

*ORDER SHEET*

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

1. IInd Appeal No.10 of 2008.

2. IInd Appeal No. 1 of 2009.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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24.11.2017.

Mr. Muhammad Arshad S. Pathan, Advocate for the appellants.

Mr. Irfan Ahmed Qureshi, Advocate for the respondent in IInd Appeal No.10 of 2008.

Mr. Ghulamullah Chang, Advocate for the respondent in IInd Appeal No. 1 of 2009.

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These proceedings arise from the adverse claims of specific performance and possession decided in favour of the owner.

Learned counsel for the appellants has contended that despite the concurrent findings it may be considered that the evidence of marginal witnesses as brought forwarded before the trial Court was misinterpreted in violation of Article 79 of the Qanun-i-Shahadat Ordinance along with provision of Section 12 of Specific Relief Act. It is further contended by the learned counsel for the appellants that the execution of the documents was got proved by the appellants, however, same was not entertained by the learned trial Court. It is further contended on part of learned counsel for the appellants that these matters are result of misreading and non-reading of evidence and conclusion reached is liable to be set aside, as the learned appellate Court has also failed to appreciate the record as was present before the said Court.

2. Learned counsels for the respondents however, contend that in the matters the agreement, payment and possession all were denied as alleged. It is further contended on part of learned counsels for the respondents that the evidence of the appellants was considered of lesser weightage as compared to that of the respondents by the learned trial Court and as such it was determined that the amount as alleged was not proved to have been delivered, the evidence as to possession was also not got proved to have been acquired against consideration of sale as was alleged.

3. I have heard the learned counsels and gone through the record. Undoubtedly, questions can be raised in comparing the evidence to the findings acquired, but then about every case / especially civil litigation can be questioned in this manner, however, at the stage of second appeal it is not open to re-appraise of the evidence. It bears from the record that a categorical denial of the payment and the agreement especially as to manner of possession is present. In the present circumstances, where the findings of facts have been made considering the evidence, interference to the extent of setting aside the two concurrent judgments, which are not found to be in direct conflict to the record, is not available in these second appeals. The dispute between the parties on account of allegations made despite being close relations seems to also have a base caused on account of the claimed right to the subject properties on account of probable / eventual inheritance and denial of the same by the owners. It has also been observed that the alleged seller i.e. the appellants have preferred never to deposit the balance consideration.

4. Considering the forgoing, the appeals are found not tenable enough to entertain the setting aside of the two findings. The appeals as such, are dismissed however, in the circumstances with no orders as to costs.

JUDGE

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