

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Umar Ata Bandial
Mr. Justice Munib Akhtar
Mr. Justice Qazi Muhammad Amin Ahmed

Civil Appeal No.73 of 2016

(Against the judgment dated 28.05.2015 passed by the Islamabad High Court Islamabad in C.R. No.392 of 2010)

Mst. Attia Bano & others

(in both cases)

...Appellant(s)

Versus

Abdul Majeed

(in both cases)

...Respondent(s)

For the Appellant(s): Kh. Shahid Rasool, ASC

For the Respondent(s): Mr. M. Shahzad Siddique, ASC

Date of hearing: 24.06.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- In the wake of series of consecutive failures, downstairs throughout, the appellants have resigned in their last ditch to defend the title over house No.2070 Sector I-10/2 Islamabad; they are the legatees of ostensible owner of the premises, late Arshad Mehmood Humayun, no other than plaintiff/respondent's real brother. The respondent, a U.S. resident, sought declaration with consequential reliefs on the plea of being the real owner through a suit instituted way back on 6.4.2002, averred wherein is that he had provided funds for the purchase of the plot as well as construction thereon, transacted as *Benami* by appellants' predecessor-in-interest in his own name for procedural convenience, otherwise with no means to acquire or maintain an expensive dwelling in the Federal metropolis; the respondent further relied upon agreement dated 22.4.1993, executed by the deceased wherein he admitted respondent's title with an undertaking to transfer the same, as and when required; the said agreement is part of the record as Ex.P.1 and purports to bind the appellants as well; upon their absence, they were proceeded *ex parte*, however, subsequently allowed to raise the

contest wherein they denied the claim. The suit was decreed vide judgment/decreed dated 29.10.2007, appeal filed by the appellants met with no better fate vide judgment and decree dated 16.3.2010; revision petition before the High Court was declined on 28.5.2015, *vires* whereof, are being assailed on a variety of grounds by leave of the Court. It is contended that the deceased had purchased the plot with his duly explained resources and himself constructed the house thereon for the family; that respondent never claimed ownership of the house during the lifetime of his brother and that agreement dated 22.4.1993 was a forged instrument, contrived to deprive the family of their legacy. The Courts below ran into a unanimous error in constructing the transaction as *Benami* in the face of respondent's failure to establish source of fund, motive, title documents and possession of the premises, warranting interference by this Court, concluded the learned counsel, a position controverted on respondent's behalf.

2. Heard. Record perused.

3. Diametrically opposite positions notwithstanding, *inter se* relationship and respondent's U.S. residence with frequent visits are common grounds. It is also not seriously disputed that the family comprising four brothers jointly dwelled in the premises. The respondent, in the witness box as PW-2, asserted to have supplied the fund for the purchase of plot as well as construction thereon; he also claimed to have financially assisted his brothers, hailing from a different district in their business pursuit besides providing a roof to their families. Despite a somewhat lengthy cross-examination, respondent's categorical claim of being the man behind the scene has not been seriously disputed; the entire exercise is structured on references to events having no bearing on the real issue. Transfer of funds for the purpose has been established by the cross-examiner himself, reproduced as follows:

میں باہر سے ہنڈی کے ذریعہ سے بھیجتا تھا

A channel, though prohibited by law, nonetheless, has been unfortunately a convenient and ubiquitous mode for money transfers. The appellants, confronted with respondent's sound financial position, the evidence led by them sans any substantial source of their predecessor's income to support the hypothesis of purchase of a costly residential unit; according to them, the deceased had a grocery shop, a video game outlet and a commercial van albeit with no tangible proofs; they also claimed loan availed from unnamed well-wishers to carry out the construction. It is also an admitted position that after their predecessor's death, no other moveable or immovable assets

have been taken over by the family. Atia Bano, the widow, appeared as DW-1 and admitted as follows:

درست ہے کہ میں میرا خاوند اور ساجد 1993 میں G-7 میں ایک سرونٹ کو ارٹری میں رہتے تھے۔
یہ درست ہے کہ اس وقت مکان متدعوئیہ کی تعمیر مکمل تھی

She unsolicitedly volunteered explanation about the disputed house having been rented out again with no details to qualify the claim; her following admission is no less damaging to her position:

میرے علم میں نہ ہے کہ میرے خاوند کے نام مکان اس لیے منتقل کرایا تھا کہ مدعی اس وقت امریکا میں تھا

The above excerpts from the evidence clearly vindicate respondent's stance that he had arranged the funds to his brother to manage a residence for the family in Islamabad; two other witnesses, a brother-in-law and a *Peer Bhai*, also fail in their joint effort to improve upon a plea, inherently flawed.

