

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Revision Application No.36 of 2024

[Mst. Shireen Tariq v Mst. Farhat Tariq & 2 others]

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1. For hearing of MA No.2141/2024
2. For hearing of main case.

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Mr. Rehman Mehsud, Advocate for the Applicant.

Mr. Tahir Hussain, APG.

Mr. Iftikhar Hussain Qureshi, Advocate for the Respondent No.1.

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Date of hearing **16.04.2025**

Date of detailed reasons **22.04.2025**

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ORDER

SHAMSUDDIN ABBASI, J:- The applicant is claiming herself to be the second wife of Tariq Iqbal Yousufi (late), who gifted Flat No.S-1, 2nd floor, Masha 'Allah Arcade, constructed on Plot No.5C-6/16, near Zikria Masjid, Paposh Nagar, Nazimabad, Karachi (hereinafter referred to as the "said flat") in her favour in lieu of dower "Haq Mahar". It is the case of the applicant that after the Nikah, she resides with the deceased in a rented house whereas the said flat was locked but under her care and control, however, after the death of her husband, the respondent No.1, who is first wife of the deceased, took control of the flat in question, illegally and unlawfully, by removing the locks and she (respondent No.1) is not allowing her to reside there, hence the applicant filed a complaint under Section 3, 4 and 8 of the Illegal Dispossession Act, 2005 seeking following relief(s):-

“(a) Direct the area police / Respondent No.2 to conduct the investigation / inquiry in the matter and submit report before this Hon’ble Court within a specific period / time.

(b) Proceed against the Respondent No.1 as per procedure, being laid down in the relevant statute /Illegal Dispossession Act, 2005.

(c) Direct the Respondent No.2 /police to arrest the Respondent No.1 accused and get vacated the subject flat from the illegal control and possession of the Respondent No.1.

(d) That in the meantime the Hon'ble Court may direct the respondent No.2 to put the complainant in possession of the above said bungalow.

(e) Grant compensation as provided under the law.

(f) Any other relief which this Hon'ble Court may deem fit and proper under the circumstances of the case in favour of the complainant".

2. Report was called from the concerned police station and based on such report, and keeping in view the precedents of Hon'ble apex Court, the learned Additional Sessions Judge-VI, Karachi (Central) declined to take cognizance of the offence and dismissed the complaint at initial stage vide its order dated 06.12.2023. Aggrieved of the order of the learned trial Court, the applicant has preferred this criminal revision application and prayed for following relief(s):-

"This Hon'ble Court may graciously be pleased to call for the Recording and proceedings of the Illegal Dispossession Complaint No.91/2023, from the learned VI Additional Sessions Judge, Central, Karachi and after hearing both the parties allow the application, set aside /recall the order dated 06.12.2023 and direct the learned Court to decide the complaint in accordance with law.

Any other better relief which this Hon'ble Court may deem fit and proper under the circumstances of the case".

3. It is, inter-alia contended on behalf of the applicant that the impugned order is bad in law and fact and without application of a conscious judicial mind, hence the same is liable to be set-aside and the matter may be remanded to the learned trial Court to decide the same on merits after providing an opportunity to the parties to adduce their evidence. It is next submitted that the learned trial Court has failed to take into consideration the fact that the flat in question was given to the applicant by her deceased husband as dower "Haq Mahar", which was illegally and unlawfully, occupied by the respondent No.1, hence she is entitled for restoration of possession. It is next submitted that the respondent No.1 has broken the locks and put her own locks on the premises, thus forcibly dispossessed the applicant. It is also submitted

that the learned trial Court has overlooked the applicant's entitlement over the flat in question and dismissed the complaint without recording the evidence. The learned counsel while emphasizing his submissions has submitted that findings recorded by the learned trial Court are against the law and pronouncements of Hon'ble apex Court, and based on misreading and non-reading of record, hence liable to be reversed.

4. The learned counsel appearing for the respondent No.1 as well as learned APG have supported the impugned order and submitted that the complaint does not fall within the scope of the provisions of Illegal Dispossession Act, 2005 since the applicant has not placed any material to substantiate her illegal dispossession from the flat in question. They have further argued that the grievance of the applicant is purely of a civil nature, and therefore, this criminal revision deserves to be dismissed.

