

# IN THE HIGH COURT OF SINDH CIRCUIT COURT, HYDERABAD.

## Criminal Revision Application No.S-109 of 2024

Applicant: Ahmed Ali through Mr. Waheed Qadir Memon, advocate.

Respondent No.1: Rahib Hussain through Mr. Wafa Nawaz Ali Shar, advocate.

The State: Through Ms. Sana Memon, Assistant Prosecutor General, Sindh.

Date of Order: 02.06.2025.

## JUDGMENT

**Muhammad Osman Ali Hadi, J** – Through the instant Criminal Revision Application, the Applicant has challenged the Order dated 05.08.2025 (**the Impugned Order**) passed by the learned Additional Sessions Judge, Hala in I.D. Complaint No.16 of 2024 filed under various Sections of the Illegal Dispossession Act, 2005.

2. Learned Counsel for the Applicant submits that he is the owner of agricultural land bearing Revenue **Survey No.389/1** admeasuring 01-00 acre situated at Deh Bhitshah, Tapo Bhitshah, Taluka Hala, District Matiari (**the Property**). Learned Counsel for the Applicant submits that the Applicant was illegally dispossessed from the said Property land by Respondent No.1, against which he filed a Complaint<sup>1</sup> under Sections 3, 4, 5 & 7 of the Illegal Dispossession Act, 2005 (**“IDA 2005”**). Learned Counsel for the Applicant next contends that he purchased the Property in the year 2012, after which, due to lack of water supply, the said Property remained uncultivated. He stated that the Applicant was residing at the Property until the year 2021, and in the year 2022 Respondent No.1 illegally and forcibly came and occupied the Property and also constructed a house on the Property, in which he (i.e. the Respondent No. 1) started residing. He further submits that when the Applicant came to know about the actions of Respondent No.1, he approached him many times to vacate the Property but to no avail. He

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<sup>1</sup> Available at page No.21 of Court file.

submits that eventually the Applicant filed a Written Complaint dated 05.06.2024. He, referring to the Impugned Order dated 05.08.2024 passed on his Complaint, stated that the said Order was erroneous in law. He referred to the Application<sup>2</sup> dated 23.02.2024 made to the Assistant Commissioner Hala, as well as the Report<sup>3</sup> of Mukhtiarkar (Revenue), Hala. He next referred to paragraph No.6 of Respondent No.1's Written Statement<sup>4</sup> in which he states Respondent No.1 has allegedly admitted the Applicant's ownership of the Property. He referred to another Report submitted by the Mukhtiarkar dated 02.08.2024, which he states supports the case of the Applicant. He lastly contends that the Impugned Order is incorrect and erroneous, and that the description provided therein is also wrong.

3. Learned Counsel for Respondent No.1 argued that the Applicant has not stated any ground regarding illegal dispossession and has not provided any basis to bring the case under the Illegal Dispossession Act, 2005 ("**IDA 2005**"). He further contends that Respondent No.1 has stated that he is the owner of 4 acres of land having **Survey No. 389/2**, which forms part of the same area. He submits Respondent No. 1 has never denied being on the land, but contends that the said Property land belongs to Respondent No. 1, and that the Applicant has adjoining lands (but not the Property). He next submits that at best, the Applicant only has a case to sort out the survey numbers and ensure each party has the area of land under the correct survey number, which he submits is a civil matter and does not fall within the purview of the IDA, 2005.

4. Learned Assistant Prosecutor General also supported the stance of Respondent No.1 and further referred to the Compliance Report filed by the Mukhtiarkar (Revenue), Taluka Hyderabad, as well as paragraph No.3 of the 2nd Report<sup>5</sup> of Mukhtiarkar (Revenue), Taluka Hala, which she says does not mention any action of illegal dispossession. She concluded by stating that the dispute is purely civil in nature as it pertains to demarcation of Survey Numbers and nothing more, and therefore, she also contends that the matter does not fall under IDA 2005.

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<sup>2</sup> Available at page No.49 of Court file.

<sup>3</sup> Available at page No.53 of Court file.

<sup>4</sup> Available at page No.59 of Court file.

<sup>5</sup> Available at page No.69 of Court file.

5. Learned Counsel for the Applicant briefly rebutted the contentions of learned Counsel for Respondent No.1 and states that the statement of Respondent No.1 and the landholding claim of Respondent No.1 is also incorrect.

6. I have heard the learned Counsels for the parties in detail and have perused the entire file. I have found that the Application itself contains various contradictions, such as the Applicant stating that he was residing at the Property and at the same time stating that in the year 2022, Respondent No.1 came and occupied the said Property. The Applicant has failed to provide any specific details regarding how Respondent No. 1 came onto the Property, and whether or not any force was used by him? He has also failed to justify as to why his reaction in approaching any authorities was highly delayed, i.e. two years belated. The Complaint filed by the Applicant was in the year 2024, which was over two years after he claims he was allegedly dispossessed from the said Property, and during which time the Respondent No. 1 had already constructed a residence on the Property.

