

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 1148 of 2013

Plaintiff: Vaneeza Umeran Through M/s. Salahuddin Ahmed and Nadeem Ahmed, Advocates.

Defendants Shamim Mushtaq Siddiqui & others
No.1 to 8, 10,11, Through Mr. Ahmed Hussain, Advocate.
28 & 29 to 31:

Defendants Abdul Aziz Khan & others
No.13 to 25, 45 & 48: Through Mr. Umar Memon, Advocate.

Defendants Mian Muhammad Abdullah & another
No.40 & 46: Through Mr. Abdul Sattar Pirzada, & Mr. Mamoon Choudhry, Advocate.

Defendants Khalid Mohsin Siddiqui & another
No.41 & 42: Through Mr. Muhammad Umer Lakhani, Advocate.

Defendants Through M/s. Qazi Umair Ali & Sameer
No.43 & 44: Ghazanfar, Advocates.

Defendant Standard Charter Bank
No.56: Through Dr. Muhammad Khalid, Advocate.

1. For hearing of CMA Nos. 9743/13 (U/O 39 Rule 1 & 2 CPC)
2. For hearing of CMA Nos. 9744/13 (U/O 39 Rule 1 & 2 CPC)

Suit No. 550 of 2014

Plaintiff: Miftah Karim through Ms. Zahrah Vayani, Advocate.

Defendant No.1: Vaneeza Umeran through Mr. Saadat Khan, Advocate.

Defendants Mian Muhammad Abdullah & another
No.3 & 4: Through Mr. Abdul Sattar Pirzada, & Mr. Mamoon Choudhry, Advocates.

For hearing of CMA Nos. 4470/14.

Suit No. 551 of 2014

Plaintiff: Misbah Karim Through Ms. Zahrah Vayani, Advocate.

Defendant No.1: Vaneeza Umeran through Mr. Saadat Khan, Advocate.

**Defendants
No.3 & 4:** **Mian Muhammad Abdullah & another
Through Mr. Abdul Sattar Pirzada, &
Mr. Mamoon Choudhry, Advocates.**

For hearing of CMA Nos. 4472/14.

Suit No. 380 of 2018

Plaintiff: **Khalid Mohsin Siddiqui Through
Mr. Muhammad Umer Lakhani,
Advocate.**

**Defendants
No.2,5 & 45:** **Mian Muhammad Abdullah & others
Through Mr. Abdul Sattar Pirzada, &
Mr. Mamoon Choudhry, Advocates.**

**Defendants
No.3,16, 17 & 44:** **Kamran Ali Khan & others
Through Mr. Umar Memon, Advocate.**

**Defendant
No.15:** **Misbah Karim
Through Ms. Zahrah Vayani, Advocate.**

**Defendants
No.23,24, 32, 36,
37, 46 & 48:** **Umair Akhtar & others
Through Mr. Mujahid Iqbal Ch.
Advocate.**

**Defendant
No.56:** **Saadi Private Trust
Through Mr. Muhammad Anas
Makhdoom, Advocate.**

**Defendants
No.25 & 26:** **Muhammad Shafiq & another
Through Mr. Sarmad Hani, Advocate.**

**Defendant
No.58:** **Standard Charter Bank
Through Mr. Altaf Ahmed Sahar,
Advocate.**

For hearing of CMA Nos. 2798/18.