It is established that the family comprising three brothers with their siblings jointly resided in the premises and it is so admitted by no other than Atia Bano (DW-1), in the following terms:

مکان متدعوئیہ میں متوفی کے دو بھائی نذیر اور ساجد بھی فیملی کے ہمراہ مکان متدعوئیہ میں رہتے تھے۔ پھر کہا کہ ارشد بھائیوں زندگی میں ساجد بھی فیملی کے ہمراہ مکان متدعوئیہ میں رہتا تھا اور نذیر کبھی کبھار آتا جاتا رہتا تھا۔

She goes on to acknowledge that the disputed premises is the permanent residential address in respondent's National Identity Card.

The appellants after demise of their predecessor-in-interest were once evicted from the premises and re-entered the same through Court's intervention. Totality of circumstances, reflected from the evidence led by the contestants unambiguously suggests a joint possession over the premises that included the respondent, strongly entrenched therein; his stay in the premises during his visit is also an admitted position.

Respondent's foreign residency and his admitted financial status appears to have been a dominant consideration behind his delegation of the task to his brother to conveniently transact the deal on his behalf and it is so evident from Ex.P-I, executed by appellants' predecessor way back on 22.4.1993, for the convenience of reference, it is reproduced below:

میرے ارشد محمود بھائیوں ولد اللہ دتہ قوم گوندل سکنہ محلہ صوفی پورہ گلی نمبر 2 منڈی بہاؤ الدین تحصیل پچالیہ ضلع گجرات کاہوں۔ جو کہ برادر م حقیقی خود رانا عبد المجید ولد اللہ دتہ سکنہ منڈی بہاؤ الدین حال امریکہ من مقرر کو امریکہ سے رقم بغرض خرید پلاٹ بھیجتا رہا ہے جو اسلام آباد 2/10-I واقع سیکٹر 9/166.6 برقبہ 2070 کہ من مقرر نے برادر مذکورہ کی متذکرہ بالا رقم سے ایک قطعہ پلاٹ نمبر خرید کیا جو بعد میں دو منزلہ عمارت تعمیر کی۔ پلاٹ متذکرہ بالا برادر مذکور کی بجائے من مقرر نے اپنے نام منتقل کروالیا۔ من مقرر نے نامی دار ہے۔ کو ٹھی مذکورہ کا اصل مالک برادر رانا عبد المجید ہے من مظہر کا کوئی تعلق واسطہ نہ ہے۔ اقرار نامہ ہذا کی پابندی مظہر اور وارثان مظہر پر بھی ہوگی۔ من مقرر یہ اقرار نامہ بقائمی ہوش و حواس نمسہ بلا جبر واکراہ بار ضامن دی خود رو بروئے گواہان حاضر بحق عبد المجید مذکور تحریر کر دیا ہے تاکہ سند رہے اور بوقت ضرورت کام آسکے

The stamp vendor appeared as PW-1 to confirm purchase of stamp paper by the deceased whereupon Ex.P-1 was executed in respondent's favour; in cross-examination, by far inconsequential, he vehemently denied suggestion of any foul play. Next in line is Muhammad Munir Akhtar (PW-3) being a real brother of the deceased as well as the respondent; he stands at equidistance; he established execution of Ex.P.1 as well as provision of funds by the respondent for the said house; his deposition being straightforward inspires confidence and by itself is sufficient enough to clinch the issue. Death intervened the entry of Nazeer Ahmed, another brother, signatory to the instrument, in the witness-box; he admittedly resided under the same roof. Evidence of aforesaid witnesses conclusively established execution of agreement Ex.P.1 leaving no space to entertain any doubt that appellants' predecessor was merely an ostensible player, with resources assigned by the respondent to conveniently manage the purchase of land for construction of a house thereon; the burden has satisfactorily been discharged in accord with the law declared by this Court in cases reported as Abdul Majeed & others Vs. Ameer Muhammad & others (2005 SCMR 577) and Muhammad Sajjad Hussain Vs. Muhammad Anwar (1991 SCMR 703). Consensus, concurrently arrived at by the Courts below, admits no interference. Appeal fails. Dismissed with no order as to costs.

Judge

Judge

Judge

Islamabad, the
24th June, 2020
Not approved for Reporting
Azmat/-