

HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD

C.P. No.S-334 of 2025

[Ali Nawaz and another vs. Aijaz and others]

Petitioners:	By Mr. Ayatullah Khuwaja and Raza Ali Halepoto, advocates
Private respondent:	By Mr. Faheem A. Ghaloo, Advocate
Official respondents	By Mr. Allah Bachayo Soomro, Additional A.G S Sindh
Date of hearing	26.10.2026
Date of Decision	26.10.2026

O R D E R

ADNAN-UL-KARIM MEMON J. - The Petitioners pray to set aside the impugned order dated 20.02.2024, judgment dated 31.10.2023, and decree dated 06.11.2023, suspend proceedings in Execution Application No. 09/2023, and grant any other appropriate relief.

2. The case of the Petitioners, in brief, is that they have challenged the order dated 20.02.2024 passed by Additional District Judge-II, Dadu, dismissing Civil Revision Application under Section 115 CPC, as well as the judgment dated 31.10.2023 and decree dated 06.11.2023 passed by Senior Civil Judge-II, Mehar @ Dadu, whereby Suit No.50 of 2022 filed by Respondent No.1 under Section 9 of the Specific Relief Act, 1877, for recovery of possession of a residential house bearing City Survey Nos.948/1-32 and 948/1-32-A, measuring 10,000 square feet, situated at Ward-A, Qalandarabad Mohalla, Dadu, was decreed.

3. Learned counsel for the petitioners contends that Petitioner No.1 is the lawful owner of the suit property by virtue of registered sale deed No.1448 dated 09.10.2012, executed in his favour by Haji Muhammad Ilyas Mallah, against consideration of Rs.400,000/-, with delivery of possession, and that the relevant property register entries also stand in his favour. He asserts that Respondent No.1 based his claim on a forged sale agreement dated 20.12.2016 and had previously instituted F.C. Suit No.33 of 2019 for specific performance of the same agreement, which was dismissed by the trial Court vide judgment and decree dated 27.10.2020. His subsequent appeal was dismissed on 06.12.2022, while Second Appeal No.S-65 of 2020 was also dismissed by this Court on 05.09.2022. According to the Petitioners, the earlier proceedings had established that Respondent No.1 failed to prove his claim and that his subsequent suit was an attempt to reopen the same dispute. He further contend that Petitioner No.1 had initiated rent proceedings against tenants occupying two shops situated in the suit property and,

pursuant to the orders passed by the competent courts, obtained possession through a writ of possession dated 14.01.2021. He denies that Respondent No.1 was in lawful possession of the entire property or was forcibly dispossessed on 02.10.2022, as alleged. He also relies upon the dismissal of complaint filed under the Illegal Dispossession Act, 2005, and maintains that the reports and previous judicial proceedings were not properly appreciated by the trial Court. It is further contended that the trial court misread and misappreciated the evidence, ignored material facts and previous judgments, and failed to properly examine the maintainability of the suit and the question of Respondent No.1's prior possession. He asserts that, notwithstanding the bar against appeal under Section 9 of the Specific Relief Act, 1877, their revision application was dismissed by the revisional court without proper consideration of the applicable law and merits of the controversy. He submits that the impugned judgments and decree are arbitrary, contrary to law, and violative of their constitutional rights, including the right to protection of property and due process. The Petitioners, therefore, seek setting aside of the impugned order dated 20.02.2024, judgment dated 31.10.2023 and decree dated 06.11.2023, along with suspension of proceedings in Execution Application No.09 of 2023 pending before the trial court.

4. On the other hand, counsel for private Respondent strongly opposed the petition and contended that the impugned orders, judgment, and decree passed by the learned forums below are well-reasoned, unassailable, and based on meticulous appreciation of the record; that a suit under Section 9 of the Specific Relief Act, 1877 is strictly confined to the determination of summary possession and dispossession within six months prior to the institution of the suit, irrespective of any title disputes, registered sale deeds, or previous litigation between the parties; that Respondent No.1 successfully established his actual physical possession over the suit property and his subsequent illegal dispossession on 02.10.2022 through cogent oral and documentary evidence; that the earlier suit for specific performance and rent proceedings were distinct in scope and cause of action, having no bearing on the immediate question of dispossession under Section 9. Furthermore, he emphasized that no appeal lies against a decree passed under Section 9 of the Specific Relief Act, and the revisional court rightly dismissed the revision application as no jurisdictional error, illegality, or material irregularity was committed by the trial court, rendering this constitutional petition devoid of merit and liable to be dismissed with costs.