Dates of hearing(s): **13.03.2019, 19.08.2019, 05.09.2019,
01.10.2019, 23, 10.2019, 05.12.2019
& 19.12.2019.**

Date of Order: **15.01.2020**

ORDER

Muhammad Junaid Ghaffar J. Injunction applications in all listed Suits have been heard together and are being decided through this common order. Plaintiff in Suit No.1148/2013 seeks a Declaration to the effect that all the shares in the companies

mentioned in the table set out in paragraph 6 of the plaint (along with all the underlying assets and real properties of the said companies mentioned in column 3 of the said table) were being held in *benami* trust by the ostensible owners mentioned in the said table on behalf of the actual owner namely Tariq Mohsin Siddiqui (late). Whereas, the Plaintiffs in Suit Nos. 550 & 551 of 2014 seek cancellation of a Strategy Plan for special events ("**Strategy Plan**") purportedly signed and executed by the Defendants and on which the entire case of the Plaintiff in Suit No.1148/2013 rests on and of which the said Plaintiff seeks enforcement of. Insofar as Suit No. 380/2018 is concerned, though it seeks a different prayer; but insofar as the underline assets of which the administration / declaration is being sought, is in respect of all such assets, as mentioned in Strategy Plan. Therefore, all these Suit(s) having nexus with the Strategy Plan and common assets have been heard together.

2. Mr. Salahuddin Ahmed, learned Counsel for the Plaintiff in Suit No.1148/2013 has contended that Late Tariq Mohsin Siddiqui ("**TMS**") was the actual owner of Pakland Group of Companies, which consists of various Companies / Trusts as well as properties; that pursuant to a Declaration of Adoption, the Plaintiff was adopted by TMS as his daughter, then known as Juanita Davey and now as Vaneeza Umeran through a deed of renouncement dated 11.6.2004; that TMS died issueless on or about 21.05.2012; that pursuant to a Proclamation and Affirmation of Symbolic Relationship, the Plaintiff, (Vaneeza Umeran), Defendant No.1 (Shamim Mushtaq Siddiqui), Defendant No.40 (Mian Muhammad Abdullah) and Defendant No.12 (Chand Baboo), agreed to a symbolic relationship of brother and daughter amongst each other and that of brother / father with TMS, who also signed the said proclamation; that as a business strategy and for convenience, TMS preferred to keep his assets in the name of his trusted employees and their family members as apparently he had estranged relations with his surviving brother and sister; that for such purposes, the Defendants held various properties as well as shares of the Companies in their names as benami on behalf of TMS; that on or around August 2011, TMS decided transfer of his real estate and corporate shareholding(s) to various trusts / beneficiaries and for such purposes a Strategy Plan for special

events was executed and was duly signed by him as well as the Plaintiff, Defendant No.1 and 40; that according to the Strategy Plan as mentioned in Para-6 of the Plaint, the real estate holding(s) as well as corporate holding(s) of TMS were to be transferred to three Trusts namely Pakland Private Benevolent Trust, Sonax Private Benevolent Trust and Saadi Private Benevolent Trust; that in line with the Strategy Plan, various assets and corporate holdings were transferred as mentioned at Serial No. A & B of the Table at Para-6 of the Plaint and suddenly after the demise of TMS, the Benamidars have refused to act further and have excluded the Plaintiff from the assets and shareholding of TMS; that as per the Strategy Plan all previous trusts created by TMS were to be dissolved; that the act of Defendants in failing to comply with the wish and desire of TMS, after transfer of assets as mentioned at A & B of the Plan, amounts to misfeasance and malfeasance on the part of the signatories of the Plan, as they have even transferred such assets in the name of their immediate family members; that the real brother of TMS had earlier filed Suit for Administration of the estate of his late father and after the demise of TMS on the basis of a purported Will of TMS; the said Suit has been settled and compromised by the Benamidars again without knowledge and to the exclusion of the Plaintiff; however, after coming into knowledge of the Strategy Plan and the disclosure of various assets of TMS, the brother i.e. Defendant No.41 has also filed Suit No.380/2018 and has claimed his share in the benami assets of TMS; that the Defendants have acted in a manner, which is against the interest of the Trust, of which, the Plaintiff is also a Trustee, whereas, they have violated the Strategy Plan after partially acting on it and have in fact indirectly sought cancellation of the same purportedly through some Director(s) / Shareholders of the Companies; that surreptitiously the Defendants / Benami owners despite being privy and signatories to the Strategy Plan, have transferred the shareholdings as well as immovable property in the name of their relatives to obstruct the execution of the Strategy Plan, as TMS is no more alive; that they have acted in violation of the Trust reposed on them by TMS as his confident and trustworthy employees; that neither the Strategy Plan has been denied nor the signatures on the same; but only its legal effect is