5. Illegal Dispossession Act, 2005 [IDA, 2005] is a unique statute to safeguard the legitimate owners and occupants of immovable properties from being unlawfully or forcefully deprived of their possessions by illegal occupants. This Act specifies the category of persons who can approach the Court of competent jurisdiction for seeking relief i.e. the owner or occupier. Definitions of both these expressions namely "occupier" and "owner" have been provided in clauses (c) and (d) respectively of Section 2 of the Illegal Dispossession Act, which are reproduced below:-

"2(c) 'occupier' means the person who is in lawful possession of a property;

"2(d) 'Owner' means the person, actually owns the property at the time of his dispossession, otherwise than through a process of law."

6. Reviewing the above clauses, it is noted that any person who being lawful owner or lawful occupier of the property, if dispossessed illegally or unauthorizedly, can bring a complaint under the provisions of IDA, 2005, whereby the complainant must prove the presence of an unlawful act, accompanied by criminal intent, and if he fails to disclose such essential elements, the Court is not

obligated to mechanically register the complaint and initiate proceedings. The main purpose of IDA, 2005 is to curb the activities of the property grabbers and to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by property grabbers. In like cases, the actions cannot be categorized as constituting an offense under the definition provided in IDA, 2005. This distinction requires the Court to carefully examine the material presented on record at the initial stage and then make an order, based on application of conscious judicial mind, just to curb the practice of registration unnecessarily complaints, which could cause distress and harm to the accused individuals.

7. Admittedly, the applicant and the respondent No.1 are widows of late Tariq Iqbal Yousufi, who is actual owner of the disputed flat. Per claim of the applicant the flat in question was given to her by her late husband at the time of Nikah in lieu of dower "Haq Mahar". Per report of the police, the ownership documents of the flat in question are lying with the respondent No.1, who is first wife of late Tariq Iqbal Yousufi, and she is residing there since last about three or four years. In such a backdrop, the dispute between the parties is purely of a civil nature and utilizing the provisions of IDA, 2005 in like cases would be an abuse of the process of law. Reliance in this behalf may well be made to the case of *Zahoor Ahmed v The State and 03 others* (PLD 2007 Lahore 231), wherein it has been held as under:-

"(i) The Illegal Dispossession Act, 2005 applied to dispossession from immovable property only by property grabbers/Qabza Group / land mafia. 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. In the case of an individual it must be the 4 W.P. No.1384 of 2008 manner of

execution of his design which may expose him as a property grabber.

(ii) The Illegal Dispossession Act, 2005 does not apply to run of the mill cases of alleged dispossession from immoveable 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 co-owners or co-sharers, between landlords and tenants, between persons claiming possession on the basis of inheritance, between persons vying for possession on the basis of competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property.

(iii) 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."

8. After careful examination of the record, this Court has reached to a conclusion that the matter pertains to factual controversy, which could only be resolved after thorough inquiry and recording of evidence by a Civil Court. Reliance in this behalf may well be made to the case of *Secretary to the Government of Punjab v Ghulam Nabi* (PLD 2001 SC 415), wherein it has been held as follows:-

"It hardly needs any elaboration that "the superior Courts should not involve themselves into investigations of disputed question of fact which, necessitate taking of evidence. This can more appropriately be done in the ordinary Civil Procedure for litigation by a suit. This extraordinary jurisdiction is intended primarily, for providing an expeditious remedy in a case where the illegality of the impugned action of an executive or other authority can be established without any elaborate enquiry into complicated or disputed facts".

9. For what has been discussed above, I am of the considered view that no case attracting the provisions of IDA, 2005 has been made out. The learned counsel for the applicant has not raised any question of law that may require consideration by this Court in exercise of its Revisional Jurisdiction, scope of which is limited and

confined to correction of jurisdictional defect, patent illegality or irregularity affecting the merit of the case. I find that the learned trial Court has passed the impugned order after due application of mind and careful appreciation of available material, hence calls for no interference by this Court. In view thereof, the instant Criminal Revision Application is bereft of any merit stands dismissed alongwith all pending applications. The applicant, however, shall be free to agitate her claim in a suit before a Civil Court, having jurisdiction.

10. Foregoing are the reasons for my short order dated 16.04.2025, whereby this Criminal Revision Application No.36 of 2024 was dismissed.

JUDGE

Naeem /PA