

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Salahuddin Panhwar
Mr. Justice Ishtiaq Ibrahim

CrI. P.L.A No.504 of 2021

(Against the judgment dated 30.03.2021 of learned single Judge of the Lahore High Court, Rawalpindi Bench Rawalpindi in Cr.A.No.588 of 2019)

Al-Haaj Malik Muhammad Ashraf.

...Petitioner(s)

Vs.

Javed Akhtar and another.

...Respondent(s)

For the Petitioner(s): Mr. Muhammad Ilyas Siddiqi, ASC.

For the State: Mr. Irfan Zia, APG.

Date of hearing: 19.02.2025

ORDER

Salahuddin Panhwar, J. The petitioner, Al-Haaj Malik Muhammad Ashraf, has invoked the appellate jurisdiction of this Court under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, seeking leave to appeal against the judgment dated 30.03.2021 ("impugned judgment") rendered by the learned Single Judge of the Lahore High Court, Rawalpindi Bench, in Criminal Appeal No. 588 of 2019. By the impugned judgment, the High Court set aside the conviction and sentence of the respondents, Javed Akhtar and Sohail Akhtar, previously recorded by the learned Additional Sessions Judge, Talagang Chakwal, in a private complaint under Sections 3, 4, 7, and 8 of the Illegal Dispossession Act, 2005 ("the Act"), resulting in their acquittal.

2. The gravamen of the complaint is that the petitioner, along with his grandchildren, purchased a 12-marla plot situated in Khewat Nos.696/685 and 1208/1180, bearing Khasra Nos. 824 and 825 ("the disputed property"), through Sale Deed No. 754/1 dated 03.10.2013, for a consideration of Rs. 3,420,000/-. It is alleged that upon full payment, possession was handed over to the petitioner. However, on the intervening night of 28th and 29th April 2018, Saleem Iqbal

(one of the vendors) informed the petitioner that the respondents, along with co-accused Ghulam Muhammad (since acquitted), had unlawfully occupied the disputed property. The petitioner, along with his sons, proceeded to the site and observed the respondents in possession of the property, allegedly armed with firearms.

3. The learned Additional Sessions Judge, after a full trial, convicted and sentenced the respondents on 27.07.2019. The respondents preferred Criminal Appeal No. 588 of 2019 before the Lahore High Court, Rawalpindi Bench, which allowed the appeal, setting aside the trial court's judgment and acquitting the respondents. The petitioner now seeks leave to appeal against the acquittal.

4. We have heard the learned counsel for the petitioner and the learned Additional Prosecutor General for the State. The High Court, upon a meticulous evaluation of the evidence, found that the respondents are co-owners of the disputed property. The demarcation of the property remains unresolved, and no official or private partition has taken place among the co-owners; rather, partition proceedings are currently pending before the civil court. The testimony of Imtiaz Ashraf (PW.2) corroborates that the respondents have been recorded as co-owners since the time of their forefathers. Saleem Iqbal (CW.1), a vendor, conceded during cross-examination that he was unaware of the exact location of Khasra Nos. 824 and 825 and whether the disputed plot formed part of Khasra No. 826. Similarly, Rafaqat Ali Khan, Tehsildar (CW.3), who conducted the demarcation, stated that half of the disputed plot towards the west lies in Khasra No. 826, owned by the respondents, while the eastern half falls within Khasra No. 824, which is jointly owned by the petitioner and others. Khasra No.825 is also jointly owned by the parties and other co-sharers.

5. It is trite law that a co-owner is deemed to be in constructive possession of every inch of the joint holding unless a formal partition has been effected. The jurisprudence on co-ownership consistently affirms that one co-owner cannot allege dispossession at the hands of another without establishing exclusive possession through partition proceedings. This Court in *Shaikh Muhammad*

Naseem vs Mst. Farida Gul (2016 SCMR 1931) has categorically held that the Act is not confined to cases involving land grabbers or Qabza Mafia but extends to any person who has been illegally dispossessed from immovable property. However, the Act is applicable only where there is clear evidence of unlawful dispossession. In cases where parties are co-owners, the question of forcible dispossession does not arise unless partition proceedings have concluded, and exclusive ownership is established.

6. Furthermore, in *Niaz Ahmed vs Aijaz Ahmed* (PLD 2024 SC 1152), this Court reiterated that the Act does not apply to disputes arising from co-ownership, as co-owners hold an indivisible interest in joint property. Since the petitioner has not established exclusive possession, the provisions of the Act cannot be invoked against co-sharers.

7. It is a well-settled principle that an acquitted accused enjoys a double presumption of innocence. An appellate court should exercise restraint in overturning an acquittal unless the judgment is manifestly perverse, arbitrary, or suffers from a glaring misreading or non-reading of material evidence, which is not evident in the present case. Reliance is placed on *Muhammad Mansha Kausar v. Muhammad Asghar and others* (2003 SCMR 477).

8. For the reasons articulated above, this petition is dismissed and leave to appeal is refused. It is pertinent to note that the respondents' acquittal shall not prejudice the civil rights of the parties, who retain the liberty to pursue their claims before the competent civil court.

Judge

Judge

Islamabad
19.02.2025
Not approved for reporting
M.Siraj Afridi PS