5. I have heard learned counsel for the parties and perused the record with their assistance.

6. The primary controversy before this Court hinges upon whether the trial court and the revisional court acted within the parameters of law while decreeing Suit No. 50 of 2022 under Section 9 of the Specific Relief Act, 1877, and subsequently maintaining the same in revision.

7. It is well-settled principle of law that a suit under Section 9 of the Specific Relief Act, 1877, provides a summary remedy designed exclusively to restore possession to a person who has been dispossessed of immovable property otherwise than in due course of law, provided such suit is instituted within six months from the date of alleged dispossession. The statutory scheme of Section 9 deliberately excludes questions of title; the inquiry is strictly restricted to two factual components: (i) whether the plaintiff was in actual, physical possession of the property before the alleged dispossession, and (ii) whether he was dispossessed therefrom without his consent and otherwise than in due course of law. Title to the property is wholly irrelevant in a proceeding under Section 9, and a person with superior title cannot take the law into his own hands to forcibly dispossess a peaceful possessor.

8. However, a meticulous scrutiny of the record reveals that the courts below failed to properly appreciate the conclusive judicial determinations previously rendered between the same parties regarding the subject property. Petitioner No.1 is the lawful title holder of the suit property by virtue of registered Sale Deed supported by corresponding property register entries. Conversely, Respondent No.1's claim originated from an alleged agreement to sell dated 20.12.2016, for which he instituted F.C. Suit No.33 of 2019 for Specific Performance. That suit was dismissed by the competent trial court on 27.10.2020, and the dismissal was consistently upheld in Appeal on 06.12.2022 and by this Court in Second Appeal No. S-65 of 2020 on 05.09.2022.

9. The findings in the prior rounds of litigation established beyond doubt that Respondent No.1 failed to prove his claim or valid possession over the suit property. Furthermore, Petitioner No.1 had already executed valid legal proceedings against tenants and obtained physical possession through an official writ of possession issued by a competent court on 14.01.2021. The subsequent complaint filed by Respondent No.1 under the Illegal Dispossession Act, 2005, was also dismissed.

10. While Section 9 does not adjudicate title, it fundamentally requires dispossession from actual, settled, and peaceful possession. A mere casual, permissive, or disputed presence does not constitute the requisite settled possession contemplated under Section 9. Where a party's claims to possession and agreement to sell have been repeatedly adjudicated and rejected up to this Court, and where the lawful owner has obtained possession through valid judicial processes, i.e., writ of possession dated 14.01.2021, Respondent No.1 could not establish that he was in independent, lawful, or settled physical possession on the alleged date of dispossession, i.e., 02.10.2022; therefore, the question of dispossession does not arise.

11. The trial court as well as the revisional court committed material irregularity and jurisdictional error by ignoring these binding judicial findings and mis-appreciating the evidence regarding prior actual possession. Although Section 9 bars an appeal, the revisional court under Section 115 CPC was duty-bound to rectify such blatant

misreading of evidence and jurisdictional overreach. Where lower forums decree a suit under Section 9 in utter disregard of facts and judicial record, this Court, in its constitutional jurisdiction, cannot act as a silent spectator to legal illegality.

12. Consequently, while affirming that Petitioner No.1 holds valid title to the suit property in terms of decree/previous orders of the lower courts in favour of the petitioners and that Respondent No.1 failed to establish settled prior possession required under Section 9 of the Specific Relief Act, 1877, this petition is allowed. The impugned order dated 20.02.2024 passed by Respondent No.2, as well as the judgment dated 31.10.2023 and decree dated 06.11.2023 passed by the trial court, are hereby set aside, and Suit No. 50 of 2022 stands dismissed with costs. Proceedings in Execution Application No. 09/2023 are accordingly terminated.

JUDGE

Karar Hussain/PS*