JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Cr. Acquittal Appeal No. S-08 of 2026

Appellant	:	Haji Jumoon Khan through Mr. Abdul Aziz Memon, Advocate assisted by Mr. Shayan Ali Baloch, Advocate
Respondents	:	Diyal Das through Mr. Kanji Mal Meghwar, Advocate for the Respondent No.1 assisted by Mr. Aiman Ali Memon, Advocate. Mr. Neel Parkash, Deputy Prosecutor General Sindh along with Inspector Sher Khan, Station House Officer, Islamkot Police Station, Mirpurkhas, and Anwar Ali, Mukhtiarkar (Revenue), Taluka Islamkot
Date of Hearing	:	27.08.2026
Date of Judgment	:	02.09.2026

JUDGMENT

Muhammad Humayon Khan, J.: The Appellant instituted a Complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005 (hereinafter the "2005 Act"), being Sessions Case No. 20 of 2022, before the learned Additional Sessions Judge-I, Tharparkar at Mithi, against three accused, Diyal Das (Respondent No. 1), Dr. Shankar Lal and Haresh Kumar. Dr. Shankar Lal and Haresh Kumar were acquitted earlier by Order dated 22.06.2022 under Section 265-K of the Code of Criminal Procedure, 1898 (hereinafter the "CrPC") whereas the Respondent No. 1's matter proceeded to trial. By Judgment dated 14.01.2026, the learned Additional Sessions Judge also acquitted him of the charge by extending the benefit of doubt. The Appellant has challenged the said Judgment in this criminal acquittal appeal.

2. The Appellant's case was that his mother, Mst. Zubaida widow of Haji Abdullah Memon, owned an area of 13-18 acres on Survey No. 12 in Makan Misri Memon, Deh, Tapo and Taluka Islamkot, Tharparkar in terms of Registered Sale Deed No. 81 dated 25.02.1999 and a Village Form VII-B Entry bearing No. 262 dated 03.11.1999. He alleged that Dr. Shankar Lal who owns the adjoining Survey No. 71 occupied an area of 02-17 1/2 acres while the

Respondent No. 1, who owns adjoining Survey No. 18, took over an area of another 02-17 acres. He stated that his father, Haji Abdullah demanded possession during his lifetime but died without any success on 27.02.2016. He stated that after his father's death, he was managing the lands and lastly he approached the accused on 08.01.2021 to vacate the possession of the property but to no avail. It was in this background that he filed the Complaint.

3. For the prosecution, the Appellant examined himself (Exh-11) followed by Muhammad Khan, DSP (Exh-14) and Abdul Ghaffar, Assistant Commissioner (Exh-15). All witnesses produced documents and were cross-examined. Thereafter, the Respondent No. 1's statement under Section 342 of the CrPC was recorded wherein he denied the allegations and produced the copy of an **Order dated 18.11.2021** of the Deputy Commissioner, Tharparkar (Exh-21/A). He did not however record his statement on oath nor examined any defence witnesses. Ultimately, by the impugned Judgment, he was acquitted as stated above.

4. Mr. Abdul Aziz Memon, learned Advocate for the Appellant, contended that the impugned Judgment suffers from misreading and nonreading of evidence and fails in appreciating the prosecution's case in its proper perspective. He stated that Mst. Zubaida's ownership remained established through the aforementioned registered sale deed and revenue entry; that the reports of the Revenue and Police authorities showed him to be in occupation of the land owned by Mst. Zubaida without lawful authority; that the prosecution's evidence was consistent and trustworthy but ignored. He stated that the learned Additional Sessions Judge gave undue importance to the setting aside of the Rubkari and delay in approaching the Court which were not sufficient to ignore the prosecution's evidence. He prayed for setting aside the impugned Judgment and for the Respondent No. 1 to be punished.

5. Mr. Kanji Mal Meghwar for the Respondent No. 1 fully supported the impugned Judgment and stated that the Appellant had failed to establish the requisite ingredients of illegal dispossession under the 2005 Act beyond reasonable doubt. He

stated that the complaint was founded upon a Rubkari dated 16.09.2021 but the same has been set-aside by the Deputy Commissioner, Tharparkar by Order dated 18.11.2021 (Exh-21/A). He contended that it was admitted by the prosecution's witnesses that there were no boundary markers between Makan Misri Memon and Makam Mataro Sand and so it was not ascertainable where either Makan or survey number existed. He stated that, according to the complaint, the alleged dispossession took place in 2012, while the father of the Appellant remained alive till 2016, but the complaint was filed in 2021 with a delay of several years. He stated that the complaint did not state the specific time and date of the alleged illegal dispossession. According to him the impugned Judgment was right in acquitting the Respondent No. 1 and he prayed that this appeal be dismissed. Mr. Neel Parkash, the learned Deputy Prosecutor General, also supported the impugned Judgment and argued on the same lines as Mr. Kanji Mal Meghwar.

