

Form No: HCJD/C

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Civil Revision No.77 of 2012

Ijaz Hussain Shah

Versus

Ikhlaq Fatima and 02 others.

Petitioner's by : Mr. Gul Hussain Jadoon, Advocate.

**Respondent's by : M/s Muhammad Ali Imran &
Muhammad Latif Saeedi,
Advocates.**

Date of Decision : 03.10.2019

AAMER FAROOQ, J. - The facts leading to the filing of the instant petition are that the petitioner filed a suit for declaration and injunction alleging therein that he is real owner in possession of House No.30, Street No. 36, Sector F-6/1, Islamabad and the referred property is in the name of defendant No.1 on benami. The suit was contested by respondent No.1. Out of the divergent pleadings, the following issues were framed:-

- 1. Whether the plaintiff has no cause of action to file the present suit against the answering defendant? OPD**
- 2. Whether the suit is no maintainable and is liable to be rejected U/O 7 Rule 11 CPC? OPD**
- 3. Whether the suit is barred U/S 49-E of CDA Ordinance? OPD**
- 4. Whether the plaintiff is entitled to the decree for declaration and mandatory injunction as prayed for? OPP**
- 5. Relief.**

The parties led their respective evidence, which included oral and documentary evidence. The learned trial Court dismissed the suit of the petitioner. Appeal was filed by the petitioner, which was also dismissed on 24.05.2012, hence the petition.

2. Learned counsel for the petitioner, *inter alia*, contended that initially respondent No.1 filed a conceding written statement, however subsequently, when she was proceeded ex parte made an application for setting aside ex parte proceedings and filed the contesting written statement. It was submitted that the petitioner proved benami through cogent evidence and in this behalf, the testimony of PW-1 & PW-2 is confidence inspiring and clearly establish that the plot was purchased by the petitioner and even construction was raised by him. It was submitted that the original title documents are in possession of the petitioner and motive is that at the relevant time father of respondent No.1 had died and she felt insecure. Learned counsel placed reliance on cases reported as **"Muhammad Sajjad Hussain vs Muhammad Anwar Hussain" (1991 SCMR 703), "Muhammad Zaman vs. Sheikh Abdul Hamid" (2002 CLC 1209), "Malik Muhammad Zubair vs. Malik Muhammd Anwar" (PLD 2004 Lahore 515), " Feroze Din vs. Jan Bibi" (2006 CLC 1815) and "Mst. Sabira Begum vs. Hakim Muhammad Akhtar" (1993 MLD 955).**

3. Learned counsel for respondent No.1, *inter alia*, contended that fact that respondent No.1 did not appear in the witness box is immaterial. Reliance was placed on cases reported as **"Abdul Qayyum vs. Haji Badri Zaman" (2008 MLD 152), "Muhammad Islam Khan vs. Muhammad Anwar Khan" (2002 CLC 960).** It

was also contended that the elements of benami have not been proved. Reliance was placed on cases reported as **"Chuttal Khan Chachar vs. Mst. Shahida Rani"** (2009 CLC 324), **"Ch. Ghulam Rasool vs. Mrs. Nusrat Rasool"** (PLD 2008 SC 146) and **"Ghulam Murtaza vs. Mst. Asia Bibi and others"** (PLD 2010 SC 569).

4. Arguments advanced by the learned counsel for the parties have been heard and documents placed on record examined with their able assistance.

5. The controversy between the parties has been stated hereinabove, therefore, need not be reproduced.

6. The petitioner claims to be real owner of the above mentioned property, hence had to prove benami; the principles of benami have been clearly spelt out in a number of cases and constitute sources of income; who is in possession of the property; motive of benami transactions and custody of the original title and other documents. The petitioner in the plaint has categorically alleged that the property was purchased by him from his own sources and even the construction was raised. In support of his referred contention, he led evidence of PW-1 & PW-2; both the witnesses do not state anything about the source of income from which the petitioner paid to the vendor. Likewise, the petitioner in his own testimony has not been able to state from where did he draw the amount for payment of the house and raising of the construction. No details of bank accounts or such other document was produced in the Court. Hence in light of the referred facts one of essential ingredients of benami i.e. the source of income from which the plot was purchased and subsequently

construction was raised has not been duly proved and the findings of the trial Court and Appellate Court do not suffer from misreading and non-reading of the evidence. It was also alleged that the property has been leased by the petitioner and the rent received by him, lease agreements of the properties were tendered in evidence as Exhibit PW-13 & PW-14. The referred lease agreements are with respect to some other properties and not the one in question. Much emphasis was laid by the petitioner that the respondent No.1 filed conceding written statement, however, to the contrary the petitioner also presented in evidence Exhibit PW-17 & PW-18 which comprise declaration duly executed by the petitioner stating categorically that the property in question is owned by respondent No.1. The fact that respondent No.1 did not appear in the witness box is inconsequential in this behalf reliance is placed on case reported as **"Abdul Qayyum vs. Haji Badri Zaman" (2008 MLD 152) and "Muhammad Islam Khan vs. Muhammad Anwar Khan" (2002 CLC 960).**

7. The onus was on the petitioner to prove that the transaction in favour of his wife was benami, however he failed to discharge the said burden. The judgments impugned do not suffer misreading and non-reading of evidence and/or there is no error of law.

8. In view of above, the instant petition is without merit and is accordingly **dismissed.**

**(AAMER FAROOQ)
JUDGE**

Shakeel Afzal