being questioned, which can only be dealt with at the trial stage; but for the present purposes, the Plaintiff has admittedly made out a prima-facie case for grant of an injunction; that once the Strategy Plan has been acted upon in respect of two transactions at (A) & (B) in the life time of TMS, then there is no ground or justification to question the validity of the Strategy Plan; that no plausible defence has been put up as to the partial execution of the Strategy Plan by the same benami owners, who are now contesting and challenging the Strategy Plan; that insofar as the objections regarding execution of the Will by TMS and the ground that only such assets can be administered, as disclosed in the Will, he has argued that this would apply only in respect of the assets, which were already in the name of TMS, whereas, the Plaintiff's case is that TMS was the actual owner of the entire assets of the group including real estate as well as corporate shareholding and was keeping the same in the name of his employees and confident and trustworthy friends as benami; that reliance on the ingredients for proving a benami transaction are merely for the purposes of a primary consideration and the exception to this must also be considered inasmuch as in this case the Strategy Plan, which pertains to the benami assets was acted upon within the life time of the actual owner i.e. TMS and in view of such submissions, he has prayed for granting an injunctive order restraining the Defendants from creating any further third party interest in respect of the properties and shareholding of the Companies as mentioned and covered by this Suit.

3. Mr. Muhammad Umar Lakhani, appearing on behalf of the Plaintiff (Khalid Mohsin Siddiqui) in Suit No. 380/2018 and for Defendants No.41 and 42 in Suit No.1148/2013 has adopted the arguments of the Plaintiff's Counsel in Suit No.1148/2013 and has further contended that his client is the real brother of deceased TMS and has been deprived of the actual assets owned by their later father Mr. Mohsin Siddiqui as according to him, TMS had no independent means to acquire all such assets and after the death of their father he had taken over the entire companies and its shareholding to the exclusion of his brother and sister; that TMS had estranged relations with his brothers and sisters and was bent upon to deprive his siblings / legal heirs from their lawful share,;

hence Suit No.265/1999 was filed and after his death on the basis of Will and property so disclosed, the said Suit was compromised, but his client was never aware of the Strategy Plan and the underline assets of TMS owned as benami by the Defendants and after being served in the Suit No.1148/2013, a fresh Suit bearing No.380/2018 has been filed and it is the case of his clients that pending trial of the Suits, the injunction be granted in favour of the said Plaintiff as well as in his Suit by restraining any further third party interest in the properties so mentioned in the Strategy Plan. He has relied upon the case reported as **1992 SCMR 786 (Jam Pari v. Muhammad Abdullah)**

4. Ms. Zahrah Vayani, learned Counsel for the Plaintiffs in Suit Nos.550 & 551 of 2014 has contended that the Strategy Plan was not signed by her clients, whereas, the properties in question are owned by the Company, of which the Plaintiffs are directors and the Strategy Plan in respect of purported transfer of the properties of the Company was never brought in the knowledge of the Directors / Plaintiffs; hence it cannot be acted upon; that Defendants No.2 & 3 in these Suits had no authority to sign any Strategy Plan in respect of Defendant No.4 i.e. the Company, as the property is of the Company and not of the individuals; that Defendants No. 2 & 3 are not shareholders / owners of the Defendant No.4 in both Suits; but were only appointed as advisers to the Company; hence they had no authority to enter into any Strategy Plan as contended; that no Resolution has been passed by the Company or Board of Directors for any Strategy Plan and or its execution; that Defendant No.1 / Plaintiff in Suit No.1148/2013 has no locus-standi in this matter and has got nothing to do with the Companies in question; that even otherwise the contents of the Strategy Plan are illegal and void; hence cannot be acted upon; that the Plaintiff in Suit No.550/2014 got share from his father i.e. Chand Baboo and owns such shareholdings independently and not as Benami of TMS as is being claimed by the Plaintiff in Suit No.1148/2013 and Defendant No.1 in this Suit. She has prayed for grant of injunction applications in her Suit.

