

SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present

Mr. Justice Amir Hani Muslim

Mr. Justice Qazi Faez Isa

C.P.Nos. 358-K and 359-K of 2014

Jawaid Ahmed Shaikh and others (*In both cases*).....Petitioners

Versus

Mst. Khursheed Akhtar and others (*in both cases*).....Respondents

For Petitioners : Mr. M.Arshad S. Pathan, ASC.

For Respondents : N.R.

Date of hearing : 02.02.2015

ORDER

Amir Hani Muslim, J.- We have gone through the impugned judgment. The issue raised apparently has not been attended to either by the trial Court or the Appellate Court. In the first place, the sale agreement entered into between the parties clearly shows that the property in question was free from all encumbrances. The claim of the Petitioner is that pursuant to the sale agreement, the Petitioners were in possession of the property in dispute. The Petitioners, during the possession, received notice from House Building Finance Corporation. The fact that the property in dispute was mortgaged with House Building Finance Corporation was come to the knowledge of the Petitioners on receipt of the notice, where after the litigation between the parties started.

2. We, in the circumstances, are of the view that the issue raised inter-alia requires reappraisal of the evidence. We, therefore, grant leave <sup>in both the Petitions</sup> on the aforesaid ground. In the meantime, we are informed that the Petitioners are not in possession of the property and the property is in the custody of the Nazir of the V-Senior Civil Judge, Hyderabad. The property shall remain in custody of the Nazir till the final decision in Appeal. Since the parties are litigating for the last several years, we direct the office to fix the appeals at an early date.

Sd/-Amir Hani Muslim, J.  
Sd/-Qazi Faaz Isa, J.