

JUDGMENT SHEET  
**IN THE HIGH COURT OF SINDH  
CIRCUIT COURT MIRPURKHAS**

2<sup>nd</sup> Appeal No.S-61 of 2024

Appellants: Mubarak & others all through the attorney power of appellant No.9 Mr. Saleem s/o Malook. Through, Mr. Muhammad Ayoub Chanhio, Advocate.

Respondent Nos.2 to 5: Through Mr. Imdadullah Hingoro, Advocate.

Official Respondents: Through Mr. Muhammad Sharif Solangi, A.A.G.

Date of hearing: 11.02.2026.

Date of Decision: 27.02.2026.

**J U D G M E N T**

**MIRAN MUHAMAD SHAH, J:-** Through this 2<sup>nd</sup> appeal, appellants have challenged the Judgment and decree dated 21.12.2018 passed by the learned Additional District Judge, Khipro in Civil Appeal No.132 of 2017 [Re-Mubarak & Others v. Baracho & others] whereby dismissed the appeal, which was filed against the impugned Judgment and Decree dated 02.11.2017 passed by Senior Civil Judge, Khipro in F.C Suit No.30/2015 and 23/2016, whereby suit was decreed. Hence, the appellants have approached this Court for setting aside the impugned Judgments and Decree passed by the Courts below.

2. The brief facts to decide this appeal are that, an agricultural land measuring 10-00 acres out of U.A. No. 136, Deh Ghandelan, Taluka Khipro, District Sanghar (hereinafter referred to as the "suit land"), was allegedly allotted in the year 1973-74 by the Barrage Department on *harp* condition in the name of late Khaki s/o Mubarak Hingoro, at the instance of late Nabi Bux s/o Hakim Hingoro. According to the plaintiffs/private respondents, a sketch/map of the suit land

was prepared and irrigation water was sanctioned by the Superintending Engineer, Nara Canal Circle. It is further asserted that the Malkana (price/cost) of the suit land was deposited by late Nabi Bux on behalf of late Khaki. The plaintiffs aver that since inception, possession of the suit land remained with late Nabi Bux Hingoro, who, out of the total area, gifted 02-00 acres each to his relatives namely Hamzo s/o Muhammad Khan, Jamal s/o Photo, and Abdul Sattar s/o Photo, who constructed their houses and resided on their respective portions. The remaining 04-00 acres are stated to be in possession of the plaintiffs/private respondents. It is further stated that Nabi Bux passed away about two to three years ago. The plaintiffs/private respondents claim that the original documents of the suit land are in their custody and that it had been mutually settled between late Nabi Bux and late Khaki that the suit land would eventually be transferred in favour of late Nabi Bux, as he had secured its allotment adjacent to the plaintiffs' residence and had borne all expenses on behalf of late Khaki, who reposed bona fide trust in him due to their relationship. It is further averred that in 1999, plaintiff No.1/private respondent No.1 submitted an application to defendant No.12/respondent No.10 for making an entry in the revenue record, which was endorsed to defendant No.13 vide letter No. KHP/C/412/1999 dated 16-09-1999; however, the T.O. (Tear Off) Form was not issued on the ground that the suit land, having been granted from an un-assessed number, had not been properly measured. The plaintiffs further state that in June 2015, defendants No.1 to 9/appellants filed an application before the Civil Judge & Judicial Magistrate, Khipro, alleging harassment, threats, and pressure by the plaintiffs to transfer the suit land in their favour, which application was dismissed. It is alleged that defendants No.7 and 9 are mischievous persons who instigated defendants No.1 to 6 to create unnecessary disputes. It is also stated that late Khaki had expired about eight to ten years earlier, yet defendants No.1 to 6 moved an application in 2005 despite residing approximately five kilometers away from the suit land. The plaintiffs apprehend that defendants No.1 to 9 may forcibly

dispossess them from the suit land. They maintain that defendants No.1 to 6 have no lawful concern with the suit land, as the transaction was benami in nature, and that being the legal heirs of late Nabi Bux Hingoro, they are entitled to its transfer in their favour. Consequently, they instituted the suit seeking judgment and decree with prayers as under;

A. Declaration that plaintiffs are entitled to transfer of suit land viz 10-00 acres, from U.A No.136, situated in deh Ghandelan, taluka Khipro, District Sanghar in their favor being a benami transaction and such T.O of suit land be issued in the name of late Nabi Bux Hingoro.

B. Grant permanent injunction restraining and prohibiting the defendants in general from issuing T.O of suit land in the name of late Khaki s/o Mubarak Hingoro, causing tampering in record of suit land adverse to plaintiffs and defendants No.1 to 9 from interfering into peaceful possession of suit land themselves, or through their successors, subordinates, helpers, attorneys, any way in any manner whatsoever without due course of law.