7. Even looking further at all the documentation provided by the Applicant, including the Mukhtiarkar's Reports as well as the Police Report, there does not seem to be any clear mention of the Applicant being illegally dispossessed of the Property by Respondent No.1. Furthermore, Respondent No.1 has never denied being on the Property, but he simply states the same survey number belongs to him and not the Applicant. The above contentions would not, in my opinion invoke IDA 2005. To invoke IDA 2005, provisions of Sections 3 & 4 would need to be fulfilled. For purposes of convenience, the same are reproduced below:

**“3. Prevention of illegal possession of property, etc.-** (1) *No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property.*

(2) *Whoever contravenes the provisions of the subsection (1) shall, without prejudice to, any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of section 544-A of the Code.*

[(3) *Whoever forcibly and wrongfully dispossesses any owner or occupier of any property and his act does not fall*

*within sub-section (1), shall be punished with imprisonment which may extend to three years or with fine or with both, in addition to any other punishment to which he may be liable under any other law for the time being in force. The person dispossessed shall also be compensated in accordance with provisions of section 544A of the Code.]*

**4. Cognizance of offence.-** (1) *Notwithstanding anything contained in the Code or any law for the time being in force, the contravention of section 3 shall be triable by the Court of Session on a complaint.*

*(2) The offence under this Act shall be non-cognizable.*

*(3) The Court at any stage of the proceedings may direct the police to arrest the accused.”*

8. Since the Applicant has failed to meet the threshold required under the IDA 2005, in particular under Section 3, I do not find any infirmity with Impugned Order. All the current matter would require for proper adjudication would be for the Revenue Authorities to view the Property and surrounding lands, and properly demarcate / identify the geographical location of the land being claimed by the Applicant. The confusion is self-explanatory as the Applicant claims Survey Number 389/1 whereas Respondent No. 1 claims 389/2. *Prima facie*, both the properties would appear to be located in the same (larger) block of land. To decipher this would require civil proceedings, which can be resolved through an application before the relevant Revenue Authorities or through a Declaratory Suit etc., but the same would not fall under the trappings of the IDA 2005. In the case of *Muhammad Asif vs. Muhammad Imran*,<sup>6</sup> the learned Single Judge of this Court held:

*“5. Cases under the Illegal Dispossession Act, 2005 often become very complicated as there is a tendency among people to use its provisions as a substitute for a declaration of ownership and rent eviction. In many cases, properties are purchased by some people, with people living on those properties for ages. Then the new owner claims that as he has an ownership document, he has the right to initiate criminal law and take over possession. Often, civil suits for declaration are pending in the civil courts when complaints under the Act of 2013 are made. The line between dispossession, ownership and eviction is thus blurred. The Act, the original aim of which was to prevent dispossession by the land mafia, ironically after the change in its scope, seems to be more beneficial to the land mafia rather than the persons it originally sought to protect. Learned trial courts seized of criminal complaints under the legislation, often make a slight overreach and also decide issues regarding ownership of the property. This is not the correct approach. Only the civil courts of competent*

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<sup>6</sup> 2024 P Cr. LJ 1295

*jurisdiction can make such findings. Preliminary inquiries made in these cases also inevitably result in the police officer submitting a reply in court that, according to his inquiry, the owner of the property is one or the other of the contesting party. The police rarely comment on who was in "possession" of the property when "dispossession" is alleged. No sworn statements of people residing in the locality are ever collected. No evidence is ever collected to establish possession. As mentioned above, ownership, particularly disputed property ownership, cannot be determined by a simple statement of a police officer declaring who the owner is. This issue requires evidence to be recorded by a civil court before such declarations or pronouncements of a conclusive nature are made. Prima facie ownership of the property may only be one of the factors considered by a criminal court when adjudicating a section 7 application under the Act of 2005. The primary finding has to be who was in possession when dispossession is alleged and on what basis the possessor claims his possession. A person's possession of a property, when not the owner, may not always be illegal.*

9. In my mind it is clear that the contours of illegal dispossession are completely separate from the matter at hand. Illegal dispossession is invoked to defend against forceful land grabbing. Whereas in the instant case, there does not appear any evidence of land grabbing, but rather a dispute relating to location of certain survey numbers.

10. Moreover, when learned Counsel for the Applicant was confronted with the query to highlight any legal error in the Impugned Order, he was unable to provide any cogent argument. The Applicant has neither provided any legal justification or grounds in support of this Application, but has merely asserted unsubstantiated allegations.

11. In view of the foregoing, this Criminal Revision Application was dismissed vide my short order dated 02.06.2025 and these are the reasons for the same.

**J U D G E**

Irfan Ali