6. Before beginning to discuss the merits, it is important to be mindful that this is an appeal under Section 417(2-A) of the CrPC against a judgment of acquittal the considerations for which are markedly different from those in an appeal against conviction under Section 410 of the CrPC. In an appeal against acquittal, there is a double presumption of innocence favouring the accused and as such interference is only to be made in the finding of acquittal in limited circumstances where the acquittal is found to be based on a serious violation of the law or misreading or nonreading of evidence sufficient enough to dislodge the double presumption. Interference may not be made simply because another view of the case is possible. Reference may be made to *Sardaran Bibi v The State* 2024 SCMR 1116 and *Muhammad Zaman v The State and others* 2014 SCMR 749.

7. In *Muhammad Akram and 9 others v Muhammad Yousaf and another* 2009 SCMR 1066 the Hon'ble Supreme Court interpreted Section 3 of the 2005 Act, the provision that defines the prohibition of illegal dispossession. The ingredients of the offence and possible defences to the same, as interpreted by the Hon'ble Supreme Court, may be stated in the following manner. They have to be proved

beyond reasonable doubt by the prosecution, as in any other criminal matter:

Ingredients constituting the offence under Section 3 of the 2005 Act (mandatory and all must be proved)	**Defence line for the accused (as stated in *Muhammad Akram*)**
1. That the complainant is the actual owner (or occupier i.e. in lawful possession) of the immovable property in question 2. That the accused has entered into or upon the said property 3. That the entry of the accused into or upon the property was without lawful authority 4. That the entry of the accused into or upon the property was with the intention to dispossess the complainant (i.e. to grab or control or occupy the property)	1. That the complainant is not the actual owner of the property 2. That the entry into or upon the property was not to dispossess the complainant 3. That the entry was lawful 4. That the accused had no intention to illegally dispossess the complainant

8. It was appreciated by the learned Additional Sessions Judge that there were no boundary marks to ascertain each of the survey numbers. Under Section 4(5) of the Sindh Land Revenue Act, 1967, boundary marks are designated natural or artificial physical markers used by Revenue Officers to separate different portions of land. Therefore, in the absence of such boundaries, there are two important points that necessarily follow. *Firstly*, it was not proved beyond reasonable doubt that the area of 02-17 acres occupied by the Respondent No. 1 fell within Survey No. 12 or outside it. *Secondly*, even taking the Appellant's plea at face value that the area of 02-17 acres was in fact within the bounds of Survey No. 12, it is still difficult to ascertain without reasonable doubt whether, without any marked boundaries, the alleged entry of the Respondent No. 1 was deliberately to cause dispossession or unknowingly and therefore unintentionally, and in the absence of any evidence given by the prosecution on this matter, there is nothing that could be said. That is not to ignore that, according to the Appellant's own case the dispossession allegedly took place in 2012 while his father was alive and who died in 2016 but the Appellant was the first person to lodge a complaint and that too in 2022, after more than nine years. In these circumstances the ingredients of the offence were rightly found to be wanting, and in my view the impugned

Judgment to the effect that the case was not proved beyond reasonable doubt is supported by evidence. It seems to me that this was a dispute relating to demarcation of boundaries and which could have been agitated before the revenue authorities for proper redressal. However, for reasons best known to the Appellant he did not do so and instead resorted to criminal proceedings which have not benefited anyone.

9. Learned Counsel for the Appellant relied upon *Rahim Tahir v Ahmed Jan and 2 others* PLD 2007 SC 423, *Niaz Ahmed and another v Aijaz Ahmed and others* PLD 2024 SC 1152 and an unreported Judgment dated 15.04.2025 of my learned brother, Jan Ali Junejo J., in Criminal Acquittal Appeal No. 500 of 2024. However, in my respectful view the propositions in the said judgments are not supportive of the case of the Appellant and are distinguishable in the circumstances discussed above.

10. For these reasons, no case has been made out for the Court to interfere. I shall be declining special leave to appeal and as such this appeal is dismissed with any listed applications.

11. Before parting, I may place my note of appreciation for Mr. Shayan Ali Baloch and Mr. Aiman Ali Memon, Advocates, who ably assisted their learned seniors in presenting their case to the Court.

JUDGE

APPROVED FOR REPORTING
Faisal