5. Mr. Abdul Sattar Pirzada, appearing on behalf of Defendants No.40 (Mian Muhammad Abdullah) & 46 (Sonax Housing (Private) Limited) in

Suit No.1148/2013 and for Defendants No.3 & 4 in Suit Nos. 550/2014 and 551/2014 has supported the stance of Plaintiffs in Suit Nos.550 & 551 of 2014, and has disputed the claim of the Plaintiff in Suit No.1148/2013 on the ground that she is merely an adopted daughter of TMS; hence cannot claim any inheritance right in the estate of TMS; that as per the record of corporate shareholding, TMS was neither the owner of any such shareholding as well as the real estate owned by the Companies in question; that TMS is not even the signatory to the Plan; hence without prejudice, it can be said that he never initiated execution of any such Strategy Plan; that again without prejudice it was only a plan and a proposal signed purportedly by four persons; that any such Strategy Plan even if executed cannot bind a Corporate Company, which is governed and managed by its Board of Directors; that even the Strategy Plan in question was not final but was revised and he has referred to written statement of Defendants No.1 to 8 by placing reliance on the revised version of such plan; that the Company in question was never a party to the Plan and no such transfer of the shares of Company i.e. Defendant No.46 was sanctioned by Defendant's management; hence not legally binding on the Company; that as per the corporate record of the Companies, the shares were never owned by TMS; but by various other persons; hence no claim can be made in respect of the ownership of the Company in question; that TMS admittedly executed a Will of his actual assets, wherein, 1/3rd of the assets were given to a Trust and remaining 2/3rd to his legal heirs and the pending Suits filed by his family members bearing Nos.742/2003, 996/2004 and 265/1999 were disposed of on the basis of a compromise in respect of assets of TMS as disclosed in his Will; that in separate proceedings, the Directors of the Company have already challenged the Strategy Plan seeking its cancellation as well as a declaration and ad-interim orders have been passed in their favour; that as of today, the plots owned by the respective Companies have already been sold out / transferred to various other parties; hence even otherwise, no cause of action remains alive so as to enforce the purported Strategy Plan; that the Plaintiff being the adopted daughter has even otherwise no nexus with the assets of TMS, and therefore, the application in her Suit is liable to

be dismissed, whereas, applications of the Plaintiffs in Suit Nos.550 & 551 of 2014 be allowed as his clients have no objection. In support he has relied upon the cases reported as **1991 SMCR 703** (*Muhammad Sajjad Hussain v. Muhammad Anwar Hussain*), **1999 MLD 2934** (*Mst. Halima v. Muhammad Kassam and others*), **2004 SCMR 1111** (*Muhammad Ali v. Mahnga Khan*), **PLD 2019 Sindh 189** (*Merrs Rashid Silk Mills and 29 others v. Federation of Pakistan and others*), **PLD 1979 Karachi 38** (*Shahnawaz Ltd. V. Khwaja Auto Car Ltd. Karachi and another*), **1999 MLD 1672** (*Muhammad Rafique Javaid v. Muhammad Khalil and 3 others*), **PLD 2003 Karachi 691** (*Jehan Khan v. Province of Sindh and others*), **2010 CLD 1675** (*National Investment Trust Ltd. and another v. Crescent Textile Mills Ltd.*).

