

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Revision Application No.266 of 2022

[Aijaz Ali Arain v The State & Muhammad Shahid Waheed and another]

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1. For order on office objection.
2. For hearing of main case.
3. For hearing of MA No.13904/2022.

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Mr. Muhammad Ramzan Tabassum, Advocate for the Applicant.
Mr. Hassnain Ali Choochan and Ms. Samreen Ali Rizvi, Advocates
for the Respondent No.2.
Mr. Tahir Hussain Mangi, APG.

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Date of hearing **26.05.2025**

Date of order **18.06.2025**

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ORDER

SHAMSUDDIN ABBASI, J:- By means of this Criminal Revision Application filed under Section 435 and 439, Cr.P.C. the applicant has prayed for following reliefs:-

“to call R & P of Cr.M.A. No.133/2022 (Muhammad Shahid Waheed v/s Aijaz Ali Arain & others) pending before the court of learned Xth Addl. Sessions Judge Karachi East and after hearing may be pleased to set aside the impugned order dated 11.11.2022 & dismiss the complaint No.133/2022 or alternatively after setting aside the impugned order dated 11.11.2022 remand back the case to the learned trial court to decide the same on merits by discussing all documentary evidence & perusal the record specially the verification reports vide letters dated 18.08.2022 & 23.08.2022 as well as the point of jurisdiction whether the case of Respondent No.2 is fall within the jurisdiction under the provision of Illegal Dispossession Act, 2005 or not in the interest of justice”.

2. The respondent No.2 is complainant in I.D. Complaint No.133 of 2022, filed under Sections 3, 4, 7 and 8 of the Illegal Dispossession Act, 2005 (“IDA 2005”), claiming himself to be lawful owner of House No.A-63, Survey No.104, Asifabad, Green Town, Saleem Housing Society, Karachi [hereinafter referred to as the “said property”], by virtue of registered sale deed vide Registration No.2405, Book No.1, Sub-Registrar T-Division, Karachi, dated 08.05.1990 and M.F. Roll No.1247 dated 15.05.1990, which was occupied by the applicant/ proposed accused, illegally and unlawfully. The respondent No.2/ complainant reported the matter to police but no action was taken, hence he filed the instant complaint.

3. Report was called from the SHO concerned police station, who conducted an enquiry into the matter, which reveals that per record of Microfilming Office the property stands in the name of respondent No.2 /complainant whereas per record of the concerned Sub-Registrar the property is registered in the name of applicant/ proposed accused and based on such report as well as keeping in view the utility bills, produced by the respondent No.2 /complainant, the learned Additional Sessions Judge-X, Karachi (East) while taking cognizance of the matter issued bailable warrants against applicant/ proposed accused in the sum of Rs.20,000/- in order to secure his attendance and aggrieved of such order, the applicant/ proposed accused has preferred this criminal revision application.

4. It is, inter-alia contended on behalf of the applicant that the impugned order is bad in law and fact and without application of a conscious judicial mind, hence liable to be set-aside. It is next submitted that the learned trial Court passed the order in haste without paying due consideration to the verification reports, which are in favour of the applicant showing him as lawful owner of the said property. It is also submitted that both parties are claiming ownership rights on the basis of registered documents, therefore, the controversy with regard to title of the property cannot be decided in a complaint under IDA 2005, hence the same is not maintainable and liable to be dismissed on this score alone. Per learned counsel, the respondent No.2 /complainant has converted a civil dispute into a criminal litigation with malafide intention and ulterior motives. The learned counsel while emphasizing his submissions has submitted that findings recorded by the learned trial Court are against the law and precedents of Hon'ble apex Court, based on misreading and non-reading of record, hence liable to be reversed.

5. The learned counsel for the respondent No.2 as well as APG have supported the impugned order and submitted that the complaint falls within the scope of the provisions of Illegal Dispossession Act, 2005, the fate of which could only be decided after recording of evidence as both parties are claiming ownership rights on the basis of registered documents..

6. I have given my anxious consideration to the submission of respective parties and perused the entire material available before me with their able assistance.

7. Illegal Dispossession Act, 2005 [IDA 2005] is a unique statute to safeguard the legitimate owners and occupants of immovable properties

from being unlawfully or forcefully deprived of their possessions by illegal occupants. This Act specifies the category of persons who can approach the Court of competent jurisdiction for seeking relief i.e. the owner or occupier. Definitions of both these expressions namely "occupier" and "owner" have been provided in clauses (c) and (d) respectively of Section 2 of the Illegal Dispossession Act, which are reproduced below:-

"2(c) "occupier" means the person who is in lawful possession of a property;

"2(d) "Owner" means the person, actually owns the property at the time of his dispossession, otherwise than through a process of law."

8. Reviewing the above clauses, it is noted that any person who being lawful owner or lawful occupier of the property, if dispossessed illegally or unauthorizedly, can bring a complaint under the provisions of IDA, 2005. It is not out of context to mention here that the cognizance under IDA 2005 was taken by the learned trial Court after perusing the enquiry report submitted by the SHO concerned. It is an admitted position that both parties are claiming to be the ownership of the property in dispute. The applicant /proposed accused is claiming ownership right on the basis of a registered deed No.491, Book No.1 dated 03.03.2022 whereas the case of the respondent No.2 /complainant is that he has purchased the property from Syed Akhtar ul Islam and got registered deed in his favour in 1990.

9. Since both parties claim themselves as owner, based on registered instruments, therefore, this Court called a report from Assistant Commissioner, Shah Faisal Sub-Division, District Korangi, Karachi, who furnished his report on 07.05.2025, which reveals that per revenue record the property stands in the name of applicant/ proposed accused Aijaz Ali Arain and no record with regard to purchase of the property by the respondent No.2 /complainant through registered deed executed by Sub-Registrar in his favour is available in their record. Let both parties shall adduce their oral as well as documentary evidence to show their ownership /occupation and then the Court will determine that as to whether the complainant being occupier or owner of the house in question was illegally dispossessed or not. Deeper appreciation about the merits and demerits of the complaint cannot be gone into, until and unless the material is placed on the record during the trial proceedings by both the parties.

10. For what has been discussed above, I am of the view that a case attracting the provisions of IDA, 2005 has been made out. The learned counsel for the applicant has not raised any question of law that may require consideration by this Court in exercise of its Revisional Jurisdiction, scope of which is limited. I find that the learned trial Court has passed the impugned order after due application of mind and careful appreciation of available material, hence calls for no interference by this Court. In view thereof, the instant Criminal Revision Application is bereft of any merit stands dismissed. The learned trial Court shall proceed with the matter in accordance with law, without being influenced of any observations made herein and try to dispose of it 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 of this Court.

11. Before parting with this order, it is noteworthy that one property cannot be legally registered twice with the same office as this would create a conflict in ownership and title, therefore, I deem it appropriate to refer the matter to Anti-Corruption to conduct a discrete enquiry into the matter and register FIR[s] against those who are found involved in getting the property registered in their names by way of fraudulent means including the officers /officials of the offices of Revenue Department as well as Sub-Registrar concerned.

12. The instant Criminal Revision Application No.266 of 2022 stands disposed of in the foregoing terms.

JUDGE