

504/25

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi
Justice Aqeel Ahmed Abbasi

Civil Appeal No. 41-K of 2021

(Direct appeal against the judgment dated
01.07.2021 passed by the High Court of Sindh,
Karachi in HCA No. 340/2006)

Mst. Nasira Ansari and others

...Appellant(s)

Versus

Late Tahira Begum through legal heirs &
others

...Respondent(s)

For the Appellant(s) : Mr. Aminuddin Ansari, ASC
Mr. K.A. Wahab, AOR

Respondent(s) : Ex-parte

Date of Hearing : 17.07.2025

Judgment

Muhammad Ali Mazhar, J.- This appeal is directed against the judgment dated 01.07.2021 passed by the High Court of Sindh, Karachi in HCA No. 340/2006.

2. According to the sequence of events, the appellants are the daughters of late Nasiruddin Ansari, who died in January, 1985. They filed a Civil Suit No.739/1993 for declaration of *benami* properties and claimed their share of inheritance in the estate of their deceased father. The appellants in their Suit entreated declaration that property No. C/35, Block-9, situated at Works Cooperative Housing Society, Gulshan-e-Iqbal, Karachi and House No. A-153, Block-L, North Nazimabad, Karachi, both were owned by their father and their


hu

mother Mst. Tahira Begum was ostensible owner and she had no title or authority but she sold the Property No. C/35, Block-9, Works Cooperative Housing Society, in November, 1992. Whereas the same plea was taken against the Property No. A-153, Block-L, North Nazimabad, Karachi with the further assertion that the mother had unlawfully gifted the property to her son (Late Rashid Bin Nasir-respondent No.2).

3. The learned counsel for the appellants argued that the properties could not be disposed of by the respondent No.1 through sale and gift, who was only an ostensible owner. It was further contended that the appellants were entitled to their share in all the estate of their deceased father but the respondent No.1 deprived them of their share in the aforesaid properties. He further argued that the learned single judge of the High Court decreed the suit after considering all relevant facts and the evidence adduced by the parties but the learned Divisional Bench in appeal upset the findings without any lawful justification.


4. Heard the arguments. The crux of the matter is whether the mother of the appellants was the ostensible owner and whether the appellants can claim their share on account of inheritance in such properties. The appellants pleaded that though the aforesaid properties in the name of their mother but they were actually owned and funded by their deceased father. The learned High Court in the impugned appellate judgment held in paragraph 23 as under: -

“23. Furthermore, when the depositions of the witnesses are viewed in juxtaposition with the documents exhibited in evidence, it emerges that no material had been brought on record to support the assertion of a benami arrangement inter se the deceased and the Appellant No.1 or demonstrate that the Deceased had mainly provided the funds through which the Disputed properties had been acquired, and the finding of the learned Single Judge as to funding was predicated entirely on inferences drawn from disparate excerpts from the oral evidence tendered. In fact, other than the bare assertion in paragraph 4 of the plaint that the Disputed Properties had been purchased/financed by the Deceased in the name of the appellant No. 1 as benami properties, there was no further elucidation as to the motive underpinning the alleged benami arrangement or even as to the details/mechanics of the relevant transactions.”



5. The attributes of "benami transaction", in reality means a transaction in the name of another person to describe and express a transaction of a property who holds the said property being an ostensible owner for its beneficial owner. In fact, it is a genre of transaction where somebody recompenses for the property but does not get hold of it in his personal name. The person in whose name this type of property is purchased is called benamidar and the property so purchased is called the benami property. Despite the fact a benami property is purchased in the name of someone else, the person who sponsored the transaction shall be the real owner. By and large, the assets acquired in the name of spouse or a child for which the money is paid from known cores of income is called the benami property. According to "Chancery Law Chronicles", the expression "Benami" is of Persian origin made of two words "be" and "nam" meaning "no name" that is nameless or fictitious. The nominal owner is the "Benamidar". The simple concept of "Benami" is that purchaser desires to buy property but does not desire to buy in his own name and therefore buys it in the name of someone else. A benami transaction has been described shortly as one in which the real owner of the property allows it to appear in the name of an ostensible owner under a sort of secret trust. [4 BLC 17] [Rotofrusy on Civil Law and Rulings, Vol.1, p. 115]. Ref: <https://www.clcbd.org/glossary/321.html>. While dilating upon the tenet of "benami transaction" in the case of Pether Perumal v. Muniandy, (1908 ILR 35 Cal 551 (558) P.C) Gurkaran v. Shella (AIR 1918 PC 140), the Court held that essential legal characteristic of these transactions is that there is no intention to benefit the person in whose name the transaction is made. The name of that person, popularly known as the 'benamidar', as the Privy Council pointed out is simply an alias for that of the person beneficially interested. The benamidar has the ostensible title to the property standing in his name; but the beneficial ownership of the property does not vest in him but in the real owner.

