

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Appeal No.408 of 2024
(Muhammad Kashif Vs. Ammar Fazal & others)

Date	Order with Signature of Judge
------	-------------------------------

1. For orders on office objection.
2. For hearing of main case.

Ms. Hina Jawaid, Advocate for the appellant
a/w Ch. Muhammad Khalid Advocate.
Ms. Nusrat Qamar, Advocate for respondents No.1 and 2.
Mr. Sharafuddin Kanwar, A.P.G. Sindh.

Date of hearing: 24.12.2025

JUDGMENT

Syed Fiaz Ul Hassan Shah; J: The appellant has challenged the judgment dated 22.04.2024 (“**impugned judgment**”) passed in I.D. Complaint No.77 of 2022 by the learned IIIrd Additional Sessions Judge, Karachi East (“**trial Court**”), whereby his complaint was dismissed and the respondents were acquitted from the charge.

2. The facts of the case are that one Abdul Waheed Khan son of Abdul Hameed Khan passed away on 26.11.2012 issueless. The appellant claims to purchase the disputed property bearing Plot No.4/240, Block-4, Drig Colony Township, measuring 83 sq. yds., Karachi (disputed property), from the legitimate legal heirs that is deceased’s sister’s sons and daughters namely Habibur Rehman son of Abdul Waheed Khan and Mst. Zahida Sultana (other than the deceased), Ammar Fazal Khan son of Fazalur Rehman Khan, Nusrat Sultana, Ishrat Azhar and Mujibur Rehman. One of the legal heirs namely Mst. Zahida Sultana has delivered / handed over the possession of the disputed property to the appellant.

3. On the other hand, the learned counsel for respondent No.1 states that the respondents are also the sons and daughters of the deceased and the signatures of

respondent No.1 on the sale agreement are forged while Babarul Islam son of Qamarul Islam is a tenant / having the sale agreement with the deceased and a suit for specific performance bearing Suit No.2489 of 2019 is filed to the extent of two shops bearing Shops No.01 and 02.

4. Heard the counsel for the parties and perused the record.

5. The learned Assistant Prosecutor General Sindh states that the title of the disputed property is a core issue for which SMA No.1018 of 2019 has already been recalled at the representation of the respondent No.1 as well as Civil Miscellaneous No.9 of 2022 is pending adjudication before this Court, therefore, in view of the civil pendency between the parties with regard to the determination of the rights over the disputed property the criminal prosecution is not sustainable.

6. I have noted that Abdul Waheed Khan died issueless and the sons and daughters of his deceased sister are claiming rights of ownership. Initially, SMA No.1018 of 2019 filed before the District Judge Karachi, East, was granted in favour of Habibur Rehman, the predecessor-in-interest of the present appellant, vide order dated 16.11.2019. However, the widow of Habibur Rehman's brother namely Mst. Rukhsana widow of Fazalur Rehman Khan filed application as an objector. After hearing the parties vide Order dated 06.11.2021 the same was recalled and the letter of administration was ordered to be annulled by initiating prosecution under Section 193 PPC against Habibur Rehman, the predecessor-in-interest of the appellant, which has been impugned in Civil Miscellaneous No.9 of 2022. Besides, a suit bearing Suit No.1251 of 2022 for cancellation of agreement is also filed by respondent No.1 which is pending adjudication before the IIInd Senior Civil Judge, Karachi, East.

7. The learned trial Court has mainly placed reliance on the civil litigation for the determination of rights between the parties with regard to the ownership. The principles laid down by the larger of hon'ble Supreme Court of Pakistan in case of

Mst. Gulshan Bibi and others vs. Muhammad Sadiq and others (PLD 2016 S.C. 769) and Shaikh Muhammad Naseem Vs. Mst. Farida Gul (2016 SCMR 1931), enunciated a rule that the criminal Court while exercising the jurisdiction under the Illegal Dispossession Act, 2005 should not be inspired by the pendency of a civil litigation and has formed an independent opinion with regard to the commission of an offence of illegal dispossess or unlawful possession against lawful owner or lawful occupant.

8. In the present case the words “lawful possession” and “lawful owner” as used in Section 2(c) and (d) of the Illegal Dispossession Act as to interpret and construe within the definition of Section 3 of the ibid Act. Presently, the question of lawful owners is pending adjudication before the Civil Court with regard to the entitlement of as to who are the legal heirs of deceased Abdul Waheed Khan, the last recorded owner. In case earlier letter of administration was granted in favor of predecessor-in-interest of the Applicant while same was recalled on the representation of the Respondent No.1 though the Respondent No.1 is also close relative yet status of both predecessor-in-interest of the Applicant and Respondent No.1 have not been determined and is pending before this Court in Civil Misc. Application No.09 of 2022.

9. Both the parties contend that they are in possession of the disputed property. The appellant claims to be in possession of the disputed property through his predecessor-in-interest while respondent No.1 claims the possession of the suit property since the lifetime of deceased. In the present situation, the Court would have to form opinion with regard to status of Applicant (being successor-in-interest of one set of legal heirs) and Respondent No.1 (being second set of legal heirs of deceased owner) within definition clause 2(d) as who the owner of disputed property.

10. I have perused the judgment. The material point is as to who was in possession of the property between the appellant and respondents No.1 and 2 or that were they

enjoying joint possession, has not been determined in the impugned judgment though the police report categorically states that the appellant is in possession of the disputed property coupled with the fact that the possession has been delivered by the predecessor-in-interest being legal heirs of deceased owner after receiving the handsome consideration by way of negotiable instrument (pay order / cheque) while rebutted by Respondent No.1 and also claims one of the legal heirs of deceased owner and produced before me the birth certificate of respondent No.1 mentioning the same address that he was born in the disputed property.

11. No finding has been given with regard to the material point as to the appellant through his predecessor-in-interest was in possession of the disputed property which has now been occupied by respondent No.1 or respondent No.2 or that the possession of the disputed property was continuously lying with the respondents No.1 and 2 since the lifetime of deceased Abdul Waheed Khan or that applicant (through predecessor-in-interest) and Respondent No.1 are co-shares or not? as no complaint under section 3 of *ibid* Act can maintain against co-sharer. Rather, the learned trial Court given findings by pointing out at the contradictory points which is irrelevant and immaterial for the purpose of adjudication and trial under the *Illegal Dispossession Act, 2005* being special law. Therefore, while allowing this appeal, I set aside the impugned judgment and remand back the matter to the learned trial Court with direction to rehear the parties and decide the matter in the light of above legal observations in accordance with law.

JUDGE

Asif