

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Crl. Appeal No.351 of 2025
(Sajjan Shoro Vs. Mahboob Ali & others)

Date	Order with Signature of Judge
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For hearing of main case.

Mr. Naveed Musarat, Advocate for the appellant
alongwith Najmul Hassan.
Mr. Abdul Khalil @ A.K. Brohi, Advocate for
respondents No.1 and 2 alongwith respondent No.1.
Mr. Sharafuddin Kanhar, Assistant Prosecutor General, Sindh.
Mr. Muhammad Anwar Kumbhar, Mukhtiarkar (Revenue),
Taluka Ghorabari present.

Date of hearing : 22.12.2025
Date of judgment: 02.01.2026

J U D G M E N T

Dr. Syed Fiaz ul Hassan Shah; J: The appellant has challenged the order dated 07.05.2025 (“**impugned order**”) passed the learned IInd Additional Sessions Judge at Thatta (“**trial Court**”) in Private Complaint No.Nil of 2025. The appellant claims as a lawful owner of agricultural land situated in Survey Nos.228, 229 and 230, measuring 48 acres, Deh Shorki, Tapo Mahar, Taluka Ghorabari, District Thatta (“**disputed land**”), through a registered sale deed executed by the last recorded owners Aijazul Hassan, Najmul

Hassan and Sajid Hussain all sons of Fazal Kareem and the revenue entry No.211 dated 11.12.1994 has confirmed his ownership. The appellant in his complaint alleged that one month back (from the institution of complaint), the respondents / accused have at about 11:00 a.m. dispossessed the appellant. The incident was reported to the Chairman District Council Thatta, SSP Thatta and Deputy Commissioner Thatta. In failing in his efforts, the appellant instituted a complaint under Section 3 of the Illegal Dispossession Act, 2005, for the restoration of his possession. The learned trial Court summarily dismissed the complaint by holding that Najamul Hassan and others filed Civil Suit No.19 of 2025 and the title of the appellant is disputed as the last recorded owner and Najamul Hassan has denied that he has sold the land to the appellant.

2. Heard the counsel for the parties and perused the record.
3. The Appellant claims to be the lawful owner and lawful possession holder of the disputed property on the basis Revenue Entry No.211 dated 11.12.1994. Such Revenue Entry No.211 was entered into the record of rights as Mutation by way of registered Sale Deed for Rs.4,40,000/- vide registration No.106 dated 05.10.1994 with Sub-Registrar, Mirpur Sakro. According to said Revenue Entry No.211, the previous Owners namely Najam ul Hassan and his two brothers namely Sajda Hussain and Aijaz-ul-Hussain who are recorded owners of the disputed property vide Revenue Entry No.180 dated 26.9.1992.
4. Conversely, the Respondent No.1 claims that they have purchase the disputed property from the last recorded owner Najam ul Hasan and his two

brothers vide Sale Agreement dated 06.12.2024 and have paid sale consideration of Rs.87,60,000/- through Pay Orders as enumerated in the said Sale Agreement available on record.

5. The Complainant has also filed civil suits No.119 of 2025 and Najam ul Hassan (last recorded owner) has also filed Civil Suit No.87 of 2025 against the complainant and others. Today he appeared and stated that he and his two brothers have sold the land to the Respondent No.1 and he is in possession of the disputed agriculture land.

6. In view of the complexities of conflicting claims and pendency of civil suit for determination of rights between the parties, this Appeal requires adjudication on the questions of lawful ownership and legal possession.

Accordingly, the following **Points for Determination** arise:

- i. Whether Appellant is lawful owner of the disputed plot through valid Sale deed linked to his lawful possession and his dispossession warrants action punishable under section 3 of the Illegal Dispossession Act, 2005?
- ii. Whether last recorded owner and his successor with original title documents and possession can prosecute under Illegal Dispossession Act, 2005?

7. Oftenly, there is great deal of confusion about how the criminal proceedings work in the presence of civil proceedings and its pendency. The Civil and criminal proceedings are fundamentally distinct in their features, scope, and objectives. The purpose of **criminal proceedings** is to punish an offender for the commission of an offence, whereas the object of **civil proceedings** is to declare or enforce legal rights. Because of these differences, both

proceedings can coexist and run simultaneously without any legal restriction. The Supreme Court of Pakistan has consistently held that the pendency of a civil case does not bar the continuation of criminal proceedings, nor can criminal proceedings be quashed merely on this ground. This principle has been affirmed in a long line of cases, including *Gulam Muhammad v. Muzamal Khan* (PLD 1967 SC 317), *Mohsin Ali v. The State* (1972 SCMR 229), *Abdul Rehman v. Muhammad Hayat Khan* (1980 SCMR 311), *DIG Police v. Anees ur Rehman* (PLD 1985 SC 134), *Marghoob Alam v. Shams-uddin* (1986 SCMR 303), *Talab Hussain v. Anar Gul Khan* (1993 SCMR 2177), *Bashir Ahmed v. Zafar ul Islam* (PLD 2004 SC 298), *Haji Sardar Khalid v. Muhammad Ashraf* (2006 SCMR 1192), and *Rafiq Bibi v. Muhammad Sharif* (2006 SCMR 512). However, criminal proceeding can stay in appropriate cases as held by superior Courts.

