

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

R.A. No.319 of 2010.

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For katcha peshi.
2. For hearing of C.M.A-1105 of 2010.
3. For hearing of C.M.A-1111 of 2010.

30.11.2017.

Mr. Jhamat Jethanand, Advocate for the applicant.

Mr. Ejaz A. Awan, Advocate for the private respondent.

Mr. Wali Muhammad Jamari, Assistant A.G.

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1. These proceedings arise from the concurrent findings of the learned trial Court as well as the learned appellate Court passed in favour of the private respondent.
2. Learned counsel for the applicant contends that the judgments of the learned trial Court as well as the learned appellate Court are based upon the evidence as brought up; however, the application filed before the learned appellate Court for additional evidence was not considered. The reason for non-consideration was the failure of making the said application before the learned trial Court; however, it was not considered that the documents called upon to be additional evidence were subsequently acquired and as such the application for additional evidence should have been considered as the same were revenue proceedings.
3. Learned counsel for the private respondent however contends that the applicant had failed to bring forward the entitlement as required under Specific Relief Act for acquiring possession and as such he supports the impugned judgments. In support of his contention learned counsel for the private respondent relied upon the case of **Ghous Bakhsh v. Muhammad Abdul Naeem (PLD 1976 Karachi 169)**. Learned AAG also supports the said judgments.
4. Having heard the learned counsels and going through the record, it is observed that the original side judgment was pronounced in year 2004,

whereas the documents as were referred by the applicant were relating to the period of 2005 to 2007. It is further observed that the learned trial Court's judgment as well as the learned appellate Court's judgment is based upon the revenue record, however, the location of the subject plot has not been considered to come to a definite conclusion as to whether the same was / is existing within the claimed areas of the respective parties. It is also observed that the title of the respondent in the matter is based upon "Sanad" which already stands nullified by the order of the Collector in the matter wherein reasons are absent, whereas the judgment of the learned appellate Court setting aside the same has only considered the element of non-hearing. The said order has not touched the merits and as such the two conclusions with regard to definiteness as required for a judicial decision entitling the parties to come up with the required evidence is not available. Accordingly, the matter is being remanded to the learned trial Court for hearing considering the fore-given. Needless to say, that the hearing includes evidence.

5. The revision application stands disposed of alongwith miscellaneous application.

JUDGE

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