

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

R.A. No.150 of 2012.

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For katcha peshi.
2. For hearing of C.M.A-725 of 2012.

26.02.2018.

Mr. Rafique Ahmed, Advocate for the applicant.

Mr. Irfan Ali Bhugio, Advocate for respondents No.2 and 3.

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1. Learned counsel for the applicant was heard on the earlier date viz. 26.10.2017 in presence of learned counsel for the respondent No.1; whereafter, on 20.11.2017 warning was again given and then on 19.02.2018, the matter was fixed for today. No one is present on part of respondent No.1 despite the matter kept aside and taken up after tea-break. The contentions of learned counsels have already been brought on record; in abbreviation, being that the suit filed for specific performance was dismissed without recording evidence on part of the learned trial Court and the said order was maintained at the appellate stage.

2. That after curing of the defect as was present by way of enhanced price the respondent had refused to perform the agreement and as such the suit was filed.

3. That learned trial Court as well as the learned appellate Court has failed to consider the dispute as is present and have limited themselves to the technical elements of law, which can only support the merits. The merit of the same cannot be commented at this stage as no evidence is available. However, as per the pleading, it is claimed by the applicant that though the private respondent is his real brother he has acquired right by way of sale agreement and thereafter had paid the enhanced amount to the concerned authorities, where on the title was acquired and the claim of the applicant as such was made after the title was standing in the name of the said private respondent. It is by-now a settled proposition of law that the proceedings are

to be decided on merits. The technical aspects are to be considered in support of the merits they themselves are / cannot determine the finality of an adjudication, which requires consideration by way of evidence. Accordingly, the revision application stands allowed and the matter is remanded to the learned trial Court for decision on merits after providing opportunity to the parties to lead their evidence.

In view of above, the pending application also stands disposed of.

JUDGE

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