

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Justice Ms. Saman Rafat Imtiaz

IIInd Appeal No.181 of 2020

Mst. Tahira Parveen.....Appellant

Versus

Mst. Sultana Kausar and others.....Respondents

Date of Hearing: 13.05.2026

Date of Judgment: 09.06.2026

Appellant present in person.

Mr. Muhammad Asghar, Advocate for the Respondent No.3(a).

J U D G M E N T

Ms. Saman Rafat Imtiaz, J: This second appeal has been preferred by the appellant against the concurrent findings¹ of the learned lower fora.

2. Briefly, the facts of the case are that the appellant filed a civil suit for declaration and permanent injunction alleging therein that the appellant/plaintiff is the widow and first wife of late Muhammad Khalid (herein after referred to as the "**Deceased**"), who died in an air crash on 27.08.2010 at Islamabad. She claims that during her marriage with the deceased, three daughters, namely Muniba, Iqra and Faiza, were born from the wedlock and have remained in her custody. According to the appellant, the Deceased had also contracted marriage with the respondent No.1 but was allegedly divorced by him during his lifetime, whereas respondent No.2 is the son born from the said marriage. Respondent No.3 was the father of the Deceased and, after his own death, is represented through his legal heirs. The appellant pleaded that she was employed as a Nurse in Jinnah Postgraduate Medical Centre (JPMC), Karachi, and was earning a regular salary even prior to her marriage. It was asserted that she used to hand over her entire salary to her husband, who was initially employed and later engaged in the business of construction under the name and style of *M.K. Builders*. According to the appellant, the Deceased utilized the funds provided by her for the purchase and construction of various immovable properties in his own name merely as a benamidar. The appellant specifically claimed ownership of four properties, namely: (i) a double-storey house on Plot No. C-7, Gulistan Colony, Quaidabad, Karachi; (ii) a house on Plot No. 229, Gulistan Colony, Quaidabad, Karachi; (iii) a house on Plot No. 238, Madina

¹ Judgment and decree dated 15.03.2019 passed by learned IIIrd SCJ Malir Karachi in Civil Suit No.239 of 2013 and judgment and decree dated 13.10.2020 passed by learned IIInd ADJ Malir Karachi in Civil Appeal No.24 of 2019

Colony, Karachi; and (iv) a house on Plot No. 352, Mehran Town, Korangi, Karachi. She maintained that these properties were acquired from her funds and, therefore, did not constitute the estate of the Deceased available for inheritance amongst the respondents. It was further alleged that respondents No.1 and 2 were occupying the property situated at Mehran Town, Korangi listed at serial No. (iv) herein above, while the remaining properties were under the possession and control of the appellant. The appellant contended that despite repeated requests, the respondents were interfering with her rights, claiming shares in the suit properties and attempting to deprive her of the ownership thereof. Consequently, she instituted the suit with the following prayers: -

a) To declare that the plaintiff/appellant is legal and lawful owner of the suit properties (annexure P/8 to husband P/11) as Bonami the of purchased by plaintiff/appellant from the funds/amounts provided by the plaintiff/appellant mentioned in paragraph No. 6. from a to d.

b) To direct the defendants/defendants No. 1 and 2 to Houre handover the vacant physical possession of constructed on plot No. 352, Mehran Town, Korangi, Karachi mentioned at serial No. d in paragraph No. 6 of plaint above.

c) To direct the defendants not interfere in the peaceful possession of plaintiff in suit properties mentioned in paragraph No. 6 from a to d.

d) To direct the concern authorities to transfer/mutate the suit properties in the name of plaintiff being absolute owner as Benami.

e) Cost of suit may also be awarded.

f) Any other relief (s) which this Honourable Court deems fit and proper under the circumstances of the case.

3. The learned Trial Court having received the pleadings of the parties, framed the following issues for adjudication:-

i. Whether the suit is not maintainable under the law?

ii. Whether the suit properties viz. House constructed on Plot No (1) Double story C-7, Gulistan Colony, Quaidabad, Karachi, (2) House constructed on Plot No 229, Gulistan Colony, Quaidabad, Karachi, (3) House constructed on Plot No. 238, Madina Colony, Karachi, and (4) House constructed Plot No. 352, Mehran Town, Korangi, Karachi were purchased by husband of the plaintiff namely Muhammad Khalid from the funds of plaintiff as Benami in his name?



iii. Whether the defendant No. 3(a) is entitled for share of 50% in the suit properties being a partner of 50% with deceased Muhammad Khalid in the business named as M.K Builders?

iv. Whether the plaintiff is entitled for the relief claimed?

v. What should the decree be?