C. Award costs of the suit to plaintiffs.

D. Grant any other relief which this Honourable Court deem fit and proper under the facts of the circumstances.

3. On notice, appellants/Defendant No.1 to 9, through attorney defendant No.9 filed a written statement, whereas the remaining official defendants were declared ex-parte. The appellants/defendant Nos.1 to 9 in their written statement Private defendants/appellants in their joint written statement denied the claim of the plaintiffs/private respondents asserting that no any allotment was made by Barrage Department to late Nabi Bux s/o Hakim Hingoro from 1973-1974 on harp condition, rather claimed that land was allotted to their elder namely late Khaki and water was also sanctioned to him in respect of suit land. Defendants/appellants denied that late Nabi Bux paid a single penny towards Malkana of suit land rather claimed that malkana was paid by late Khaki. Defendants/appellants denied that possession of suit land was with late Nabi Bux or plaintiffs, or Hamzo, Jamal & Abdul Sattar. Defendants/appellants claimed that land in question is

in their possession and uncultivable while plaintiffs have evil eyes upon the suit land and they want to occupy the same illegally. It is denied by defendants/appellants that plaintiffs/private respondents are in possession of original documents of the suit land and stated that original documents are in possession of legal heirs of late Khaki while no any settlement was made between late Nabi Bux and late Khaki regarding transfer of land in the name of late Nabi Bux. Defendants/appellants alleged that plaintiff No.1/respondent No.1 is neither owner nor concern or any right for transfer of suit land, therefore, suit was/is not maintainable, causeless, undervalued & barred by section 42 of Specific Relief Act, 1877, hence liable to be dismissed with special costs.

4. The trial Court framed following issues:-

- a) Whether suit is not maintainable?
- b) Whether late Nabi Bux s/o Hakim Hingoro got allotment of suit land an area 10-00 acres out of U.A No.136, Deh; Ghandelan in the name of late Khaki s/o Mubarak Ali Hingoro and late Nabi Bux has paid the price of suit land?
- c) Whether Late Khaki s/o Mubarak Hingoro is Benamdar?
- d) Whether the plaintiffs are entitled for the transfer of suit land being the legal heirs of late Nabi Bux Hingoro?
- e) Whether plaintiffs have no cause of action to file this suit?
- f) Whether plaintiffs are entitled for relief claimed?
- g) What should the decree be?

5. To substantiate their claim, the plaintiff No.1 examined himself as PW-1 at Exh.27, he produced certified true copy of sketch of suit land at Exh.27/A, Original receipt of payment of allotment fee of suit land at Exh.27/B, deposit slips of payment of installment of suit land at Exh.27/C, Dhal receipt for the year 1974-75 at Exh.27/D, Dhal receipt for the year 1975-76 at Exh.27/E, Dhal receipt for the year 1978-79 at Exh.27/F,

Dhal receipt for the year 1999 at Exh.27/G, Dhal receipt for the year 1997-98 at Exh.27/H; Muhammad Saifal Tapedar Tappa Rar as PW-2 at Exh.28; Jamal s/o Photo as PW-3 at Exh.29; Jean s/o Muhammad Khan as PW-4 at Exh.30; Muhammad Ali s/o Qurban Ali, Junior Clerk (authorized by Mukhtiarkar Estate Sanghar) as PW-5 at Exh.32, he produced authority letter at Exh.32/A, Original A-Form bearing No. PE-246 at Exh.32/B, Original Page-55 of Day Book at Exh.32/C, Original Page 71 of day book at Exh.32/D, Original entry No.76 dated 20.04.1987 of day book at Exh.32/E, carbon copy of receipt No.14 regarding payment of survey charges at Exh.32/F, entry No.215 dated 17.07.1973 of Offer Book at Exh.32/G, Original sketch of granted land as per A-Form 246 (Drawn on backside) at Exh.32/H and verified receipt at Exh.27/B, 27/B, 27/C [Originals of Exhibits No.32/B to 32/G seen, exhibited, returned & copies kept on record]; Photo Khan s/o Abdul Hakim as PW-6 at Exh.33, thereafter, plaintiffs' closed their side of evidence vide statement at Exh.35.

6. On the other hand, in rebuttal the defendants led evidence through Special Attorney Muhammad Saleem (Defendant No. 9) as DW-1 at Exh.40 he produced original special power of attorney bearing stamp paper serial No.921 at Exh.40/A; Muhammad Uris s/o Gul Hassan as DW-2 at Exh.41 and Muhammad Ali Junior Clerk (Authorized by Mukhtiarkar Estate Sanghar) as DW-3 at Exh.42, he produced and verified already exhibited documents at Exh.32/B, 32/C, 32/D, 32/E, 32/F, 32/G and 27/B, thereafter defendants' counsel closed the side of evidence vide statement at Exh.No.43.