6. The primary point at issue is who can challenge the benami transaction? The burden of proving whether a particular person is a benamdar is upon the person alleging the same. The probe whether the acquisition in the name of the wife by a husband is benami for his



own benefit or not, this entirely depends on the intention of the parties at the epoch of buying. The acid test for resolving the character of transactions is obviously the source of funds but it is not always conclusive and significant to the real ownership though it may prima facie show that the person who provided money did not intend to relinquish or give up the beneficial interest in the property but some other factors also need to be considered i.e. possession of title documents, after purchase the conduct of the parties concerned in dealing with the property; who administers and oversees the property; who relishes the usufruct and who is recognized as title holder in general as well as government departments. All these important physical characteristics depend on the facts of each case separately which requires concrete evidence to prove. In the case of Ch. Ghulam Rasool vs. Nusrat Rasool (PLD 2008 S.C. 146), this Court held that two essential elements must exist to establish the benami status of the transaction. The first element is that there must be an agreement, express or implied, between the ostensible owner and the purchaser for the purchase of the property in the name of ostensible owner for the benefit of such person and second element required to be proved that the transaction was actually entered between the real purchaser and the seller to which ostensible owner was not party. It was held by this Court in the case of Abdul Majeed vs. Amir Muhammad (2005 SCMR 577), that the question whether a transaction is of benami character or not has to be decided keeping in view a number of factors/considerations. The source of purchase money is not conclusive in favour of the benami character of transaction though it is an important criterion but there are other circumstances showing that the purchaser intended the property to belong to the person in whose favour the conveyance was made, the essence of benami transaction being the intention of the purchaser and the court must give effect to such intention. In a benami transaction the actual possession of the property or receipt of rents of the property is most important.

7. The learned Trial Court in Suit No.739/1993 settled the issues *inter alia*, whether the defendant No.1 (Mother) was the lawful owner of property bearing A-153, Block L, North Nizamabad, Karachi; whether the gift of said House No. A-153, Block L, North Nizamabad,

Karachi by the respondent No.1/defendant No.1 to the respondent No.2/defendant No.2 (Rashid Bin Nasir) was illegal and unauthorized; whether the defendant No.1 was the lawful owner of the property No.C-35, Block-9, Works Cooperative Housing Society and whether the sale of the property by the defendant No.1 was illegal and unauthorized. The record reflects that out of aforesaid two properties, one property was purchased in the year 1960 and another property in the year 1970 and the respondent No.1/defendant No.1 (mother) clarified her position with regard to the arrangement of funds and pleaded that both the properties (C-35 and A-153) were exclusively owned by her and purchased from her own resources and out of the income of her sons (the Appellants No.2 and 3 before High Court). The cost of the land of A-153 was paid by her and the construction was raised after securing a loan from the House Building Finance Corporation ("HBFC"), which was then repaid by her on 01.02.1987. It is also matter of record that the predecessor of the appellants/plaintiffs and the husband of the respondent No.1/defendant No.1 died in 1985 but there is nothing on the record that in his lifetime, he ever disputed the ownership of two properties in the name of his wife nor did he ever claim that his wife is the benami/ostensible owner of the said properties. The foremost and primary component in such dispute or controversy is the agreement/understanding, express or implied between the ostensible owner and the real purchaser for the benefit of the person who made payment and it is also required to be proved that the transaction was actually entered into between the real purchaser and seller to which ostensible owner was not a party.

8. The onerous sense of duty lies on the party who raises the plea of benami transaction to prove by adducing unimpeachable evidence. The Court is not required to decide such pleas on the basis of mere suspicion. Moreover, the mode and manner of transaction is to be established by corroborating the intentions of the parties at the relevant time which could be congregated from the surrounding circumstances such as the relationship/association of parties, the motive or aspiration implicit in the transactions including the subsequent comportment and the factum of possession of the property and custody of title documents. The best possible evidence

could have been adduced by the deceased himself if he had any dispute with regard to the title of properties which he never raised in his lifetime. Even if the properties were purchased through the funds or resources of the deceased husband, then both husband and wife were privy to such arrangements/transactions in their own marital relationship and after passing of several years, the children could not question or challenge the title or ownership of properties in the name of their mother without any cogent proof or trustworthy evidence that she was actually an ostensible owner.

9. In view of above, we do not find any justification to cause any interference in the impugned judgment. Consequently, this appeal is dismissed.


Judge
Judge
Judge
Karachi

17.07.2025

Approved for reporting