IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

IInd Appeal No.104 of 2024
'Hussain Ameer and another versus Mst. Rubina Mufti and others'

Revision Application No.176 of 2024
'Mohsin Ameer versus Mst. Rubina Mufti and others'

Revision Application No.190 of 2024
'Mst. Mehr Darakhsh versus Mst. Rubina Mufti and others'

Mr. Nabeel Kolachi, Advocate for Appellants in IInd Appeal No.104 of 2024
Mr. Atta Hussain Chandio, Advocate for Applicant in Revision Application No.176 of 2024 and for Respondent No.10 in IInd Appeal No.104 of 2024

Mr. Muhammad Hamayoon Khan advocate for Applicant in Revision Application No.190/2024

Mr. Waqar Sial Advocate for Respondents 1 to 4 in IInd Appeal No.104 of 2024

Mr. Irfan Ahmed Qureshi, Advocate for Respondent No.1 in R.A. No.176 of 2024 and for Respondent No.9 in IInd Appeal No.104 of 2024

Mr. Allah Bachayo Soomro, Addl. AG Sindh

Dates of hearing: 21.11.2025, 18.12.2025 and 19.12.2025

Date of Announcement: 13.04.2025

JUDGMENT

MUHAMMAD HASAN (AKBER), J.- Through this consolidated Judgment, the subject two Revision Applications and the Appeal are being decided, due to commonality of law and facts, wherein the Judgment and Decree dated 18.05.2024 passed by the learned VIII Additional District Judge Hyderabad have been assailed, which upheld the Judgment and decree dated passed by the learned Senior Civil Judge Hyderabad in F.C Suit No.137 of 2006.

2. Gist of the arguments jointly pleaded by counsel for appellant/ applicants side was that the learned trial Court transgressed its jurisdiction decreeing the suit with respect to those properties, regarding which reliefs were not even sought in the plaint; that there was no prayer to seek declaration of Benamidar in the plaint, yet such a decision was also taken by the trial Court. Further argued without prejudice that while issuing declaration of Benamidar, even the bar of limitation was not considered. Based *inter alia* upon the above and other arguments, it was jointly prayed that the impugned Judgments and decrees be set aside. Reliance was placed upon PLD 2016 Lahore 383, 2023 MLD 576, 2005 SCMR 577, 2016 YLR Note 139 and 2017 CLC Note 225. It was additionally argued that although the applicant in Revision Application No.190 of 2024 (claiming to be the daughter of the deceased) was also a co-owner in the suit property, based upon her claim in inheritance, her application under Order I Rule 10 CPC. before the learned appellate Court was rejected in Civil Appeal 35 of 2014. She claims that she was deliberately not impleaded as a party to the proceedings, and as soon as she came to know about the decree, she immediately approached the appellate Court, yet her application was disallowed for being completed as a party.

3. Conversely, all such arguments were controverted; and the impugned Judgment and decree were defended by the learned counsel for the Respondent Nos.1 to 4, through the "**written synopsis**" dated 22.12.2025.

4. Heard learned counsel, perused the record, proceedings and the written synopsis filed by respective parties.

5. Succinct facts of the case are that Mst. Rubina Mufti and 5 others filed F.C Suit No.137 of 2006 before the learned Senior Civil Judge Hyderabad, for declaration, possession, cancellation of documents and permanent injunction, claiming ownership of land being an area of 0-03-13 ghuntas from Survey No.279/2 (0-26) ghuntas of deh Seri Taluka Qasimabad, District Jamshoro (**Suit property**); seeking cancellation of the registered sale deed dated 19.12.2005 (**Sale Deed**) concerning the suit property; seeking possession of the suit property; and lastly, seeking permanent injunction with respect to the suit property. It was claimed in the plant that Amir Ali Chandio (**the deceased**) was a civil servant serving in the police department, who contracted two marriages i.e. the first one in 1978 with Mst. Shaista @ shama (Defendant No.3), and the second one in 1984 with Mst. Rubina Mufti (Plaintiff No.1).