8. In *Mst. Gulshan Bibi v. Muhammad Sadiq* (PLD 2016 SC 769) and *Shaikh Muhammad Naseem v. Mst. Farida Gul* (2016 SCMR 1931), the Larger Bench (05 Members) of the Supreme Court of Pakistan clarified the scope and applicability of the **Illegal Dispossession Act, 2005**. The Court held that **Section 3 of the Act applies to any person** who unlawfully dispossesses or occupies, grab, controls property of a lawful owner or lawful occupant, and is not confined to professional land grabbers or organized groups. These judgments further reaffirmed that **civil disputes** over title or settled possession do not bar criminal proceedings under the Act. The principles emerging from these cases establish that only lawful owners or lawful occupants are protected under the Act; and possession against a lawful owner or lawful occupant without authority constitutes an offence

under Section 3 and empowered such criminal Court(s) to return back possession under Section 7.

9. Courts have categorized ownership and possession of land or property according to the settled principle that possession follows title and legislative framework embodied in the *Transfer of Property Act, 1882*, *Colonization Act, 1912*, *the Registration Act, 1908*, *West Pakistan Land Revenue Act, 1967* or such other laws related to lands or immovable property through two distinct modes. The first is **allotment** or subsequent Lease, whether by the Government¹, a public development authority², a cooperative society³, or a private developer or company⁴. The second is **transfer**, which may occur by **inheritance**, **gift**, or **sale** from the last recorded owner. The law thus contemplates both original allotment and derivative transfer as valid sources of ownership and possession.

10. Possession is the factual exercise of control over property, while ownership is its legal recognition. Traditionally, possession without title could mature into ownership through prescription (a civil court decree and following mutation in the record of rights. The moment such exercise is completed, his status crystallizes into that of a lawful occupier or owner). Conversely, with the enactment of the *Illegal Dispossession Act, 2005*, lawful owners and occupants are empowered to reclaim possession through criminal courts against unlawful occupiers. Proviso (c) and (d) of Section 2 of the *Illegal Dispossession Act, 2005* is an exposition of the manner in which possession

¹ For instance, under the Colonization Act, 1912

² For instance, KDA Order, 1957

³ For instance, registered under the Cooperative Societies Act, 1925 or now Act, 2020

⁴ For instance, registered under KBTR Regulation 2002 or SBCA Ord., 1979

is recognized and applied in the actual legal system. It expressly declares “**occupier**” and “**owner**” as categories entitled to seek remedy.

11.Two principles emerge from section 2(c) & (d), **one** there can be no lawful occupier in the absence of lawful owner and his status necessarily derives under a contract be it may under contract for sale against consideration which protects possession under Section 53-A of the *Transfer of Property Act, 1882* or contract of tenancy against rent which is safeguarded under the *Sindh Rented Premises Ordinance, 1979*; and even a licensee enjoys protection once possession is voluntarily conferred by lawful owner or through final Decree of Civil Court and enrolment of name in the record of rights on the basis of such Decree. No illegal or un-authorized person can claim as lawful occupant, **Second** a lawful owner by way of Allotment or subsequent Transfer(s) and in case of he having parted with possession to occupant, he cannot reclaim possession by force or unlawful means except only through due process of law. The legislative intent is manifest: protection is not confined to the **lawful owner** alone but extends to any **lawful occupier**.

12.The Act mainly emphasis on “**possession**” as a legally recognized focus or interest, thereby broadening the remedial scope to cover those who hold property under lawful arrangements. The legislature intended to cast the widest possible net, ensuring that any person who unlawfully interferes with property rights is amenable to prosecution. A careful reading of Section 3 of the *Illegal Dispossession Act, 2005* demonstrates that the legislature has deliberately employed expansive terminology—“dispossess,” “grab,”

“control,” and “occupy”—to criminalize every conceivable form of unlawful interference. The expressions “no one” and “whoever” signify universality of application, leaving no room for distinction or qualification. Therefore, a lawful owner remains entitled to complain against unlawful dispossession or unlawful grab, control, occupy or possession of his property by any person. The interpretative balance struck by the legislature is that both ownership and lawful possession are protected interests, each capable of invoking remedies against unlawful interference.

