

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

R.A. No. 6 of 2010.

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
------	----------------------------------

1. For katcha peshi.
2. For hearing of C.M.A-36 of 2010.
3. For hearing of C.M.A-1537 of 2011.

05.03.2018.

Mr. Irfan Ahmed Qureshi, Advocate for the applicants.

Ms. Razia Ali Zaman Khan, Advocate for respondent No.1.

=

Having heard the learned counsels, wherein learned counsel for the applicants relying upon the cases of **Fareed Ahmed v. Muhammad Amin (2004 SCMR 954)**, **Muhammad Din v. Naimat Bibi (2006 SCMR 586)**, **Muhammad Yaqub Brohi v. Ministry of Housing and Works (2017 CLC 369)** and **Karam Dad Khan v. Faiz Ahmed (2017 CLC 1720)**, supports the judgment passed by the learned trial Court, which was set aside by the learned appellate Court to the extent of consideration of balance payment. He has relied upon the evidence as led in the matter alongwith the conclusion drawn thereon by the learned trial Court as well as the learned appellate Court.

2. Learned counsel for respondent No.1 on the other hand, states that the appeal was preferred by the said respondent as such this revision application filed by the applicants cannot be entertained. It is further contended on her part that the payment having been proved, it was not questioned in the cross-examination and that the revision application is liable to be dismissed.

3. Having heard the learned counsels and gone through the record with their assistance, it is observed that the learned trial Court has only placed reliance on the documentary evidence whereas the learned appellate Court has also considered the oral evidence in respect to the payment made in the matter. It however, bears from the record that a sum of Rs.75,000/- was remained as balance and payable. Muhammad Moosa, the respondent No.1, present in the Court, admits the same. Accordingly, where the balance

payment was never paid nor deposited with the learned trial Court and the possession of the land having been enjoyed by the said respondent as such the value thereof is liable to be paid for the specific performance. In the circumstances, it shall not be in the interest of justice to allow any party to acquire benefit of the time spent in these proceedings especially, where the balance amount was never deposited, the order of the learned trial Court is varied to the extent that the learned executing Court in the matter, shall enforce specific performance of the agreement of sale by way of execution of the document in favour of respondent No.1 against the value of Rs.75,000/- at the time of the said execution treating total price as Rs.6,50,000/-. The executing Court as such shall ascertain the price of the subject land presently and get the required documents executed against payment of 11.54% of the said price (Rs.75,000/- being the 11.54% of Rs.6,50,000/-) as the right of acquiring specific performance is a different element as compared to the value of the subject land. The value of the said land as of today is to be assessed and the above said balance is payable to the owner.

4. The revision application stands disposed of in the above terms, alongwith pending applications.

JUDGE

S