6. Mr. Umar Memon appearing on behalf of Defendants No.12 to 25 and 45 in Suit No.1148/2013 has adopted the arguments of Mr. Abdul Sattar Pirzada, and has further argued that this case is not of a benami transaction; that his clients are not signatory or witness to the Strategy Plan and own the properties as well as shareholding on their own; that even otherwise Strategy Plan is not an agreement by itself as there are no witnesses; hence neither a contract nor an agreement; that the Suit in question is in fact a Suit for Specific Performance; that the Strategy Plan has already been challenged in Suit No.550 & 551 of 2014; that no Strategy Plan can be executed and acted upon without the actual consent of owners of the property; that the Will was executed by TMS in his life time; hence there is no question of benami ownership, whereas, he has given 1/3rd share of his estate as a Will to a Trust and left the other for his legal heirs; that TMS was never a director in the Companies and only had shareholding to the extent of 166 shares in 1981, which was then sold and transferred; that the Strategy Plan in any manner is not binding on his clients. In support he has relied upon the cases reported as **2010 CLC 1633** (*S. Abid Ali and 3 others v. Syed Inayat Ali and 5 others*) & **2018 CLC 1676** (*Sheikh Muhammad Javiad v. Sartaj Saqlain and 5 others*).

7. Mr. Ahmed Hussain, appearing on behalf of Defendants No.1 to 8, 10, 11, 28, 29 & 31 has also adopted the arguments of other Counsel for the Defendants and has contended that the assets in

question are not benami; but properly owned by the Defendants; that the Strategy Plan is not a legal document and is not legally binding and enforceable against the Defendants; that TMS never owned any such properties; hence question of benami does not arise; that he has executed his Will in his life time, and therefore, the claim of the Plaintiff in Suit No.1148/2013 is baseless; that even the Strategy Plan relied upon by the said Plaintiff was revised, which was also signed by the said Plaintiff; that the main ingredients i.e. motive is missing in the purported benami transaction; that convenience and privacy is not a motive for a benami transaction; that even otherwise the Strategy Plan was only a proposal and was never placed before the shareholders of the Companies for its approval or otherwise; that the Trusts mentioned in the Strategy Plan are not parties to the Suit; that no injunction can be granted in the given facts and circumstances of this case. In support he has relied upon the cases reported as **1999 MLD 2934 (Mst. Halima v. Muhammad Kassam and others)**, **2009 SCMR 124 (Muhammad Nawaz Minhas and others v. Mst. Surriya Sabir Minhas and others)**.

8. Mr. Qazi Umair Ali, learned Counsel for Defendant No.43 and Mr. Sameer Ghazanfar for Defendant No.44 have adopted the arguments of Mr. Abdul Sattar Pirzada as well as the other learned Counsel for the contesting Defendants.

9. Mr. Saadat Yar Khan, appearing on behalf of Defendant No.1 in Suit Nos.550 & 551 of 2014 has adopted the arguments of Mr. Salahuddin Ahmed, learned Counsel for the Plaintiff in Suit No.1148/2013.

10. I have heard all the learned Counsel and perused the record. Insofar as the present stage of the proceedings is concerned, it may be of relevance to observe that it is only the injunction application(s), which have been heard in all four Suits and are being decided through this common order. It is needless to state that at this stage of the proceedings it is only a tentative assessment of the material placed before the Court by the respective parties, which is required to be considered and appraised. Insofar as the Defendants' Counsel are concerned, they have vehemently argued that the main ingredients, as settled by

the Hon'ble Supreme Court through its various judgments in respect of a benami transaction are lacking in the case of Plaintiff in Suit No.1148/2013. To that it may be observed that the case law relied upon by the learned Counsel for the Defendants is in majority of the cases, primarily based on the appraisal of evidence available before the respective Courts; however, for the present purposes, since only injunction applications are being decided and no evidence is available, it is only a tentative assessment of the documents so placed on record which is to be made and to see whether the party seeking an injunctive relief has made out a prima facie case with balance of convenience lying in its favour and further if the injunction is not granted whether irreparable loss would be caused. Thus, listed applications are being decided keeping in mind these basic ingredients for grant or otherwise of the same.

