

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

C.P No.S-45 of 2010
C.P No.S-46 of 2010

DATE

ORDER WITH SIGNATURE OF JUDGE

07.02.2020

Mr. Arbab Ali Hakro, Advocate for the petitioner(s).

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Mr. Faiz Muhammad Chandio advocate files separate vakalatnamas in both these petitions, which are taken on record.

In these two petitions, petitioner has denied the relationship on the count that an agreement of sale was executed somewhere in July 1999 between the predecessor of the respondents and petitioner. The effect of section 53-A of the Transfer of Property Act has to be taken into consideration to adjudge whether the occupation of the petitioner was in pursuance of agreement as part performance or otherwise. Though in the cross-examination the witness admitted his occupation as a tenant as he was inducted in the premises by the respondents' father, however, learned counsel for the petitioners submits that it was an error on the part of the trial court which has not recorded the version correctly. No application for correction was filed. I have heard the learned counsel for the petitioner(s) in this matter and have also gone through the alleged sale agreement. The sale agreement only disclosed that he was already in possession when alleged agreement was executed. The possession thus cannot be considered to be in part performance of a sale agreement as he was already in possession. He ought to have surrendered the possession before occupying the same in

part performance of sale agreement. He has not disclosed as to under what capacity he was originally inducted in the premises as the agreement disclosed that he was already enjoying the possession when sale agreement was executed. Be that as it may, parallel proceeding under the sale agreement were initiated. The trial court claimed to have decreed the suit whereas appellate court upset the findings of the trial court and dismissed the suit. Since a revision application in this regard is pending as R.A. No.132/2013, office is directed to fix the same along with these two petitions on 10.02.2020. To be taken up at 12:00 noon.

JUDGE