

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

FAO NO. 134 OF 2018

Mrs. Nargis Fatima

Vs.

Khuda Bukhsh & another

Appellant: **Sardar Arshad Mahmood Khan, Advocates.**

Respondent No.1: **Syed Ashfaq Hussain Naqvi, Advocate.**

Respondent No.2: **Ch. Zaheer Ahmed, Advocate.**

Date of Decision : **16.03.2020.**

LUBNA SALEEM PERVEZ, J. This appeal has been filed against order dated 27.10.018 passed by the Learned Civil Judge 1st Class, Islamabad-West, whereby the application under Order XXXIX, Rule 1 & 2 filed by Respondents was allowed with the direction to maintain status quo in respect of the suit property.

2. In the present case, the dispute between the parties, who are also wife and husband, is regarding the ownership of a property bearing House No. 1295, St No. 90, Sector I-10/1, Islamabad (hereinafter the suit house). The Appellant claims to have purchased the said property through a sale agreement dated 01.08.2007 from one Azmat Hussain Chohan against sale consideration of Rs. 7,850,000/-, with the financial support of her father and brothers. On the other hand Respondent asserts that purchase of the suit house was made through "benami transaction" on Respondent's behalf, on the ground that he has arranged and paid the sale consideration of Rs. 7,850,000/- to purchase the suit house in Appellant's name using his wife.

3. Learned Counsel for the Appellant contended that the Appellant is the owner in possession of the suit house; all the original title documents concerning the property are also with the Appellant and the suit house has been purchased by the Appellant with the financial support of her father and brothers. Learned counsel further contended that the evidence of payment of sale consideration regarding purchase of the suit house are also available with her, whereas, the Respondent was also one of the witnesses of sale transaction. Learned counsel apprised that the suit pending for trial is the second suit filed by the Respondent after withdrawing the previous suit, therefore, the question of benami purchase of the suit house does not arise and that the Learned Trial Court has not considered this submission while allowing application under Order XXXIX Rule 1 & 2 CPC while granting interim injunction for maintaining status quo.

4. On the other hand, the Learned Counsel for Respondent while defending the impugned order submitted that the suit house was purchased by the Respondent in Appellant's name which fact can be proved through documentary evidence. Learned counsel further submitted that being a government servant Respondent, he could not purchase the property in his own name; that after purchase of the suit house in her name the behavior of the appellant was suddenly changed and now he apprehends that the appellant will sell the property as she is in possession of all the title documents concerning the suit house, hence, it was inevitable that she be restrained from selling, alienating or transferring the suit house since now disputed for ascertaining its actual ownership and title. Learned counsel submitted that the restraining order is just and proper under the facts and circumstances of the case.

5. Heard learned counsel for the parties and perused the impugned order.

6. The impugned order has been passed to restrain both parties for creating any third party interest and its perusal revealed that both the parties are claiming to

have the documentary evidence in respect of the purchase of the suit house. The Respondent since, has claimed the purchase of the suit house as his benami property, the onus is thus on him to prove his contention with factual and legal justifications. As it is a settled principle that in appeals this court has limited jurisdiction to the extent of correcting illegality or jurisdictional defect in the impugned order and until and unless same does not suffer from material irregularity, the impugned order cannot be interfered for resolves the controversy. The Counsel for the Appellant has not been able to point out any flagrant violation or legal lacuna in the impugned order which is only a restraining order for both the parties in respect of the disputed property. It has been noted that the trial is in process and the learned Trial Court while directing the parties to maintain status quo has also framed the issues for inviting evidence of the parties thereupon, therefore, no prejudice would be caused to any of the party if the order regarding status quo is maintained.

7. Keeping in view the fact that the controversy is entirely regarding the ownership of the suit property which fact can well be ascertained after recording of evidence, I am of the considered opinion that the impugned order does not suffer from any legal infirmity which rather a fair order under the facts and circumstances of the case; hence upheld. However, the learned Trial Court is directed to finalize the trial proceedings expeditiously in accordance with law.

8. The Appeal, being devoid of merits, is **dismissed** accordingly.

(LUBNA SALEEM PERVEZ)
JUDGE