13.Undoubtedly, the question of title or ownership rights can finally adjudicate by a civil court and such decree is only binding upon parties and it may bar a complaint or may terminate a complaint due to passing of a decree of civil court against the status or legal character of lawful owner or lawful occupant, however, under special sphere of the Act, mere pendency of civil suit is not enough to halt intermittent complaint, therefore, civil disputes over title or settled possession do not bar criminal proceedings under section 3 of the Act.

14.Another way to understand such complexities is legal principle of civil jurisprudence that possession ordinarily follows title. Strictly, the law presumes possession with the lawful owner or title holder where actual possession is vacant, uncertain, or unproved. This principle has been consistently affirmed in *Haji Muhammad Yonus vs Faruukh Sultan* (2022 SCMR 1282). In contrast, such presumption is rebuttable by proof of adverse or settled possession and a person who has in long continuous possession can protect possessory title by seeking an injunction against any

person in the world other than the true owner as held in *Ismail Ariff v. Mahomad Ghous and others* (2007 SCMR 181) or *Prataprai N. Kothari v. John Braganza, Rame Gowda v. M. Varadappa Naidu* (2004), and *Anathula Sudhakar v. P. Buchi Reddy* (2008) by Supreme Court of India.

15. These two principles are consistently followed in civil jurisprudence and continue to follow even in the criminal jurisprudence too. However, under the new paradigm of criminal jurisprudence after the enactment of Illegal Dispossession Act, 2005, the legislative intent is to deter property grabbing and to protect lawful entitlement, the rule that possession follows title is imbibed and assimilated with the proviso of section 2(c) & 2(d) while the second rule of possessory title or longstanding continuous possession and its civil remedies cannot be applied in view of perceptible language of Sections 3 and 7 of the Illegal Dispossession Act, 2005. The statutory scheme of the Act is clear. Section 2(c) defines a “lawful occupier” as a person vested with legal status, while Section 2(d) defines a “lawful owner” as one in lawful possession. Section 3 criminalizes unlawful dispossession or unlawful occupation, grab, control or possesses against such lawful owners or lawful occupants. Consequently, dispossession of such a lawful owner, whether from actual or constructive possession, falls within the mischief of Section 3. Such an interpretation would embolden property grabbers and undermine the legislative purpose of safeguarding ownership rights.

16. It is therefore imperative to harmonize civil and criminal principles. The Act does not exclude civil presumptions; rather, it incorporates them by recognizing lawful owners and lawful occupants. A lawful owner, by virtue

of title, is deemed to have possession sufficient to invoke criminal remedies. Civil remedies remain available for possessors, without title but criminal liability attaches when unlawful occupation or dispossession is directed against a lawful owner or occupant. Accordingly, this Court holds that the doctrine of *possession follows title* operates not only in civil jurisdiction but also supports criminal complaints under the Illegal Dispossession Act, 2005.

17.In the present case, the Appellant produced photocopy of Revenue Entry No.211 based on Sale Deed. Neither the original sale deed or its copy was produced by the Appellant nor available in the official record of Sub-Registrar or Mukhtiarkar concerned. No plausible explanation has given in the complaint nor any valid justification given in the present appeal with regard to misplaced or loss of such sale deed or its specific date. Nor any police report has been presented about the misplaced or loss of such sale deed nor any source or mode of funds or sale consideration has been produced to supplement the existence of sale deed, if any. Even no reference or material point for mis-placed of such sale deed has given in the appeal or before the trial court. Under Article 129(g) of the Qanun-e-Shahadat Order, 1984, the Court may presume that evidence which could be and is not produced would, if produced, be unfavorable to the party withholding it, thereby rendering the applicant / complainant's narrative unreliable.

18.On the contrary, the Learned Counsel for Respondent filed Digital Certified copy of same Revenue Entry No.211 which rebutted the Revenue Entry No.211 stand in the name of Ali Mohammad with regard to some other property. Article 71 and 72 of the Qanun-e-Shahadat mandates that oral and

documentary evidence must be direct and consistent and therefore in the absence of material record to demonstrate valid ownership lacking principle of possession follows title, the eligibility of Appellant as owner within definition of Section 2(d) is missing. His Revenue Entry No.211 is rebutted by Respondents through certified copy of Digital Scan of Board of Revenue which stands in the name of third party (Ali Mohammad) coupled with the fact that the original owner has filed suit for cancellation against Appellant and supported Respondent No.1 before this Court that he has sold the disputed property to the Respondent No.1. Therefore, the Order passed by the learned Trial Court is well-reasoned.

19.Therefore, the Appeal find no merits. Consequently, stand dismissed while maintaining the impugned Order of trial Court.

J U D G E

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