11. Now let me take up the attributes of benami transaction. In reality it means a transaction in the name of another person to describe and express a transaction of a property who holds the said property being an ostensible owner for its beneficial owner. In fact it is a genre of transaction where somebody recompenses for the property but does not get hold of it in his personal name. The person in whose name this type of property is purchased is called benamidar and the property so purchased is called the benami property. Despite the fact a benami property is purchased on the name of someone else, the person who sponsored the transaction shall be the real owner. By and large, the assets acquired in the name of spouse or a child for which the money is paid from known cores of income is called the benami property. But a primary point at issue is who can challenge the benami transaction? The burden of proving whether a particular person is a benamidar is upon the person alleging the same. The probe whether the acquisition in the name of the wife by a husband is benami for his own benefit or not this entirely depends on the intention of the parties at the epoch of buying. The acid test for resolving the character of transactions is obviously the source of funds but it is not always conclusive and significant to the real ownership though it may prima facie show that the person who provided money did not

intend to relinquish or give up the beneficial interest in the property but some other factors are also need to be considered i.e. possession of title documents, after purchase the conduct of the parties concerned in dealing with the property; who administers and oversees the property; who relishes the usufruct and who is recognized as titleholder in general as well as government departments. All these important physical characteristics depend on the facts of each case separately which requires concrete evidence to prove¹.

12. Coming to the merits of the case, it appears that the precise case of the Plaintiff in Suit No. 1148/2013 is firstly to the effect that she is an adopted daughter of TMS pursuant to a declaration to that effect, whereas, TMS was the owner of the entire assets and shareholding of the group known as Pakland Group. It is her further case that TMS in 2011 initiated a process for creating three new Trusts namely Pakland Private Benevolent Trust, Sonax Private Benevolent Trust and Saadi Private Benevolent Trust and the main purpose for creating these Trusts was that his assets held as benami by various persons including the Defendants be transferred progressively in the name of these three Trusts as well as application of various proceeds of income of the Trusts in the manner so specified in the respective Trust Deeds to the benefit of the Trustees which also included her as well as various Defendants in Suit No. 1148/2013. In support reliance has been placed on the Strategy Plan, which is the bone of contention amongst the parties. The said Strategy Plan and its actions as well as its execution have been summarized and reproduced in Para-6 of the Plaint and reads as under:-

	Name of Asset	Benamidars	Underlying assets (in case of company)	Shares/ underlying assets/ proceeds to be transferred to:
A.	Entire shareholding in Pakland Housing (Pvt.) Ltd.	1. Chand Baboo 2. Fahim Ahmed 3. Zohaib Ahmed Khan 4. Muhammad Shafiq	1. Saadi Town Project (4649 plots) situated at 46-A, Scheme 33, Gulzar-e-Hijri	Saadi Private Benevolent Trust

¹ Farrukh Afzal Munif v Muhammad Afzal Munif & Others (2019 CLC 431)

