

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

**Criminal Misc. Application No.259 of 2025**

Applicants : Mazhar Ali and 3 others  
through Mr. Habibullah G.  
Ghouri, Advocate.

Respondent No.1 Misri Khan son of Ali Murad

Respondent 2 to 4 : Station House Officer, P.S.  
Madeji, District Shikarpur and 2  
others through Mr. Sardar Ali  
Solangi, Deputy Prosecutor  
General {Sindh}.

Date of hearing **18-09-2025**

Date of order **29-09-2025**

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**ORDER**

**Shamsuddin Abbasi, J:-** Through this Criminal Misc. Application filed under Section 561-A, Cr.P.C., Mazhar Ali, Liaquat Ali, Ali Raza @ Ghulam Raza and Anwar Ali, applicants, have assailed an order dated 14.06.2025, penned down by the learned Additional Sessions Judge-V, Shikarpur, in Criminal Complaint No.23 of 2025 {Re: Misri Khan v Mazhar Ali and 4 others}, through which the cognizance was taken andailable warrants in the sum of Rs.50,000/- each and P.R. Bonds in the like amount were issued against applicants/ proposed accused for their appearance and face a regular trial under Illegal Dispossession Act, 2005.

2. Succinctly, the facts as narrated in the complaint are that the respondent No.1 /complainant Misri Khan is lawful owner of agricultural land, measuring area 01-36 acres, out of survey No.85, situated at Deh and Tapo Tarai, Taluka Garhi Yasin, District Shikarpur, which was being cultivated by him. It is alleged that on 09.12.2023 he alongwith Deedar son of Ali Murad and Imad Ali son of Mehar Ali was present at his land. It was about 11:00 am when applicants/ proposed accused came there, duly armed with weapons, forcibly dispossessed him and occupied the land, illegally and unlawfully. He approached the SSP Shikarpur and since no action was taken, the respondent No.1 /complainant filed the

instant complaint under Sections 3, 4, 5, 6 and 7 of Illegal Dispossession Act, 2005.

3. Before taking cognizance, the learned trial Court called reports from Mukhtiarkar (Revenue), Taluka Garhi Yasin and S.H.O P.S. Madeji and based on such reports registered the complaint for regular trial and also issuedailable warrants against applicants /proposed accused as detailed in para-1 {supra}.

4. Aggrieved of the order of taking cognizance, the applicants/proposed accused have preferred this Criminal Misc. Application.

5. It is contended on behalf of the applicants that the land in question belongs to applicants and no such incident of forcible dispossession as disclosed in the complaint ever occurred. Next contends that the applicant No.1 has purchased the said land from Muhammad Ali Ujjan, who purchased the same from respondent No.1/ complainant. Also contends that he has paid handsome amount towards sale consideration and also incurred huge expenses for bringing the land in cultivation position and also paid revenue tax for the year 2024-2025. The applicant ever ready to perform his part of contract and made repeated requests for payment of balance sale consideration and transfer of land in his name, but to no avail, hence the applicant filed Suit No.19 of 2025 seeking declaration, specific performance of contract and permanent injunction, which is pending adjudication before Senior Civil Judge-II, Shikarpur. Per learned counsel, the applicant is in possession of the land in question since 2023 and this fact has also been affirmed by the SHO concerned and Mukhtiarkar as well. The learned trial Court failed to appreciate this aspect of the matter and passed the impugned order without application of conscious judicial mind and extended undue favour to the respondent No.1 /complainant, hence the same is liable to be set-aside and prayed for dismissal of complaint.

6. The D.P.G. for the State submits that controversy between the parties appears to be of civil nature and such type of controversy cannot be resolved by way of criminal litigation.

7. I have given my anxious consideration to the submissions of both the sides and perused the entire material available before me with their able assistance.

