

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.259 of 2024

Applicants : 1. Feroze Ali son of Nouroz Ali
2. Rehman Feroze Ali son of Feroze Ali Gaba
3. Farid Feroze Ali son of Feroze Ali Gaba,
4. Amir Feroze Ali son of Feroze Ali Gaba
Through Mr. Ammar Yasser, advocate.

Respondents : 1. Abdul Aziz, 2. Mst. Tasleem &
3. Ghulam Hussain Korai
Through Mr. Raj Ali Wahid, advocate.

Date of hearing : 07.05.2025

Date of judgment : 19.05.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. The appellants via this appeal challenge the judgment dated 05.03.2024, passed by the learned Additional Sessions Judge-XII, Karachi West, whereby the complaint filed under Sections 3(2) of the Illegal Dispossession Act, 2005 was dismissed.

2. Briefly stated that the Appellants No. 2 to 4 are/were registered owners of land bearing Plot Nos. 124, 127, and 128, situated in Gothabad Scheme, Manjhar Goth, Gabo Pat, District West Karachi. These plots were developed and occupied by their father, Appellant No.1, who invested significant personal capital and resources in establishing and operating a fishery business for the benefit of the area and its residents. Appellant No.1, in his individual capacity and on behalf of his sons, filed a complaint under the Illegal Dispossession Act, alleging that Respondents No.1 and 2 had unlawfully and forcibly entered into the subject properties, dispossessing the appellants and their authorized guard/chowkidar Abdul Hamid without lawful authority. During the trial, the appellants relied upon registered Sanads, the Mukhtiarkar's verification, police report dated 09.02.2023, CDR and a video admission of Respondent No.1, all indicating that the respondents had no lawful possession or ownership and had never resided at the disputed property. The learned trial court, however, dismissed the complaint primarily on technical and civil grounds, including issues

relating to title, authorization, and characterization of possession, while disregarding the specific criminal elements prescribed under the Act.

3. It was contended that the learned trial court grossly misdirected itself by engaging in civil title issues rather than focusing on the elements under Section 3 of the Illegal Dispossession Act, which relate solely to the unlawful entry and dispossession of a lawful owner or occupier, regardless of ultimate title. Learned advocate argued that the respondents admitted that they have nothing to do with the Plot Nos.124 & 127. He argued that the Civil Suit No.2081/2021 was filed by the respondents No.1 & 2 and claimed certificate No. 022447 of Book No. 00449, dated: 16.02.2021, while the Sanad (available in the plaint at Page No.89) shows the Certificate No.015695 of Book No.00314 in the name of appellant No.2 and the appellant filed the Civil Suit No.1685 of 2024 which is pending adjudication before the Court of learned VII Senior Civil Judge West Karachi. He argued that one Case was filed before the Deputy Commissioner West Karachi by respondents Muhammad Ayoub and MSt. Tasleem against the cancellation of Sanads on application dated: 16.06.2020 filed by appellant No.1. Learned advocate pointed out the said order available at Page No.191 shows the cancellation of Plot Nos.128 & 130 in the name of both Abdul Aziz and his wife Mst. Tasleem. He drawn the attention of this court towards the Page No.273 wherein, in the prayer clause of a case they requests for restoration of the possession in December, 2021 and if in the month of December, 2021 they were not in possession so how could they come in possession later on. He further draw the attention of the Court towards the Page No.97, 99 & 101 which is a positive police reports in favor of the appellants. He further drawn the attention of the Court towards the Page No.205 & 207 and in this regard stated that no suit for specific performance was filed in view of such partnership agreement. The advocate argued that the appellant, being in occupation of the subject plots with the consent and authority of his sons (Appellants No.2 to 4), was in lawful possession. Even a tenant or manager is protected under the Act against forcible or illegal dispossession. It was submitted that the trial court failed to consider overwhelming documentary evidence, including the Sanads, Police Report dated 09.02.2023, video clips, and

call data records establishing the appellants' occupation and the respondents' illegal intrusion. The advocate emphasized that even if the respondents dispute the title, they had no right to enter forcibly or oust the appellants without due process of law. Their own admission that they had no claim over Plot Nos. 124 and 127 but were present on the land establishes unlawful dispossession. The trial court's reliance on the notion that the appellant was not an "owner" was flawed, since the Act equally protects "occupiers" from illegal dispossession. The concept of occupier includes any person in control or possession with legal authority, which was clearly the case here. Moreover, pendency of a civil suit (Suit No.1169/2024) does not bar criminal prosecution where clear illegal dispossession is shown. The trial court erred in dismissing the complaint without determining the key questions: (i) Was there unlawful entry? (ii) Was the entry with lawful authority? (iii) Was the appellant a lawful occupier?