			2. Ispahan Town Housing Project situated at Scheme 33, Gulzar-e-Hijri, Karachi	
B.	Entire shareholding in Sonax Housing (Pvt.) Ltd.	1. Misbah Karim 2. Syed Haseeb ul Haq 3. Syed Aftab Hussain 4. Mr. Muhammad Hanif	1. Saadi Gardens Project (6348 plots) situated at Scheme 33, Gulzar-e-Hijri, Karachi 2. Land measuring 136-9 acres in Sectors 37B, 31, 32, 3B, 13C, Karachi	Sonax Private Benevolent Trust
C.	Entire shareholding in Arcon Enterprises (Pvt.) Ltd.	1. Muhammad Mansoor 2. Kashiba Karim 3. Muhammad Salim Arif Siddiqui	Two flat site plots in Saadi Town Project	Saadi Private Benevolent Trust
D.	Entire shareholding in Avastar Housing Pvt. Limited	1. Suhail Akhtar Khan 2. Farrukh Aftab Ahmed 3. Aftab Ahmed Khan	Shiraz Town Housing Project situated near National Highway, Malir, Karachi	Pakland Private Benevolent Trust
E.	Entire shareholding in Calston (Pvt.) Limited	1. Hafiz Asim Wahid 2. Shama Afroz 3. Shamim Mushtaq Siddiqui	105 plots in Saadi Town Project	Saadi Private Benevolent Trust
F.	Entire shareholding in Megadon (Pvt.) Limited	1. Islam Ahmed Siddiqui 2. Muhammad Salman Siddiqui	437-22 acres of land in Deh Petaro Jagir, Jamshoro, Sindh	Pakland Private Benevolent Trust
G.	Entire shareholding in Novatar (Pvt.) Limited	1. Shamim Mushtaq Siddiqui 2. Naseem Ahmed Siddiqui	1. Land in Kathore and Khanto 2. Plot No.43-9-H-1, PECHS, Karachi (said plot to be transferred to Vaneeza Umeran directly by virtue of Payments/Special Caretaking Statement	Pakland Private Benevolent Trust

			executed by TMS on 17.11.2011 annexed herewith as Annexure 'F')	
H.	Entire shareholding in Selectcon (Pvt.) Limited	1. Islam Ahmed Siddiqui 2. Muhammad Salman Siddiqui	1. 360-38 acres land in Petaro Jagir, Jamshoro, Sindh 2. 244 acres of the aforesaid land part of Exchange Agreement with TMS to be exchanged for: i) Bungalow No.43-10-H, PECHS, Karachi ii) Plot No.35, Overseas Cooperative Housing Society, Karachi iii) Plot No.14, Sector G/11, Islamabad	Pakland Private Benevolent Trust
I.	Entire shareholding in Tributex (Pvt.) Limited	1. Farhan Ahmed Siddiqui 2. Aftab Alam 3. Khawar Aziz 4. Asim Siddiqui	Survey No.245, Deh Okewari, Karachi	Pakland Private Benevolent Trust
J.	Entire shareholding in Zelta Housing (Pvt.) Limited	1. Asim Siddiqui 2. Umair Akhtar 3. Muhammad Salim Arif Siddiqui	14 ST Plots in Saadi Gardens Project	Sonax Private Benevolent Trust
K.	i) 8 acres land in Dhabeji ii) 100 acres land in Dhabeji iii) 76 acres land in Dhabeji iv) 175 acres land in Dhabeji	i. Mairajuddin ii. Abdul Aziz iii. Abdul Aziz iv. Habib Khan		Pakland Private Benevolent Trust
L.	Survey Nos.243 & 244, Deh Okewari,	Zamir A. Khan		Pakland Private Benevolent

	Karachi			Trust
M	6 plots in Gulshan, Shah Abdul Latif Town, MDA, Karachi	Mashkooor family namely Mashkooor Ahsan, Masroor Ahsan, Marghoob Ahsan, Matloob Ahsan		Pakland Private Benevolent Trust

