

*ORDER SHEET*  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

IInd Appeal No. 49 of 2016.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of C.M.A-1691 of 2016.

09.02.2018.

Mr. Roshan Ali Azeem Mallah, Advocate for the appellants.

Mr. Shahnawaz Brohi, Advocate for respondent No.1.

Mr. Wali Muhammad Jamari, Assistant A.G.

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Learned counsel for the appellants contends that the case of the appellants was not considered by the learned trial Court as well as the learned appellate Court although they had brought up two receipts of part payment as such the learned trial Court as well as the learned appellate Court has failed to consider that the applicants are in possession of the subject property by way of part payment; as such, despite the element of the appellants not filing a suit for specific performance they are entitled to not only resist the claim of the respondent No.1, their possession is not liable to be disturbed. Learned counsel referred to pages-89 and 91 of the file for the said receipts referred above. However, as to the production of the said receipts before the learned Courts below the answer unfortunately has not come out in clear terms.

2. Learned counsel for the respondent No.1 on the other hand, states that sale deed has been acquired by the respondent No.1 from the actual owner and that mutation in this regard was also got effected. It is further contended on part of the learned counsel for respondent No.1 that the said respondent being the owner had acquired the rights in the matter and as such the proceedings decided concurrently in his favour are not liable to be disturbed.

3. Learned AAG supports the impugned orders and further states that the learned appellate Court had considered and discussed the required elements for consideration.

4. Having heard the learned counsels as well as the learned AAG and gone through the record with their assistance, the documents relied upon by

the learned counsel for the appellants not having produced cannot be entertained, the same having been translated by the learned counsel for the appellants before this Court orally, also do not specify the handing over / retention of the possession in consideration thereof. In the circumstances, where said material has failed to come up to the required value the findings of the Courts below are not liable to be disturbed. Accordingly, this 11nd appeal stands dismissed, however, with no orders as to costs alongwith the pending application.

JUDGE

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