7. The learned trial Court after hearing the advocate for parties passed the impugned judgment and decree, which have been assailed by learned Additional District Judge, Khipro, and through instant appeal, the appellants, seeking the reversal of the learned court's below decision.

8. The learned counsel for the appellant has argued that the impugned judgments and decrees passed by both the learned

trial and appellate courts are contrary to law, equity, and the principles of natural justice. He further submits that the learned courts below failed to appreciate that benami transactions stand prohibited under the Benami Transactions (Prohibition) Act, 2017. After promulgation of the said Act, the civil Court lacked jurisdiction to adjudicate upon a claim based on an alleged benami transaction, as such matters fall exclusively within the domain of the Adjudicating Authority under Section 6 of the Act. The respondents/plaintiffs, having claimed Nabi Bux to be the real owner and Khaki as benamidar, ought to have approached the competent authority under the statute if their claim was bona fide. Their failure to do so rendered the suit not maintainable before the civil Court, and the impugned judgments are therefore without jurisdiction and void in the eyes of law; that the courts below further failed to examine the essential ingredients required to establish a benami transaction. It is settled law that the burden lies upon the party alleging benami to prove, through cogent and unimpeachable evidence, the source of consideration, custody of original title documents, possession of the property, and most importantly, the motive for entering into such transaction. In the present case, no convincing documentary evidence was produced to establish that late Nabi Bux provided the consideration amount. Mere oral assertions are insufficient to prove a benami transaction. No explanation has been offered as to why late Nabi Bux, who remained alive and available throughout, would purchase the land in the name of Khaki. The absence of any pleaded or proved motive demolishes the respondents' case. Admittedly, neither late Nabi Bux during his lifetime nor the respondents thereafter sought transfer of the suit land from the name of Khaki on the basis of alleged benami ownership. Even in their application before the revenue authorities in 1999, no such plea was raised. If the respondents genuinely believed the transaction to be benami, they were required to first approach Khaki or his legal heirs for transfer of title. Instead, they directly approached the official respondents without any declaration from a competent forum and without issuing notice to the appellants, which casts

serious doubt on the bona fides of their claim and offends the principles of natural justice. It is further significant that the suit land was allotted by the Barrage Department on harap basis and was not a private sale transaction. A benami transaction ordinarily arises from a purchase between parties involving consideration; therefore, the very foundation of the respondents' plea is misconceived. The courts below also ignored the evidence produced by the official respondents which supported the appellants' case and rebutted the respondents' assertions. He further argued that the learned appellate Court failed to consider binding precedents of the Honourable Supreme Court and High Courts which lay down that motive is the most important factor in determining a benami transaction and that payment of consideration alone does not establish benami ownership. It is equally settled that a plaint in a suit based on benami must clearly plead the motive, source of funds, custody of title documents, possession, and circumstances necessitating purchase in another's name. The plaint in the present case is conspicuously silent on these mandatory particulars and does not disclose a valid cause of action. Moreover, according to the respondents themselves, the alleged cause of action accrued in 2015 when the appellants moved an application before the Judicial Magistrate. However, they had approached the authorities as early as 1999 without asserting any benami claim. The suit instituted in 2015 was therefore hopelessly barred by limitation, yet the courts below failed to properly address this vital legal issue. The impugned judgments have been passed mechanically, accepting vague and unsupported claims while ignoring material inconsistencies and legal defects in the respondents' case. Serious prejudice has been caused to the appellants, and unless the impugned judgments and decrees are set aside, the appellants shall suffer irreparable loss and injustice.

9. The learned A.A.G., along with the learned counsel representing respondent Nos. 2 to 5, has supported the impugned judgments and decrees passed by the learned trial

and appellate Courts. They submit that the findings recorded by the Courts below are based upon proper appreciation of oral as well as documentary evidence available on the record and do not suffer from any illegality, irregularity, or misreading of evidence. It is contended that the learned Courts have rightly exercised jurisdiction vested in them and have passed well-reasoned judgments after addressing all material questions of fact and law. Therefore, according to them, no interference by this Honourable Court is warranted in the findings recorded by the Courts below.

10. I have heard the arguments advanced by the learned counsel for the appellants, the learned counsel for the private respondents, as well as the learned A.A.G., and have carefully perused the material available on record.

11. At the very outset, it is necessary to examine the scope of interference in a second appeal. Under Section 100 C.P.C., this Court can interfere only where a substantial question of law arises. The High Court is not a third court of facts. Concurrent findings of fact recorded by the Courts below cannot be disturbed unless, the findings are based on no evidence; material evidence has been misread or not read; the conclusions are perverse or a legal principle has been wrongly applied. In the present case, both the trial Court and the first appellate Court have recorded concurrent findings in favour of the plaintiffs/respondents. Therefore, this Court must examine whether any substantial question of law truly arises. In this regard, I place reliance on the case of *Faqir Syed Anwar Ud Din (deceased) through LRs v. Syed Raza Haider and others* (PLD 2025 Supreme Court 31) and on the case of *Gulzar Ahmad and others v. Ammad Aslam and others* (2022 SCMR 1433).

