

## **IN THE HIGH COURT OF SINDH AT KARACHI**

### **Criminal Revision Application No.276 of 2022**

Applicant : Shahbaz son of Rehmat Masih  
Through Mr. Ikhaq Ahmed Baloch, Advocate

Respondents : 1. Shabana 2) Lubna Khalid & 3) Khalid Masih  
1 to 3 Through Mr. Khalid Mehmood Keyari, advocate

Respondent 4 : The State  
Through Mr. Muhammad Mohsin Mangi, Asstt: P.G  
Sindh

Date of hearing : 15.05.2025

Date of order : 19.05.2025

### **ORDER**

**KHALID HUSSAIN SHAHANI, J.-** The Applicant has invoked the revisional jurisdiction of this Court, challenging the order dated 12.10.2022 passed by the learned IInd Additional District Judge, Karachi East, whereby Criminal Complaint No.112/2022, offence under Section 3(2) of the Illegal Dispossession Act, 2005 was dismissed on the ground that the dispute between the parties is civil in nature and does not fall within the ambit of the said Act.

2. The petitioner claims to have purchased the house bearing No. 165, Street No. 11, Sector 43/A, Sarfaraz Town, Korangi No. 3-1/2, Karachi, from one Adnan Hashmi under an agreement dated 20.01.2022. The said Adnan, in turn, allegedly purchased the same from Elizabeth Margret. The complainant alleges that on 29.05.2022, while the house was temporarily unoccupied by the tenant, respondents Nos.1 to 3 illegally entered the premises, broke the locks, and dispossessed the complainant. It is alleged that the respondents have no legal right over the property and are merely encroachers. The trial court, however, found that both parties have asserted rival claims of ownership based on separate sets of documents and that the matter is already pending adjudication in civil court (Civil Suit No.1403/2022).

3. Learned counsel contended that the applicant was in peaceful possession of the subject property when he was unlawfully dispossessed,

which led him to file an application under the Illegal Dispossession Act, 2005. It was further argued that prior to filing the civil suit, the applicant had instituted proceedings under the Illegal Dispossession Act, showing that he had approached the proper forum at the earliest to seek redress against the highhandedness of the respondents. Learned counsel pointed to the inquiry report available at page No.125 of the case file, which supports the applicant's claim of being illegally dispossessed from the property in question. He submitted that the applicant has also filed a civil suit seeking permanent injunction and declaration, and such recourse to civil remedy does not bar the criminal action under the Illegal Dispossession Act, especially when the illegal dispossession is prima facie established through official record. It was urged that the trial court did not properly consider the effect of the said inquiry report and prematurely dismissed the complaint. Accordingly, the learned counsel prayed for remand of the case for reappraisal of evidence and proper adjudication in accordance with law.

4. Conversely, learned counsel for the respondent submitted that both parties are relying upon sale agreements as the basis of their claim over the property in dispute. However, it was emphasized that no party holds any registered title documents or ownership rights, and thus neither can claim any superior title or enforceable right over the property. He further argued that the sale agreement in favour of the respondent predates the one produced by the applicant, and as such, the respondent's possession is legally protected under the terms of that earlier transaction. The learned counsel stressed that the subject property falls within the ambit of Katchi Abadi, where issues of possession and title are complicated and require adjudication by civil courts rather than by way of criminal complaints. He also contended that in such circumstances, the appropriate remedy lies before the civil court, and the pendency of a civil suit for declaration and injunction by the applicant reflects that the matter is essentially civil in nature, and no case under the Illegal Dispossession Act is made out.

5. Learned APG adopted the arguments of the respondent and submitted that the property in question is located within a Katchi Abadi,

and as such, any claim of lawful ownership or dispossession must be examined with reference to regularization laws applicable to Katchi Abadis. He submitted that no party has produced a registered ownership document or any lease deed, and hence the matter primarily revolves around competing sale agreements, which do not constitute conclusive proof of title. In such circumstances, learned APG contended that criminal proceedings are not an appropriate remedy, and the dispute ought to be resolved through civil litigation. Having considered the impugned order, the case record, and the arguments advanced in the revision application, this Court finds no reason to interfere with the findings of the learned trial court. The following factors are relevant:

6. The Illegal Dispossession Act, 2005 was enacted with the objective of safeguarding lawful owners or occupiers against unlawful evictions at the hands of land grabbers or “Qabza groups.” However, it is a settled proposition of law that the provisions of the said Act are not attracted where the underlying dispute is essentially civil in nature, particularly when both parties assert competing claims of ownership or title over the property. In Civil Suit No.1430/2022, filed by Mst. Shabana Saleem against Shahbaz and others, the learned counsel for the applicant had submitted an undertaking on behalf of the defendants, affirming that no coercive or unlawful action would be taken against the plaintiff. It was, however, clarified therein that the defendants would remain at liberty to initiate legal proceedings in accordance with law. In view of the said undertaking, the suit was disposed of with directions that the defendants (including the present applicant) shall not dispossess the plaintiff or disturb her possession except in accordance with law. The use of the expression "peaceful possession" in the said order negates the assertion of any illegal dispossession by the respondents.

7. In the present proceedings, the applicant claims title through one Adnan Hashmi, whereas the respondents predicate their claim through Mst. Shabana W/o Saleem, allegedly based on a transaction originating from Aneela Rozi through one Harry. The conclusion of civil litigation, coupled with the aforementioned order, clearly indicates that the allegation of “illegal dispossession” is not borne out from the record.

8. The core question before this Court is whether the impugned order passed by the learned trial court warrants interference in revisional jurisdiction. In my considered view, the answer is in the negative. The learned trial court has rightly observed that both sides are asserting rival claims to ownership and possession. The police report relied upon by the applicant, alleging that the respondents entered the premises during his absence, does not conclusively establish "illegal dispossession" within the meaning of Section 3 of the Act. At most, it reflects that possession was assumed in a disputed manner, but the lawfulness of such possession can only be determined upon resolution of the underlying title dispute. The report of the learned Justice of Peace dated 26.04.2021, though relied upon by the applicant, merely records that Aneela Rozi denied having sold the property to Shabana. This denial, standing alone, does not advance the petitioner's case to the extent of demonstrating that the respondents are land grabbers as envisaged under the Act. It is well-settled that the revisional jurisdiction under Section 439 Cr.P.C. is supervisory in nature and is to be exercised sparingly, only in cases involving manifest illegality, jurisdictional defect, or miscarriage of justice. Where the trial court has applied its mind, evaluated the material on record, and rendered a reasoned order, interference is not warranted merely because an alternative view is possible.

9. The order passed by the learned trial court reflects due consideration and proper application of legal principles. The applicant has not been left remediless; rather, the parties have been appropriately directed to agitate their claims before the competent civil forum. This course is consistent with settled judicial precedent, which cautions against invoking criminal jurisdiction in matters that are civil in nature. The use of criminal proceedings, particularly under the Illegal Dispossession Act, to settle property disputes involving competing sale agreements and absence of conclusive title documents, constitutes a misuse of the process of law.

10. In view of the foregoing discussion, it is manifest that the dispute between the parties pertains to title and possession, and does not fall within the mischief of illegal dispossession as contemplated under the Act. There is no clear finding that the respondents are land grabbers or

trespassers acting without color of title. The civil suit was disposed of on the basis of an undertaking, without adjudication on the merits of declaratory relief. The impugned order dated 12.10.2022 passed by the learned trial court does not suffer from jurisdictional error or legal infirmity warranting interference. The petitioner shall, however, remain at liberty to seek appropriate relief before the civil court having jurisdiction. Accordingly, this Criminal Revision Application stands dismissed.

**J U D G E**