4. In reply, the learned counsel for the respondents argued that there exists a duly executed Partnership Agreement between Appellant No.1 and Respondent No.1, available at Page 199 of the record, wherein both parties agreed to run a fishery business with equal (50%-50%) partnership in Manjhar Goth Fish Factory located on Plot No.128, Deh Mann, Tapo Gabo Pat, Karachi West. It was pointed out that as per Clause on Page 205 (i.e., fourth page of said partnership agreement), the second party (Appellant No.1) had agreed to invest in the fishing business only, and had no claim whatsoever over the land, property, or assets of Manjhar Goth Fish Factory, including Plot No.128. All rights in the property and equipment were unequivocally reserved in favour of Respondent No.1. The counsel submitted that the complaint was a tactic to circumvent civil litigation pending between the parties. Both sides have already filed suits, including Suit No.1169/2024 for declaration and permanent injunction before the High Court (now transferred to Senior Civil Judge West). Hence, the matter is sub judice and ought not to be simultaneously adjudicated under the Illegal Dispossession Act. The learned counsel further submitted that the presence of Respondents No.1 and 2 on Plot No.128 was not only legal but with reference to the mutual agreement signed between the parties. The appellants' claim of unlawful

dispossession was a frivolous attempt to create parallel proceedings while ignoring the binding contractual terms. The trial court rightly declined to entertain the complaint as the dispute, at its core, pertained to ownership, contractual rights, and partnership terms, which cannot be adjudicated under the Illegal Dispossession Act. The trial court's observations, supported by record, were within jurisdiction and based on sound reasoning.

5. Upon thorough evaluation of the material available on record, this Court finds no merit in the instant appeal. The appellants have challenged the judgment dated 05.03.2024 passed by the learned Additional Sessions Judge-XII, Karachi West, primarily on the ground that the complaint under Sections 3(2) of the Illegal Dispossession Act, 2005 was dismissed without due appreciation of evidence and legal principles. However, the record belies such assertions. The factual background reflects that while the appellants claimed ownership and possession over Plot Nos.124, 127, and 128, the only contested property between the parties is Plot No.128, which is already the subject of civil litigation (Suit No.1685/2024 filed by the appellants and Suit No.1169/2024 filed by the respondents). As per the verification issued by the Mukhtiarkar Sindh Gothabad (available at Page No.215 of the appeal), Plot No.128 was entered in the name of Respondent No.1 Abdul Aziz, and Plot No.130 in the name of his wife Mst. Tasleem, both of which were subsequently cancelled by the Deputy Commissioner West Karachi on the application filed by Appellant No.1 (vide cancellation order at Page No.191). More significantly, a statement available at Page No.95 clearly affirms that Respondents Abdul Aziz and others have no concern with Plots No.124 and 127, thus negating the appellants' claim of dispossession from those plots. This admission materially undercuts the allegation of illegal dispossession concerning those two plots. The only remaining dispute is over Plot No.128, regarding which both parties possess conflicting documents (Sanads, Challans, certificates), and both have resorted to civil suits to assert and protect their respective claims. It is also noted that the respondents, in December 2021, sought restoration of possession in their own pleadings (Page No.273), thus implicitly admitting that they were not in possession at that time, which further

dilutes their claim of longstanding occupation. Despite this, the learned trial court, upon evaluating the oral and documentary evidence, concluded that the matter was of civil nature, arising from a contractual and partnership relationship between Appellant No.1 and Respondent No.1. A Partnership Agreement dated 05.11.2020, available at Page No.199, reveals that both parties had agreed to jointly operate a fishery business on Plot No.128. Clause 4 (Page No.205) of the said agreement explicitly states that Appellant No.1 had no claim over the land or assets of the Manjhar Goth Fish Factory, including Plot No.128, which were retained exclusively by Respondent No.1. This contractual arrangement undermines the appellant's assertion of exclusive and lawful occupation protected under Section 3 of the Act. Even if Appellant No.1 was in possession as a tenant or manager, such status must be lawful and not disputed through written agreement. The learned trial court rightly held that the claim of illegal dispossession cannot be sustained under the Act when the dispute is entangled in contractual terms and civil title issues. The Illegal Dispossession Act, 2005, is not a substitute for adjudicating complex questions of ownership, contractual obligations, or civil possession; rather, it aims to curb highhanded acts of illegal and forcible dispossession by land grabbers from lawful owners or occupants. The key questions to be determined under Section 3 of the Act are: (i) whether the complainant was a lawful owner or occupier; (ii) whether the entry or possession was taken without lawful authority; and (iii) whether there was actual dispossession. On these fronts, the appellants failed to establish their case with the level of clarity and proof required under criminal jurisdiction. While the appellants relied upon police reports (Pages 97, 99, 101), call data records, and video clips, the existence of the Partnership Agreement, coupled with pending civil litigation, documentary contradictions, and competing claims of possession, all support the trial court's conclusion that the matter fell outside the criminal scope of the Act and warranted resolution through civil proceedings. The trial court was justified in treating the complaint as an attempt to bypass civil adjudication by invoking criminal process. The police reports, though favorable to appellants, do not override the legal significance of mutual contractual terms and the respondents' possession predicated upon that agreement.

6. Moreover, the trial court carefully examined whether Appellant No.1 had any independent legal authority to initiate proceedings under the Act without proper title or possession. It correctly concluded that even if Appellant No.1 was acting on behalf of his sons (Appellants No.2 to 4), his possession was not clearly shown to be peaceful, settled, and exclusive in terms required to trigger protection under the Act. The learned court exercised its jurisdiction judiciously and dismissed the complaint after thorough appreciation of evidence.

7. In view of the above, this Court is of the considered opinion that the impugned judgment does not suffer from any illegality, perversity, or misreading/non-reading of material evidence. The learned trial court's findings are based on sound reasoning and cogent appreciation of record, particularly with regard to the contractual and civil nature of the dispute. Accordingly, the appeal is found to be devoid of merit and is dismissed. The judgment dated 05.03.2024 passed by the learned Additional Sessions Judge-XII, Karachi West is affirmed.

J U D G E