

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal Nos.153 & 141 of 2025

Appellant in : Ms. Almas D/o Akber Ali  
Cr. Appeal No.153/25 (In Person)

Appellant in : Muhammad Arshad  
Cr. Appeal No.141/25 through Mr. Muhammad Riaz, Advocate.

Respondent : The State  
through Ms. Rubina Qadir, Addl. P.G.

Date of hearing : 28.03.2025.

Date of order : 14.04.2025.

## **J U D G M E N T**

**KHALID HUSSAIN SHAHANI, J.** – By way of this single judgment, instant two appeals would be adjudicated whereby the appellant (Muhammad Arshad) of Cr. Appeal No.141/2025 was convicted by the learned Additional Sessions Judge-X South Karachi and he was convicted for offence under Section 3(2) of Illegal Dispossession Act, 2005 to suffer R.I for three years with fine of Rs.50,000/- (Rupees Fifty Thousands only), in default of payment of fine, he will undergone simple imprisonment for three months.

2. It would be convenient to outline a summary of Cr. Appeal No.153/2025 filed by Mst.Almas, the complainant of Illegal Dispossession Application stated that she being the lawful owner of immovable property situated at Plot No. LY12/25, Pritchard Road, Lea Market, Karachi, acquired through a Gift Deed from her late father, claimed that the respondents unlawfully dispossessed her by forcibly entering the premises, breaking the locks, and demolishing parts of the structure. This was not the first instance of such encroachment; a similar act had occurred in 2004, which led to a successful civil suit (Suit No. 238/2004), followed by execution proceedings in 2012, through which the applicant regained possession. Despite this, the respondents once again took over the property in March 2022, prompting the applicant to file complaints with the police and relevant authorities, all of which yielded no effective

response. Consequently, a private criminal complaint was filed under the Illegal Dispossession Act, 2005. During the proceedings, the applicant submitted extensive title documents and judicial records confirming her lawful ownership and possession, including civil judgments, execution reports, and municipal correspondence. The respondents failed to produce credible ownership record, and the plot number, he relied on was found to be inconsistent and fabricated. Official verification from the Karachi Metropolitan Corporation confirmed that the respondents' claimed plot had no registered record, and the respondents' shifting claims further exposed his fraudulent intent. The High Court, upon finding merit in the applicant's evidence, ordered restoration of possession, which was duly complied with. Additional inquiries and documentary evidence revealed that the respondents had not only fabricated documents and affidavits but also obtained a CNIC using the applicant's property address and was involved in other land-grabbing activities. The applicant, aggrieved by the trial court's leniency in sentencing, seeks enhancement of punishment, asserting that the offence was committed with clear mens rea, involving deception, force, and repeated illegal dispossession in defiance of civil decrees and law and she also claims for compensation as provided under the Illegal Dispossession Act, 2005.

3. In the connected appeal No.141/2025, the appellant Muhammad Arshad challenged his conviction and sentenced referred hereinabove. The appellant contends in appeal that the trial court erred in law by convicting him solely on the complainant's testimony without examining any independent witnesses, and that the evidence was not properly appreciated. He claims that his shop is adjacent to the complainant's property, both having distinct numbers and measurements, and that the complainant falsely implicated him to usurp his property. He further argued that the property was allegedly vacant at the time of dispossession, which contradicts the essential elements of the offence, and that material contradictions in the prosecution's case were overlooked by the trial court.

4. The appellant Mst. Almas, appearing in person, reiterated that multiple contradictions existed in the claims and evidence presented by the accused, particularly respondent No.1, Muhammad Arshad. She emphasized that respondent No.1's statement was not recorded under the law by the concerned Investigating Officer and that he initially claimed ownership of Plot No. AK 515-4/A, which the Director and Deputy Director

Land, KMC, confirmed to be untraceable in official records. This assertion was corroborated by the police inquiry report and respondent No.1's own statement who falsely identified Plot AK 515-4/A as belonging to the respondent. The appellant pointed out that, despite this initial claim, respondent No.1 later introduced an irrelevant claim over Plot No. 575-B situated on Miran Pir Road, whereas the possession of her property (Plot No. LY-12/25, Pritchard Road, Lea Market) was handed over to her in execution of a decree in presence of KMC officials. She further contended that the documents regarding Plot No. 317, submitted by respondent No.1, bore a date of 31<sup>st</sup> August 2023, significantly after the filing of the criminal complaint on 15<sup>th</sup> February 2023, indicating post hoc fabrication to justify the illegal occupation. The appellant alleged that the respondent's counsel acted with mala fide intent by suppressing material facts and misleading the court through submission of irrelevant and forged documents. She also contradicted the counsel's statement about the location of her plot, asserting that LY-12/25 lies on Pritchard Road, as per the layout plan, and not on Hussain G. Ismail Road. The appellant asserted that despite overwhelming oral and documentary evidence establishing her rightful possession and the respondents' unlawful dispossession, the punishment awarded was disproportionately lenient and not reflective of the gravity of the offence. She also referred to a prior decree in Civil Suit No. 238/2004 against the same accused as corroborative evidence of their role in organized land grabbing. Accordingly, she prayed for enhancement of the sentence to the maximum prescribed under the Illegal Dispossession Act, 2005, imprisonment up to 10 years along with fine, while also seeking compensation for demolition, loss of property, and unlawful use of the premises.