8. The applicants claim to have purchased the land from one Muhammad Ali Ujjan, who purchased the same from respondent No.1/ complainant Misri Khan. They are in possession of the land since 2023 and cultivating the same since then and this fact has also been supported by SHO P.S. Madeji, District Shikarpur. On the other hand, the respondent No.1 /complainant claims to be the owner of the land and his forcibly dispossession at the hands of applicants/proposed accused. The matter was also inquired from Mukhtiar (Revenue) Taluka Garhy Yasin, who through his report dated 10.05.2025 has confirmed that the land in question is in possession of the applicants/proposed. Relevant extract of the said report is reproduced below:-

*Ownership Status: That the suit land (01-36) acres of Survey No.85 only entered the revenue record in favour of Misri Khan s/o Ali Murad, Jatoi (Applicant/Complainant) vide entry No.204 dated 10.03.2023 of VF-VIIB situated in deh Tapo Tarat Taluka Ghari Yasin.*

*Possession Status: The possession status of suit land has been got verified through Tapedar of the beat who after visited the site, has reported on the basis of statements of two notable persons of the locality, which reveals that the entire sit land is under the cultivating possession of Mazhar Ali s/o Karim Bux, Ujjan (Respondent No.1) since about 02 years, who also paying its land revenue etc.*

*It is further submitted that prior to this complaint Mazhar Ali V/s Misri Khan Jatoi (Respondent No.01) has filed F.C. Suit No.19/2025 before the Honourable 2<sup>nd</sup> Senior Civil Judge, Shikarpur, which is still pending before the Honourable court".*

9. Reviewing the report of SHO and Mukhtiar concerned, it is noted that the land in question is entered in the name of respondent No.1 /complainant in revenue record whereas the possession is lying with the applicants, who are cultivating the land and also paying land revenue etc to the Government and civil litigation is pending between the parties. This position finds support the case of the applicants that they have purchased the said land from Muhammad Ali Ujjan, who purchased the same from respondent /complainant. Filing of suit by

Mazhar Ali, applicant No.1, give rise to a presumption that he is taking efforts in getting the land transferred in his name and ready to pay the balance sale consideration whereas Muhammad Ali Ujjan and respondent No.1 /complainant are avoiding to perform their part of contract.

10. It is noteworthy that the incident of alleged dispossession is shown to have taken place on 09.12.2023 whereas the complaint has been filed on 18.07.2025 after more than 19 months and that too without furnishing any plausible explanation. In like cases, the Courts have observed that an unexplained delay casts serious doubt on the veracity of the allegations. It creates a possibility that the complaint is an afterthought, made out of imagination, thereby dragging the innocent persons into criminal litigation and subjecting them to unwarranted harassment. The land in question is in possession of the applicants since 2023 and they are paying agricultural {dhal} tax etc to the Government. I am also cognizant of the fact that applicant Mazhar Hussain has filed suit for declaration, specific performance of contract and permanent injunction against six defendants including respondent No.1/ complainant Misri Khan as defendant No.5 and Muhammad Ali Ujjan as defendant No.6 on 30.01.2025 whereas the complaint was filed on 06.05.2025, but the respondent No.1/ complainant did not disclose about pendency of suit in his complaint, which give rise to a presumption that the respondent No.1/ complainant has approached the Court with unclean hands and suppressed the true facts.

11. Undisputedly, the possession of the suit land is lying with the applicants since 2023, they are paying the relevant charges and taxes etc to the Government, and a suit for specific performance of contract, filed by applicant Mazhar Ali, is pending adjudication before the Court of competent jurisdiction well before filing of the complaint. In view of this backdrop., I am of the view that the matter pertains to civil jurisdiction and the respondent No.1/ complainant has attempted to prosecute the applicants party through criminal litigation, which is not permissible as held by Hon'ble apex Court in various pronouncements. No case attracting the provisions of Illegal Dispossession Act, 2005 has been made

out. The claim regarding ownership and possession etc can only be sifted by a Civil Court. I find that the learned trial Court has passed the impugned order without appreciating the available material and application of conscious judicial mind. Accordingly, while allowing the instant Criminal Misc. Application, the impugned order dated 14.06.2025 is set-aside and the complaint, filed by the respondent No.1/ complainant is dismissed. However, the respondent No.1/ complainant may approach Civil Court for appropriate relief, if he is so desired, or defend himself in the pending suit. Needless to state that the Civil Court(s) shall not be influenced by this order in any manner and shall decide the case, involving the land in question, purely on merits and material made available before it without causing prejudice to either side.

JUDGE

NAK/PA