manner of execution of his design that may expose him as a property grabber. Additionally, **the Illegal Dispossession Act, 2005 does not apply to run-of-the-mill cases of alleged dispossession from immovable properties by ordinary persons having no credentials or antecedents of being property grabbers/Qabza Group/land mafia, i.e. cases of disputes over possession of immovable properties between coowners or co-sharers, between landlords and tenants, between persons claiming possession based on inheritance, between persons vying for possession based on competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property.** Further a complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the relevant property is being regulated by a civil or revenue Court.

12. There is no cavil to the proposition that if the offense confines to the provisions of the Illegal Dispossession Act, 2005 then the land grabbers/Qabza Group/land mafia cannot escape punishment as no one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property, however, in the present case both the parties are real brothers and are at loggerhead and claim and counterclaims and there appears to be a civil/revenue/inheritance dispute over some of the portion of the subject land, and in such a scenario, the learned trial Court ought to have referred the matter to the civil/ revenue Court firstly to decide the issue of partition/demarcation of the subject land rather than convicting the brothers of the complainant under Illegal Dispossession Act 2005 as there appears no valid ground to claim that the applicants were land grabbers/Qabza Mafia and the civil Court could easily decide the issue of possession of the land. However, in principle, the Court empowered to take cognizance of an offense under the Act, is required to filter out those complaints which do not disclose the requisite criminal intent. Courts that have been authorized to try cases under the Act, 2005 thus have a responsibility to see that the persons named in the complaint have a case to answer before they are summoned to face trial. In the present case, both the parties are one family, however, due to the application of the Illegal Disposition Act 2005, the applicants were tried and convicted.

13. It appears from the record that during the cross-examination respondent/complainant has admitted that he is the elder brother of the accused but denied that after the death of his father, he was dealing with all the affairs of the property and brothery. He also denied that he and applicant Sikandar had obtained the loan from the bank together. He admitted that in S.No. 2/1 his brothers are co-sharers with him. Voluntarily says in S.No.437/1;that his brothers are not co-sharers with him. He has denied that all the brothers had purchased the land collectively from Piyaro. He has also denied that in the private partition S.No. 437 was given to him by the accused persons in exchange for other land. He has admitted that they had purchased the land jointly from their sister Mst. Janul. He has denied that land was purchased by them from Mst. Janul is in his possession. He has also denied that the accused have not illegally dispossessed him. He has also denied that as per the report of Mukhtiarkar accused have not illegally occupied his land.

14. PW ASI Muhammad Haneef in his deposition has deposed that on 21.10.2022 the inquiry in the complainant was entrusted to him. He went to the place of the incident, where he recorded the statement of complainant Liaquat Ali who disclosed that in Deh Jhangal Malik, survey No. 437/1 area 1-28 acres is his property. He had purchased the same on consideration. He has further deposed that the complainant further disclosed before him that from the inheritance he had received the share of 1-02 acres from survey No. 2/1 which is owned by his brothers. He has further deposed that he recorded the statements of accused persons who also disclosed that the disputed land was given to them in the inheritance of their father in private partition. They further disclosed that they have not illegally occupied the land of the complainant.

15. Tapedar Shahmeer in his deposition has deposed that he verified the record and found that vide entry No. 439 of Fouti Khata Badal, the survey Nos. 2/1 and others were entered in the name of Liaquat Ali complainant Barkat Ali, Sikandar Ali, Shoukat Ali the accused persons, and Mai Janul. He has further deposed that in the record another entry was recorded bearing No. 4 dated 06.01.2011 about survey No. 1/1 area 01-10 acres and survey No. 437/1 area 01-28 acres based on registered sale deed bearing No. 1740 dated 25.05.2010 in the name of Liaquat Ali and the area 2-38 acres was the property of complainant Liaquat Ali as per entry. He also admitted that no official partition of the land is made as per the record.

16. in view of the above facts and circumstances of the case, this Criminal Appeal is allowed, the conviction and sentence awarded to the appellants are set aside, they are on bail and their bail bond stands discharged. However, the issue of possession of the subject portion of the property is concerned; the trial court is directed to take into possession and leave the parties to resort to the Court of plenary jurisdiction for possession, which shall regulate the affairs of the subject land till final decision.

JUDGE