5. Learned counsel for the appellant/convicted accused submitted that the impugned judgment dated 17.02.2025, passed by the learned trial court is/was not sustainable in law, as it is based on conjectures and surmises without appreciation of material contradictions in the prosecution's case. He contended that no independent or private witness from the locality was examined by the Investigating Officer to substantiate the alleged illegal dispossession, nor was any corroborative evidence produced to establish forcible occupation. The learned counsel pointed out that the complainant herself was not present at the time of the alleged dispossession and relied solely on information provided by her brother, thereby rendering the complaint speculative and unsubstantiated. He

further argued that the complainant failed to produce any documentary proof of actual possession or title over the property in question, and that the shop of the appellant is situated adjacent to the complainant's plot, with both plots bearing distinct numbers and measurements. It was contended that the trial court overlooked the fact that the appellant had submitted documents asserting his claim over the property, which, though disputed by the complainant, were not conclusively discredited during trial. Moreover, the learned counsel emphasized that the trial court convicted the appellant solely on the basis of the complainant's uncorroborated testimony without examining any other witness, which is a serious violation of procedural fairness. He maintained that the essential ingredients of the offence under Section 3(2) of the Illegal Dispossession Act, 2005 were not satisfied, as no evidence established that the complainant was in settled possession or that the appellant had forcibly dispossessed her. He concluded by praying for setting aside the impugned judgment and for acquittal of the appellant, submitting that the conviction is not supported by the legal requirements of proof and lacks independent corroboration.

6. I have heard the learned counsel for the respective parties at length. The learned Assistant Prosecutor General appearing for the State has supported the impugned judgment passed by the learned trial Court, asserting that it is well-reasoned, based on sound appreciation of evidence, and does not warrant interference by this Court.

7. It becomes imperative for this Court to adjudicate whether the learned trial court fell into error while convicting the appellant Muhammad Arshad under Section 3(2) of the Illegal Dispossession Act, 2005, and whether any grounds exist for interference in the impugned judgment dated 17.02.2025.

8. Upon holistic scrutiny of the evidence brought on record and in the wake of the comprehensive reasoning rendered by the learned trial court, I find that the conclusions drawn below are rooted in sound legal and factual foundation. The complainant, Mst. Almas, in her deposition, unequivocally stated her ownership over Plot No. LY-12/25, situated at Pritchard Road, Lea Market, Karachi, measuring 43 square yards, based on a valid gift deed. She produced a plethora of documents in support thereof including civil court decrees, mutation entries, official correspondence from KMC, and compliance reports which conclusively established her possession prior to the incident of illegal dispossession.

Importantly, this possession was not only acknowledged in civil litigation but was subsequently restored through execution proceedings and orders passed by this Court.

9. The complainant's cross-examination, instead of weakening her stance, reinforced the consistency and credibility of her testimony. She was confronted with questions regarding the area of the plot, the documents, and her father's title, and yet her answers remained measured and consistent with the documents available on record. The relevant cross-examination is reproduced as under:-

*"It is incorrect that I have produced documents and claiming the plot is area of 43 Square Yards. It is correct that the documents viz. Lease deed does not show the name of my father Akber Ali. I have mutation certificate in the name of my father. It is correct that today I have not produced. It is incorrect that the respondent has also lease of plot No. 575. It is incorrect that the respondent had been living in plot No.LY-12/25 as a tenant. It is correct that I have not produced any document of plot No.B-575/B as I have not claim the said property. It is correct that the plot No.LY-12/25 is in my possession. It is correct that I have no concern with B-575/B. It is incorrect that I am deposing falsely."*

10. These statements are highly relevant for adjudication as they reaffirm the complainant's case that the subject plot was in her lawful possession and that the appellant had no legal right, title, or relationship to justify his occupation. In the entire cross-examination, learned defence counsel could not elicit any material contradiction or inconsistency to discredit her version. Rather, her candid responses exhibited veracity and withstood the rigor of adversarial testing.

11. Additionally, the appellant Muhammad Arshad, in his statement under Section 342 Cr.P.C., disowned any link or connection with Plot No. LY-12/25 and instead laid vague claims to another property described as Plot No. 575-B. No supporting documents were produced in respect of that property. Significantly, the appellant failed to offer any cogent explanation as to how and under what legal entitlement he came into occupation of the complainant's property, especially in the face of compelling photographic and documentary evidence showing his physical possession and subsequent dispossession under orders of competent forums.

12. In such circumstances, the denial of ownership or concern with the subject property, made voluntarily by the appellant himself, must be

viewed through the lens of **Article 113 of the Qanun-e-Shahadat Order, 1984**, which provides:

***"113. Facts admitted need not be proved.—No fact need be proved in any proceeding which the parties thereto or their agents agree to admit at the hearing, or which before the hearing, they agree to admit by any writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings."***

13. The admitted position taken by the appellant, denying any claim or link with Plot No. LY-12/25, squarely attracts the applicability of the above provision. It absolved the prosecution/complainant from the burden of proving the same as per normal rules of evidence, and further strengthens the inference that the occupation of the subject plot by the appellant was not only unauthorized but also without color of right or lawful justification.

14. The learned trial court, after evaluating the oral and documentary evidence, rightly convicted the appellant under Section 3(2) of the Illegal Dispossession Act, 2005. The sentence imposed is not excessive, rather lenient in view of the fact that the offence entails imprisonment extending up to ten years. The sentence of three years R.I. with fine, in light of the first-offender status of the accused, strikes a balance between deterrence and proportionality.

15. It is also worth noting that the complainant's possession has already been restored under the orders of this Court and execution Court, and the accused has been specifically restrained by the learned trial court from interfering with such possession in future. Therefore, no further direction is called for in this regard.

16. Consequently, this Court finds that the impugned judgment does not suffer from any material illegality, misappreciation of evidence, or procedural irregularity warranting interference. Both appeals are found to be devoid of merit and are accordingly dismissed. The conviction and sentence recorded by the learned trial court vide judgment dated 17.02.2025 are hereby upheld. Let these findings be communicated to the learned trial court for information.

**J U D G E**