6. After filing of written statements by the respective defendants, the following eight issues were framed by the Court:

"**ISSUES**

1. Whether suit is not maintainable in law?
2. Whether suit is bad for mis-joinder of necessary party?
3. Whether plaintiffs are rightful owners of **suit property i.e. an area measuring 0.03-13 ghuntas** from R.S. No. 279/2 (0-26) ghuntas of **Deh Seri Taluka Qasimabad District Jamshoro**?
4. Whether general power of attorney dated 30-11-2005 in favour of defendant No. 1 and registered sale deed dated 19-12-2005 executed by defendant No. 01 in favour of defendant No. 02 are illegal, mala fide, void, ab initio, fraudulent, bogus one?
5. Whether subsequent sale by defendant No. 7 to the defendant No. 8 is also illegal, void, fraudulent?
6. Whether entry No. 1425 dated 28-12-2005 is illegal, void, mala fide?
7. Whether plaintiff is entitled for any relief as prayed?
8. What should the decree be?"

[underlining added for emphasis]

7. To prove her case, the Plaintiffs examined four witnesses, whereas on part of the Defendants, Mohsin Amir Chandio was examined. Upon completion of the trial, the suit of the plaintiff was decreed, through a consolidated Judgment and decree, which was assailed in Civil appeal No.35 of 2014 before the learned VIII ADJ Hyderabad, by the present applicant (in Revision Application 176/2024); and also by the appellant (in IInd Appeal 104 of 2024). Both were dismissed vide impugned Judgment and decree, which is assailed in the present proceedings.

8. The first argument from the applicant/ appellant side was that the decree was passed with respect to property which was not even sought in the subject suit. Perusal of the plaint reflects that the following prayers were sought in the Suit:

"**Prayers:**

(a) that this Honourable court may be pleased to declare that the Plaintiffs are rightful owners of ***suit property i.e. an area measuring 0.03-13 ghuntas from R.S. No. 279/2 (0-26) ghuntas of Deh Seri Taluka Qasimabad District Jamshoro****.*

(b) To judge/cancel the alleged general power of attorney dated 30.11.2005 in favour of defendant No.1 and registered sale deed dated 19.12.2005 executed by Defendant No.1 in favour of defendant No.2 in respect of **an area 3.13 ghuntas** from total area of 0.16.13 ghuntas out of survey No.279/2 (0-26) ghuntas of Deh Seri Taluka Qasimabad District Jamshoro *which are illegal, mala*

fide, void ab initio, fraudulent, bogus one and not binding upon plaintiffs;

(b-1) Subsequent sale by defendant No.7 to defendant No.8 is also illegal, void, fraudulent and is not binding upon plaintiffs. Entry number 1425 dated 26.12.2005 of VF. VII-B showing ***an area*** **3.13** from S.No.279/2 (0-26) ghuntas of Deh Seri *which is illegal, void, mala fide and bad in law.*

(c) To direct defendants 1, 2, 3, 6, 7 and 8 to hand over the vacant possession of suit property as mentioned in para supra to the plaintiffs.

(d) to grant permanent injunction against the defendant thereby restraining the Defendants Nos. 7 and 8 from selling, alienating, exchanging, mortgage and creating any kind of encumbrances over the suit land mentioned above directly or indirectly, personally or through their agents, servants or subordinates, attorneys, assignee and associates i.e. in any way in manner whatsoever and also restrain the Defendant No.4 from issuing of Sale Certificate in respect of suit property in favour of Defendant No.8."

[emphasis added]

9. In the **Decree** impugned, the following reliefs were allowed to the Plaintiffs:

"DECREE

The above said suit came-up for final disposal on 31-03-2014 before Mr. Muhammad Asif Soomro, 2nd Senior Civil Judge, Hyderabad in presence of parties and their counsel, the suit of the plaintiff No.1 is partly decreed, prayer clause (a) partly allowed while prayer clause (b), (b-1), (c), (d) and (e) including (f) ***whereby both plots bearing Nos. A-15 and A-16 the plaintiff No. 1 is entitled to the share*** *according to Muhammadan Law at present market value in the suit property along with legal heirs of late Ameer Ali Chandio viz defendants No. 1 to 3 and Mst. Darakhshan. The subsequent transaction/sale are illegal, null and void hence, cancelled. Plaintiff No.1 is entitled to get possession according to her share while received amount Rs.4,00,000/- (Rupees four lacs) from defendant No.3 as per her own admission in evidence will be adjusted. There is no order as to costs."*

[emphasis added]

10. The applicants/appellant have argued that although F.C. Suit No.137/2006 was filed only with respect to one property (16-A area 3.13 Ghuntas), yet the learned trial Court proceeded to decree the Suit with respect to two properties (one property having area 3.13 Ghuntas "suit property", and the other property having area of 3.31 Ghuntas). In response to the above, the first explanation put forth by

Respondents 1 to 4 is at paragraph 6 of their written synopsis dated 22.12.2025, filed in second appeal S-104 of 2024:

> **"6. It is admitted that the suit was only filed for plot A/16 wholly but as the matter of fact the plot No.A/15 also attached with the issue and that's why it was discussed."**

11. The second explanation by Respondents 1 to 4 (as at paragraph 9 of their written synopsis) was that all other reliefs additionally given to the Plaintiff were based on the last **prayer clause "f"** in the plaint:

> **"any other relief which this honourable Court deems fit and proper may also be awarded".**

12. I have carefully perused the record and from a bare comparative analysis of, (i) the prayers sought in the plaint; (ii) the Issues farmed by the Court; (iii) the Judgment and decree passed by the learned trial Court; and (iv) the above reproduced written arguments of the contesting Respondents 1 to 4, it appears that the F.C. Suit No.137/2006 was filed only with respect to property No.16-A area 3.13 Ghuntas (**suit property**), however the learned trial Court proceeded to decree the Suit with respect to two properties i.e. one property having an area 3.13 Ghuntas (suit property), and another property having an area of 3.31 Ghuntas. Apparently, neither any prayer was sought in the plaint, nor any Issues were framed with respect to the said second property having an area 3.31 ghuntas, yet the learned trial Court proceeded to decree the second property. Such an exercise was beyond the prayers sought in the Suit. The explanation put forth by the Respondents 1 to 4 to justify the inclusion of other properties in the Judgment and decree is completely untenable and unsustainable. The established legal position under Order VII rule 1 CPC. is that a plaint shall state specifically the relief which the Plaintiff claims. As held by a Division Bench of this Court in ***A.R. Builders Pvt. Ltd.***[1] The Court cannot grant larger relief than that claimed, nor shall the Court grant relief which has not been prayed for. Courts would not travel outside the scope of the suit to grant either final or interim relief of the nature which has no nexus with the facts pleaded in the plaint and/or relief sought in the suit. The Courts are bound in law to confine themselves to reliefs sought and/or which flow from the

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1. P 2004 K 492 Messrs A.R. BUILDERS (PVT.) LTD. v. Faisal Cantonment Board and 4 others' (PLD 2004 Karachi 492), 2001 SCMR 19 'Government of Balochistan v Ghulam Muhammad'

facts pleaded in plaint. In the instant case, the additional property having an area of 3.31 ghuntas was neither mentioned in the plaint nor any relief was sought with respect thereto and therefore, passing of the decree with respect to such a property was not permissible, and the decree to the extent of such property is therefore set aside.

13. Secondly, upon further comparative analysis of the prayers, the Issues, and the Judgment and decree reveal that no prayer in the plaint of the suit was sought with respect to any declaration that the suit property was a Benamidar, or was owned by an ostensible owner, nor any issues were framed with respect thereto. However, the learned trial Court proceeded to declare in the impugned Judgment, that the said properties were being held by the ostensible / benamidar owners, without even considering that for the determination of the question, whether a transaction is a Benami transaction or not, *inter alia*, the following factors must be taken into consideration:

(i) the source of consideration;
(ii) from whose custody the original title deed and other documents came in evidence;
(iii) who is in possession of the suit property; and
(iv) motive for the Benami transaction.

14. On the contrary, to the above ingredients are distinct from the prayers in the present case, wherein neither any such relief for declaration of benamidar was sought, nor any such Issue was framed, nor any opportunity in the trial was allowed to the parties to adduce evidence with respect thereto. Such an exercise by the learned trial Court was beyond the reliefs prayed in the suit; in excess of its jurisdiction; and was also not in consonance with the principles settled by the superior Court, and such observations and conclusions are therefore set-aside. Reliance is placed on the cases of ***Abdul Majeed***[2], ***Muhammad Sajjad Hussain***, ***Muhammad Zaman*** and ***Din Muhammad Vagan***. In Abdul Majeed, the Honourable Supreme Court held that,

"The initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar for him and that the weakness in the defence evidence would not relieve a plaintiff from discharging the above burden of proof. However, the burden of proof may shift from one party to the other during the trial of a suit. Once the burden of proof is shifted from a plaintiff on a defendant and if he fails to discharge the burden of proof so shifted on him, the plaintiff shall succeed. The question whether a transaction is Benami in character or not has to be decided keeping in view a number of factors/considerations. The source of purchase money is not conclusive in favour of the Benami character of a transaction though it is an important criterion and that where there are other circumstances showing that the purchaser intended the property to belong to the person in whose favour the conveyance was made, the essence of Benami being the intention of the purchaser, the Court must give effect to such an intention. In a Benami transaction the actual possession of the property or receipt of rents of the property is most important.