4. Upon evaluating the pleadings, evidence and the respective contentions of the parties, the learned trial Court dismissed the suit instituted by the appellant. The said findings and decree were subsequently upheld by the learned appellate Court. Consequently, the appellant has preferred the instant second appeal challenging the concurrent judgments and decrees passed by the courts below.

5. The learned counsel for the appellant argued that the appellant is a working lady who was a Nurse at JPMC and produced her salary slips in evidence. He argued that the contractor who was produced as witness confirmed that payments were made to him by the Appellant. He also submitted that possession of three out of the four properties involved in the instant matter is with the appellant to date. Similarly, possession of title documents is also with the appellant. Despite the foregoing, both the Courts below have failed to give a finding of benami ownership in favour of the appellant in respect of the properties which were bought in the name of the Deceased husband of the appellant through the funds provided by the appellant. He argued that although no details were provided by the appellant to prove the provision of funds by the appellant to her husband but that is because no records of financial dealings are kept or maintained between the husband and wife.

6. On the other hand, the learned counsel for the respondents submitted that there is no proof of payment of sale consideration for any of the properties by the appellant. He further pointed out that the appellant also failed to produce in evidence any proof of income before 2006 whereas all the four properties were admittedly bought prior to 2006. Lastly, he submitted that no claim was made by the appellant of ownership in respect of the subject properties during the life time of the Deceased.

7. Heard the arguments and minutely perused the record.

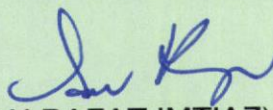
8. Admittedly, the appellant only produced salary slips from the year 2011 onwards whereas the subject properties were purchased prior to the year 2006.

In such circumstances, testimony of the contractor alone that payments were made to him by the Appellant is not sufficient to establish the claim of the Appellant and deprive other legal heirs of their rightful share in inheritance.

9. Even otherwise, if it were to be believed that the appellant provided funds to her deceased husband for purchase of the subject properties being a working lady, merely because financial contribution was made does not *ipso facto* establish that the intention was for the properties to be held in the name of the ostensible owner only as benami and not for title to vest². Motive in a benami transaction is the most important factor. In order to be successful in a claim for benami, the plaintiff needs to prove the motive for not keeping the properties in their own name instead holding them in the name of another despite financing the purchase. A transaction cannot be dubbed benami simply because one person happened to make payment for and on behalf of another³. There are many instances when family members purchase property in the name of another family member with the intention of title to vest in the name of such other. In the instant case no motive has been submitted for the alleged benami transaction by the appellant in her plaint what to talk of proof⁴.

10. Insofar as the possession of the properties and custody of the title documents are concerned, it is settled law that such possession by a legal heir is viewed as constructive possession on behalf of the other legal heirs notwithstanding exclusive possession of one legal heir⁵. Custody of title documents is only significant when both the ostensible owner and the beneficial owner are alive and the documents are found in possession of the latter but when the ostensible owner has already passed away it is but natural that the documents would be in the custody of one of the legal heirs⁶.

11. In view thereof, I find that the concurrent findings are unexceptional and do not warrant any interference; hence the instant appeal is dismissed with pending application.


(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in in open Court on the 09th day of June, 2026

² [Muhammad Zaman Vs. Sheikh Abdul Hamid], 2002 CLC 1209

³ [Ghulam Murtaza Vs. Mst. Asia Bibi], PLD 2010 SC 569

⁴ [Muhammad Siddique Vs. Muhammad Saeed], 2023 MLD 1785; [Tahira Begum Vs. Mst. Nasira Ansari], 2022 YLR 1414

⁵ [Ghulam Ali Vs. Ghulam Sarwar Naqvi], PLD 1990 SC 1

⁶ [Dr. Muhammad Riaz Mirza Vs. Muhammad Yousaf Mirza], 2005 YLR 2213