

JUDGMENT SHEET

**LAHORE HIGH COURT, MULTAN BENCH,
MULTAN
JUDICIAL DEPARTMENT**

Writ Petition No. 5962 of 2025

Nadeem Akhtar

Versus

Addl. District Judge etc.

JUDGMENT

Date of hearing:	02.10.2025
Petitioner by:	Syed Tajammal Hussain Bukhari, Advocate
Respondent No.12 by:	Sardar Fazal Ahmad Khan, Advocate

SYED AHSAN RAZA KAZMI, J.- Through this writ petition, the petitioner has challenged the legality of judgment and decree dated 14.05.2025 passed by the learned Additional District Judge, Layyah, whereby, while accepting the revision petition filed by respondent No.12, the plaint of the suit was rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**CPC**), and the appeal filed by the petitioner was dismissed being infructuous.

2. Briefly stated, the petitioner, Nadeem Akhtar, filed a suit for declaration and mandatory injunction against his wife, Mst. Shahar Bano (respondent), asserting that the property mentioned in the headnote of the plaint had been purchased by him from one Jahan Ara Begum. Since he was a government servant and could not purchase property in his own name, the property was transferred to the name of his wife as a Benami owner, on the understanding that she was holding it in trust for him. Later, she allegedly refused to reconvey the property.

3. The respondent contested the suit and filed an application under Order VII Rule 11 **CPC** seeking rejection of the plaint on the ground that the suit was

barred under Section 43 of The Benami Transactions (Prohibition) Act, 2017 (“**Benami Act**”). The learned trial court dismissed stay application of the petitioner as well as application under Order 7 Rule 11 CPC filed by respondent vide order dated 18.02.2025.

4. Aggrieved, the petitioner filed an appeal against the dismissal of his injunction application, while the respondent preferred a revision against the dismissal of her application under Order VII Rule 11 CPC. The learned Additional District Judge, vide judgment dated 14.05.2025, accepted the respondent’s revision petition, rejected the plaint, and dismissed the petitioner’s appeal as infructuous. Hence, this writ petition.

5. Learned counsel for the petitioner contends that the learned appellate court misapplied Section 43 of the **Benami Act** and misconstrued the ouster clause relating to jurisdiction of Civil Courts. He submits that for Section 43 to apply, proceedings must first be initiated before the authorities established under the Benami Act, which is not the case here. The dispute between two private individuals does not fall within the exclusive jurisdiction of the Benami authorities. It is argued that the present case is of a civil nature involving the determination of ownership based on an alleged fiduciary or spousal relationship, and hence, cognizable by the Civil Court.

6. Conversely, learned counsel for respondent No. 12 supported the impugned judgment and maintained that the suit was hit by the bar contained in Section 43 of the Benami Act, 2017.

7. I have heard the arguments advanced by the learned counsel for the parties and perused the record.

8. The pivotal issue in this case is whether Section 43 of The Benami Transactions (Prohibition) Act, 2017, operates to oust the jurisdiction of Civil Courts to adjudicate matters pertaining to benami transactions.

9. The Benami Transactions (Prohibition) Act, 2017 targets benami transactions where properties are held by individuals who lack the financial means to purchase them, often used for illicit purposes. The Act establishes a framework for identifying and confiscating such properties through designated

authorities. Section 43 bars Civil Court jurisdiction in matters entrusted to these authorities or tribunals. However, given the Code of Civil Procedure, 1908 (Section 9), such jurisdictional ouster must be strictly interpreted, applying only to explicit or implied bars.

10. It would be beneficial to quote Section 2(8) of the Act, which defines "benami" transactions:-

S. 2(8) Benai transaction means,

(A) a transaction or arrangement,

- (a) where a property is transferred to, or is held by, a person and the consideration for such property has been provided, or paid by, another person;
- (b) the property is held for the immediate or future benefit, direct or indirect, of the person who has provided the consideration, except when the property is held by
 - (i) a person standing in a fiduciary capacity for the benefit of another person towards whom he stands in such capacity and includes a trustee, executor, partner, director of a company, agent or legal adviser and any other person as may be notified by the Federal Government for this purpose; or
 - (ii) any person being an individual in the name of his spouse or in the name of any child or in the name of his brother and sister or lineal ascendant or descendant and the individual appearing as joint owner in any document of such individual and the consideration for such property has been provided or paid out of known resources of income of the individual; or
- (B) transaction or arrangement in respect of a property carried out or made in a fictitious name; or
- (C) a transaction or arrangement in respect of a property where the owner of the property is not aware of, or denies knowledge of, such ownership; or
- (D) a transaction or arrangement in respect of a property where the person providing the consideration is not traceable or is fictitious;

A plain reading of Section 2(8)(A) of the Benami Act defines "benami transaction," while sub-clause (b)(ii) specifically exempts transactions where property is purchased in the name of a spouse or child, provided the consideration is paid from known income sources. Such transactions are therefore statutorily exempt.

11. It is evident that the Benami Act applies only when a transaction falls within the definition of Section 2(8)(A)(a) and not within the exclusions under clause (b). Moreover, the jurisdictional bar under Section 43 is triggered only when the authorities under the Benami Act are seized of proceedings concerning the property in question. In the absence of such proceedings, the matter does not fall within the exclusive domain of the Benami authorities.

12. In the present case, no proceedings have been initiated under the Benami Act regarding the property in dispute. The controversy relates to the ownership and title between spouses, involving questions of fiduciary relationship and intent, which are quintessential civil issues requiring evidentiary assessment. The Appellate Court erred in assuming that the mere mention of "benami" in pleadings automatically divests the Civil Court of jurisdiction. This interpretation contradicts Section 43 and overlooks statutory protections contained in Section 2(8)(A)(b)(ii). Therefore, it is held that the Civil Court has jurisdiction over this dispute, and Section 43's bar does not apply here. This Court in case-law titled as "Syed Tahwer Hussain Rizvi versus Syed Javed Ali Rizvi" (**2022 CLC 1196**) has observed as under:-

"For applicability of Benami Act on a transaction, the property forming subject thereof must be held by a benamidar in terms of clauses (a) and (b) of Section 2(8) (A) and not under the exclusion envisaged thereunder. Similarly, there must be some proceedings, triggered and initiated under Benami Act and/or matters, which any of the Authority or the Tribunal established thereunder are empowered to determine, in respect whereof the jurisdiction of civil courts is barred and not every matter where the issue of benami comes into play can be said to be barred..."

Further reliance may be placed upon case law titled as "Sadiq Rasheed and another versus Mst. Uzma Rizwan and 10 others" (**2022 CLC 492**).

13. In view of above, it can be safely observed that in the instant matter the dispute between the parties, a husband and wife, regarding property ownership is a civil matter that falls within the jurisdiction of the Civil Court. The Appellate Court incorrectly treated Section 43 as an absolute bar to jurisdiction without proper analysis, revealing a misinterpretation of the law by the Additional

District Judge, Layyah, and a failure to appreciate statutory scheme of the Benami Act, 2017.

14. Accordingly, this writ petition is **allowed**, and the impugned judgment dated 14.05.2025 passed by the learned appellate court is set aside. The trial Court shall proceed with the suit on merits, in accordance with law, uninfluenced by any observations made hereinabove.

**(SYED AHSAN RAZA KAZMI)
JUDGE**

**Announced in open Court
on 17th of November, 2025.**

Judge

APPROVED FOR REPORTING

JUDGE

Riaz Anjum