The question whether a particular sale is Benami or not, is largely one of fact, and for determining this question, no absolute formula or acid test uniformally applicable in all situations, can be laid down. Following are considerations for deciding the question of Benami character of a transaction.

(i) It is the duty of the party who raises such plea to prove such plea by adducing cogent, legal, relevant and unimpeachable evidence of definitiveness. The Court is not required to decide this plea on the basis of suspicions, however, strong they may be.

(ii) That Court is to examine as to who has supplied the funds for the purchase of property in dispute. If it is proved that purchase money from some person other than the person in whose favour the sale is made, that circumstance, prima facie, would be strong evidence of the Benami nature of the transaction.

(iii) The character of a transaction is to be ascertained by determining the intentions of the parties at the relevant time which are to be gathered from all the surrounding circumstances i.e. the relationship of parties, the motives underlying the transactions and any other subsequent conduct.

(iv) The possession of the property and custody of title deed."

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2. 'Abdul Majeed and others v. Amir Muhammad and others' (2005 S C M R 577), Muhammad Sajjad Hussain v. Muhammad Anwar Hussain 1991 SCMR 703, Muhammad Zaman v. Sheikh Abdul Hamid 2002 CLC 1209 and Din Muhammad Vagan v. Mst. Rashida Khatoon 2002 CLC 1573 ref.

16. Thirdly, the learned trial Court also failed to consider that the relevant time limitation for filing of such a suit, in the absence of any express provision, under Article 120 of the Limitation Act, as a residuary provision was 6 years. Per the appellants/ applicants, the Suit was filed 10 years after demise of the deceased, however neither the said point was pleaded, nor any issue was framed, nor any evidence was recorded, nor the same was even considered by the learned Trial Court, which again violated settled principles settled by this Court in the cases of ***Kaleem Hyder Zaidi***, ***Karam Hussain Khan***, ***Sharifan Bibi*** and ***Nazimuddin Ahmad***.[3]

17. Lastly, turning to the Revision Application No.190 of 2024, the application clearly reflects that despite being a legal heir of the deceased, the said applicant was not impleaded as a Defendant in the suit. No explanation whatsoever was put forth by the Respondent side in this regard. The applicant was a proper and necessary party, who has a right to a fair trial under Article 10-A of the Constitution, and the right to be impleaded as a party under Order I rule 10 CPC. The Revision application is therefore allowed.

18. Upshot of the above discussion is that, without recording my findings with respect to the merits or de-merits of the claims by the respective parties, lest it may prejudice the rights of either side, it is therefore ordered that the instant Revision Applications (176/2024 and 190/2024) and the Appeal (104/2024) are allowed; and the impugned Judgment and decree dated 18.05.2024 passed by the learned VIII ADJ Hyderabad in Civil Appeal No.35/2024 and the Judgment and decree dated passed by the learned Senior Civil Judge Hyderabad in F.C Suit No.137 of 2006**,** are set aside. The matter is remanded back to the learned trial Court with directions, firstly, to implead Mst. Mehr-e-Darakhshan (applicant in Civil Revision 190/2024) as Defendant No.9 in the Suit; and thereafter to allow her to file written statement. The said Defendant No.9 shall have right to cross-examine the Plaintiff/ witnesses on evidence already recorded in Court, and also the right to produce her evidence as well. The parties to the suit shall also have a right to cross-examine

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3. Kaleem Hyder Zaidi v. Mahmooda Begum (2006 YLR 599), Karam Hussain Khan v. Sairan Bibi and other' (2013 MLD 713), 'Sharifan Bibi and others v. Abdul Majeed Rauf and others' (PLD 2012 Lahore 141) and 'Nazimuddin Ahmad v. Ainuddin Ahmad and others' (PLD 2010 Karachi 148).

Defendant No.9/ her witness(es). The above exercise shall be completed within a period of 60 days from the date of receipt of this Judgment. Secondly, upon completion of the above exercise, Final Arguments by all the parties may be heard by the learned trial Court within 30 days after completion of the above-discussed evidence. Thirdly, the learned trial Court shall proceed to pass Judgment and decree based upon the evidence produced by all parties, while remaining within the parameters of the suit, and to the extent of the prayers sought therein.

19. The instant Revision applications and the Appeal stand disposed of in the above terms, along with all pending applications, with no order as to costs. The office is directed to return the R&P to the learned trial Court.

JUDGE