

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**Cr. Acquittal Appeal No.644 of 2021**

<b>Date</b>	<b>Orders with Signatures of Judges</b>
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For hearing of main case

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 Mr. Muhammad Hanif Kashmiri, Advocate for the appellant.  
 Ms. Mehwish Naz, Advocate for the Respondent No.2  
 Ms. Amna Ansari, APG.

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Date of hearing                      13.05.2025

Date of judgment                  **30.05.2025**

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**Shamsuddin Abbasi, J.-**      The appellant has impugned the Judgment dated 12.10.2021 delivered by XI Additional Sessions Judge, Karachi South, in ID Complaint No.636 of 2019 under Section 3/4 of the Illegal Dispossession Act, 2005 (the “**Act of 2005**”) whereby the trial Court acquitted the respondents No.1 and 2 of the charge.

Appellant Shahbaz Ahmed, owner of ground plus three floors constructed on plot No.R-1844-A, Sheet 2, Gali No.28, Azam Basti, Karachi, (the “**Subject Property**”) sold out the ground floor to the Respondent No.1 Taj Bahadur pursuant to sale agreement dated 16.12.2014 while second and third floors rented out to tenants. In February, 2019, when the appellant visited the building to collect rent found accused/Respondents No.1 and 2 raising construction on the roof of third floor. After preferring applications to the concerned SHO, he made subject ID complaint. The trial Court after framing charge, recording evidence and hearing the parties acquitted the Respondents of the charge vide Judgment impugned herein.

The learned counsel for the appellant submitted that the trial Court failed to appreciate the evidence of the complainant and his

witnesses regarding illegal dispossession and construction on the roof of third floor. He further submitted that in December, 2014 the Appellant and Respondent No.1 inked a sale agreement exclusively for the ground floor of the subject property upon payment of sale consideration in installments and some amount still unpaid. He further submitted that alleged sale agreement dated 20.09.2016, exhibit 10-A, produced by the accused/respondent No.1 in his evidence is in direct conflict with the registered title documents while in law on the basis of solitary sale agreement no occupation and construction can be made/raised. According to him the impugned Judgment is based on misreading and wrong appreciation of evidence available on record.

Learned counsel for the respondents/accused and APG supported the impugned Judgment on premise that the appellant and Respondent No.1 entered into a sale agreement dated 16.09.2016 in respect of ground floor plus roof of third floor of the subject property and despite receiving entire consideration the appellant has failed to execute the sublease in his favor.

Heard learned counsel for the appellant, Respondents No.1 and 2, APG and perused the material available on record. The appellant denied the execution of sale agreement dated 16.09.2016 regarding sale and purchase of ground floor and roof of third floor and whole controversy revolves upon authenticity or otherwise of the said agreement. Appellant produced and build up his case on execution of sale agreement entered in December, 2014 between the parties regarding sale and purchase of ground floor of the subject property only. However, during trial none of the parties moved application before the trial Court in terms of Article 84 of the Qanun-e-Shahadat Order, 1984, for referring the admitted and disputed

signatures of the appellant on the subsequent sale agreement to the handwriting expert. In law, the trial Court is itself competent to undertake such exercise. Instead the trial Court in the impugned order observed that:-

“It further appears that the arguments of learned counsel for both parties have also entered on the question of genuineness of the subsequent sale agreement dated 16.09.2016 or otherwise rather than on the question of dispossession, as is envisaged by the Illegal Dispossession Act, 2005. But it is not the jurisdiction of this Court to determine the genuineness of the subsequent sale agreement dated 19.06.2016 or otherwise, in this proceeding under the Illegal Dispossession Act, 2005. In other words, the question of genuineness of the subsequent sale agreement dated 16.09.2016 or otherwise; can not be decided in the proceedings before this Court.”

It is settled proposition of law that in the proceedings initiated under the Act of 2005 the trial Court cannot determine title or ownership and its powers are confined to the determination of illegal dispossession against a lawful owner or occupier of the premises, however, as sale agreement of immovable itself does not create any title on the subject property, the controversy raised herein cannot be decided without referral of the admitted signature of the appellant against his disputed signature available on the subsequent sale agreement of 2016 to the expert. From evidence it appears that appellant was in constructive possession of the roof of third floor at the time of execution of agreement dated 26.12.2014 but, as per the Respondents the Appellant through agreement to sell dated 16.09.2016 sold flat No.01, ground floor alongwith rooftop of third floor total measuring 990 square feet. The Respondents alongwith their objection to the complaint annexed photocopies of sale agreement dated 16.09.2016 and all the receipts issued by the appellant to the Respondent No.1, starting from acceptance of first installment dated 26.12.2014. However, the receipts issued by the Appellant were in regard to flat No.1 ground floor of the subject

property only. Moreover, DW-03 Abdul Qayyum in his cross-examination admitted that:-

“It is correct that I had disclosed to police that contract was executed in 2014. It is correct that I am not witness to the agreement of 2014. In my presence no any receipt was signed in the year 2016.”

Hence, in light of the foregoing and for aforesaid limited purpose the matter is remanded to the learned trial Court and rendering judgment afresh after completing the said exercise and hearing the parties. The impugned Judgment is accordingly set-aside and this Cr. Acquittal Appeal stands disposed of in above terms. The Respondents No.1 and 2, who were on bail before the trial Court shall remain on bail in the meanwhile. The learned trial Court is directed to conclude the trial as quickly as possible preferably within a period of six months from the date of receipt of this order and furnish compliance report through MIT-II.

Judge