

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

C.R.No.282/2016  
Farooq Ahmed  
**Versus**  
Muhammad Azeem and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	<b>18.09.2019</b>	<b>Mr. Muhamamd Akram Gondal, Advocate for the petitioner</b>

Through the instant civil revision petition, the petitioner, Farooq Ahmed, impugns the *ex-parte* judgment and decree dated 22.03.2016 passed by the Court of the learned Additional District Judge, whereby his appeal against the *ex-parte* judgment and decree dated 06.01.2016 passed by the Court of the learned Civil Judge, Islamabad was dismissed. Vide the said *ex-parte* judgment and decree dated 06.01.2016, the learned Civil Court dismissed the petitioner's suit for declaration, etc. In the said suit, the petitioner had prayed for *inter-alia* a declaration to the effect that he was the real owner of plot No.95, measuring 05 *marlas*, situated at DHA Valley, Islamabad (the suit plot) whereas Adnan Azeem (the predecessor of respondents No.1 and 2) was the ostensible/*benami* owner of the said plot.

2. Learned counsel for the petitioner submitted that the petitioner had full trust and confidence in his nephew Adnan Azeem, who was murdered on 19.02.2014; that since the petitioner was residing in Saudi Arabia, it was more convenient for him to purchase property in Pakistan in his nephew's name; that the total value of the suit plot was Rs.6,55,000/-, which was paid in installments by the petitioner to the Defence Housing Authority ("D.H.A."); that an amount of Rs.5,55,000/- for the suit plot is yet to

be paid; that the petitioner had also paid Rs.27,500/- to the D.H.A.; that although possession of the suit plot and the allotment letter/title document is not with the petitioner but he had sent funds from abroad to Ahmad Hussain Naseem (PW-1) and these funds were used for the purchase of the suit plot; that the evidence produced by PW-1 (Ahmad Hussain Naseem) and PW-2 (the petitioner) went un-rebutted since the defendants in the suit had been proceeded against *ex-parte*; and that the concurrent judgments and decrees passed by the learned Courts below suffer from misreading and non-reading of evidence. Learned counsel for the petitioner prayed for the revision petition to be allowed and for the concurrent judgments and decrees passed by the learned Courts below to be set-aside.

3. I have heard the contentions of the learned counsel for the petitioner and have perused the record with his able assistance.

4. Perusal of the order sheets reveal that respondent No.1 (Muhammad Azeem) was proceeded against *ex-parte* on 12.01.2017 and respondent No.2 (Lubna Adnan) was proceeded against *ex-parte* on 28.03.2017. Respondent No.1 and respondent No.2 are Adnan Azeem's son and widow, respectively. Earlier in the proceedings before the learned Civil Court, the respondents were proceeded against *ex parte* vide order dated 19.03.2015.

5. In essence, the petitioner's case is that the transaction for the purchase of the suit plot was a *benami* transaction, and that the petitioner was the real owner of the suit plot whereas Adnan Azeem was its ostensible/*benami* owner.

6. In order to determine whether a transaction is *benami* or not, Courts are usually guided by the following factors:-

- (1) *the source from which the purchase money came;*
- (2) *the nature and possession of the property, after the purchase;*
- (3) *motive if any, for giving the transaction a benami complexion;*
- (4) *the position of the parties and the relationship, if any, between the claimant and the alleged benamidar;*
- (5) *the custody of the title-deeds after the transaction; and*
- (6) *the conduct of the parties concerned in dealing with the property after the sale.*

7. It is well settled that the burden of proving that a particular sale is *benami* and that the apparent purchaser is not the real purchaser always rests on the person asserting it to be so. This burden has to be strictly discharged by adducing evidence of a definite character which would either directly prove the fact of *benami* or establish circumstances unerringly raising an inference of that fact. The decision of a Court cannot rest on mere suspicion, but must rest on legal grounds and legal testimony. In the absence of evidence, the apparent title must prevail. These principles we have noted from judicial precedents, which for the sake of brevity, need not be listed here.

8. It is also well settled that the primary and most important question in cases where a transaction is sought to be declared as *benami* is the source of the money for the purchase of the property in question. There is a catena of case law in support of the proposition that the source whence the purchase money came is by far the most important test for determining whether the sale standing in the name of one person, is in reality for the benefit of another. A party taking

the plea of *benami* must show that the purchase money was provided by the real owner and not by the *benami* ostensible owner.

9. In the case at hand, there is no evidence on record that the petitioner has transferred funds for the purchase of the suit plot to Adnan Azeem. The learned Trial Court had correctly noted that the receipts of Western Union show that funds were transferred in favour of Ahmad Hussain Naseem. Indeed, if the petitioner had full faith and trust in Adnan Azeem, he should have transferred the funds to Adnan Azeem and no other. The receipts for the payment of installments for the suit plot have been issued by Askari Bank Limited to Adnan Azeem. The transfer of funds by the petitioner to Ahmad Hussain Naseem does not prove that the suit plot was purchased with the funds sent by the petitioner. The original receipts for the payment of installments had not been produced by the petitioner. In the case of State Life Insurance Corporation of Pakistan Vs. Javaid Iqbal (2011 SCMR 1013), it has been held that a document which was not produced and proved in evidence, but only “*marked*”, then the same could not be taken into account by the Court as legal evidence of a fact.

10. The motive for entering into a *benami* transaction has to be clearly pleaded in the suit. There is no pleading in the petitioner’s suit as to the motive for entering into a *benami* transaction. The Superior Courts have time and again held that no party should be permitted to travel beyond its pleadings and that all necessary and material facts should be pleaded by a party in support of the case set up by it. The mere fact that the petitioner was living abroad cannot constitute the motive for entering into a *benami* transaction. A

person living abroad can purchase property in Pakistan by executing a power of attorney in favour of a person in Pakistan. Admittedly, the petitioner is neither in possession of the suit plot nor the provisional transfer letter/title document. Therefore, I am of the view that the conditions for declaring the transaction for the purchase of the suit plot to be a *benami* transaction with the petitioner as the real owner and Adnan Azeem as an ostensible owner have not been satisfied in the instant case.

11. Since the concurrent judgments passed by the learned Courts below do not suffer from any jurisdictional infirmity, the instant revision petition, being devoid of merit, is dismissed. There shall be no order as to costs.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

Ahtesham\*