12. The principal argument of learned counsel for the appellants is that after promulgation of the Benami Transactions (Prohibition) Act, 2017, the civil Court ceased to have jurisdiction and the matter fell within exclusive jurisdiction of the Adjudicating Authority. This contention

requires careful examination. The alleged transaction took place in 1973-74. The suit was filed in 2015. The 2017 Act came into force much later. There is no express provision in the Act providing retrospective operation so as to nullify pending civil proceedings or extinguish accrued rights. It is a settled rule of interpretation that statutes affecting substantive rights are prospective unless expressly or by necessary implication made retrospective. Moreover, the Act primarily provides for confiscation and penal consequences in respect of benami property. It does not contain any provision declaring that all pending civil suits based on benami claims shall abate. Thus, the plea of lack of jurisdiction is without substance and does not raise any substantial question of law in the facts of the present case.

13. The Courts below have thoroughly examined the essential ingredients governing a benami transaction by applying the settled tests, namely, the source of consideration, possession of the property, custody of title documents, motive for the alleged benami arrangement, and the overall conduct of the parties. Upon appreciation of oral and documentary evidence, including verification of entries in the A-Form, Day Book, and Offer Book through official witnesses from the Mukhtiarkar's office and production of original deposit receipts, both Courts concurrently concluded that the installments were paid by Nabi Bux and not by Khaki, while the appellants/defendants failed to produce any documentary proof to establish payment by Khaki. The issue of possession was also carefully examined; the appellants/defendants adopted contradictory stands, at one stage admitting respondents/plaintiffs possession for decades and at another alleging dispossession. Further, the respondents/plaintiffs produced original documents relating to the suit land, whereas the defendants admittedly possessed none, a circumstance that strongly supported the case in favour of respondents/plaintiffs. These findings are purely factual, based on proper appraisal of evidence, and do not disclose any misreading or non-reading of material on record. As regards

limitation, although the appellants contended that an earlier application before the Revenue Authorities in 1999 rendered the suit of 2015 time-barred, the Courts below concurrently held that the cause of action accrued upon threatened interference and that the suit for declaration coupled with injunction based on possession was within limitation. No legal infirmity has been demonstrated in this regard. The impugned findings cannot be termed perverse, as they neither ignore material evidence nor rely upon inadmissible material, nor do they reach conclusions which no prudent person could arrive at. The challenge raised in the present second appeal essentially seeks re-appreciation of evidence, which is impermissible within the limited jurisdiction of this Court under Section 100 C.P.C.

14. In view of the foregoing discussion and after having examined the impugned judgments of the learned trial Court as well as the learned first appellate Court in the light of the grounds urged in the instant second appeal, this Court finds that both the Courts below have concurrently held, upon proper appraisal of oral as well as documentary evidence, that late Nabi Bux had provided the entire consideration for the suit land though the allotment stood in the name of Khaki, and that the plaintiffs, being legal heirs of Nabi Bux, established continuous possession, custody of original documents, and beneficial ownership over the property. The findings so recorded are based upon verification of official record including A-Form, Day Book entries, Offer Book entries and deposit receipts proved through competent witnesses from the Mukhtiarkar's office. The defendants failed to produce any documentary evidence to rebut the plaintiffs' case, and their stance regarding possession remained inconsistent. The learned first appellate Court independently re-appreciated the entire evidence and affirmed the conclusions of the trial Court with sound reasoning. The objections raised in this second appeal, including the plea regarding applicability of the Benami Transactions (Prohibition) Act, 2017, the question of jurisdiction of the civil Court, alleged misreading of evidence,

limitation, and allotment on Harap basis, do not give rise to any substantial question of law within the contemplation of Section 100 C.P.C. The Act of 2017 does not operate retrospectively so as to invalidate rights which had accrued decades earlier or to nullify pending civil proceedings. No material illegality, perversity, non-reading or misreading of evidence, or jurisdictional defect has been pointed out warranting interference by this Court. The concurrent findings of fact recorded by both the Courts below are neither arbitrary nor based on no evidence; rather, they are well supported by the record. Consequently, this Court is of the considered view that the instant second appeal is devoid of merit and does not call for interference in exercise of limited jurisdiction under Section 100 C.P.C. The same is hereby dismissed and the judgments and decrees passed by the Courts below are maintained. No order as to costs.

JUDGE

**\*Adnan Ashraf Nizamani\***