13. Insofar as the Execution and transfer of the assets as well as shareholding as mentioned at “A” & “B” of Para-6, as above is concerned, the same admittedly appears to have been acted upon and the assets as listed thereon stands transferred in the name of the newly created respective Trusts. For example when case of *Pakland Housing (Private) Limited / Defendant No.45* at “A” of the plan is looked into, it appears that as per **Form A** being maintained with SECP dated 31.10.2011, Zohaib Ahmed Khan had 3 shares, Chand Baboo had 10 shares, Fahim Ahmed had 461 shares and Muhammad Shafiq had 7000 shares (Total-7474 shares), whereas, pursuant to the Strategy Plan, vide **Form A** dated 31.10.2012 Zohaib Ahmed Khan had 3 shares, Abdul Aziz Khan 10 shares, Fahim Ahmed 15 shares, and **Saadi Private Benevolent Trust now had 7446 shares**. This transfer was made by Chanb Baboo to the extent of 10 shares in favor of Abdul Aziz Khan, by Fahim Ahmed to the extent of 446 shares and by Muhammad Shaifq to the extent of 7000 shares in favor of **Saadi Private Benevolent Trust**. This transaction as recorded in **Form A** with SECP has not been denied; nor has any arguable defence come forward to rebut or dislodge it. Similarly, in the case of another Company at B namely, *Sonax Housing Private Limited / Defendant No.46*, as per **Form A** dated 31.10.2011 with SECP, Syed Aftab Hussain had 201 shares, Misbah Karim had 51 shares, Muhammad Hanif had 44,300 shares and Syed Haseeb ul Haq had 450 shares (Total-45,002 shares). Thereafter, pursuant to Strategy Plan shares were transferred as desired by TMS and as per **Form A** dated 31.10.2012, Syed Aftab Hussain had 200 shares, Kamran Ali Khan had 52 shares and **Sonax Private Benevolent Trust had 44,750 shares**. Again this goes unexplained as to why these chunk of shares now stood in the name of *Sonax Private Benevolent Trust*. It further needs to be

appreciated that in response to the claim of the Plaintiff in Suit No.1148/2013 at Para 8 thereof to the effect that Clause A & B of the Strategy Plan had been acted upon when TMS was alive, Defendant No.40 and 46 through their written statement have taken a somewhat contradictory stance. In Para 9 of their written statement while submitting response to Para 8 of the plaint in the first Part thereof, it has been stated that *“It is denied that the shares of corporate entities mentioned in serial A and B of the table in Paragraph 6 of the plaint have been transferred as alleged.”* Whereas, in the same Paragraph in the latter part it is stated that *“Furthermore, by virtue of a meeting of the board of trustees of the said trust which were convened on 02.02.2013 (copy of the minutes of which were supplied to the answering Defendant) **the said trust decided to transfer the shares of Mr. Mohammed Hanif and Syed Badar Ahmed back to them.** These shares were 44750 in total. Subsequently, the said shares were sold to other shareholders as reflected in Form-A of Defendant No. 46. By virtue of the aforementioned minutes and the decisions of the board of trustees, from which it appears that the Plaintiff or Sonax Private Benevolent Trust ceased to have any interest in the Defendant, whatsoever.”* From perusal of the same it clearly reflects that the same is contradictory in nature and this Court fails to understand as to how under oath the person so authorized by Defendant No.46 can make such a statement. First, there is a complete denial in respect of transfer of assets / shares at A and B; but in the same paragraph, thereafter, it is stated that a meeting was convened on 2.2.2013 by the Trust (Defendant No.46) and the shares of *Muhammad Hanif* and *Syed Badar Ahmed* have been returned back to them and these shares i.e. 44750, were then sold to other shareholders. If the stance of Defendant No.46 is to the effect that no action was taken pursuant to the Strategy Plan as above; then how come the shares were first transferred by *Muhammad Hanif* and *Syed Badar Ahmed* as per the instructions and Strategic Plan of TMS in favor of the Trust, and then on 2.2.2013, they were given back to both these persons. There appears to be no logic, reason or any sense in this assertion of these two Defendants in the written statement. But this, at least, supports the stance of the Plaintiff in Suit No.1148/2013 that there was a Strategy Plan and was not only acted upon by its signatories as well as benami owners; but so also by Defendant No.46, irrespective of its claim that they had nothing to do with the said Strategy Plan. At the

injunction stage this contradictory stance of these Defendants does nothing; but goes in favour of the Plaintiffs. It further appears and again for reasons not understandable by this Court, and noted surprisingly as well, that a joint written statement has been filed by Defendant No. 40 i.e. *Mian Muhammad Abdullah* along with Defendant No.46 i.e. *Sonax Housing (Private) Limited*, though there appears to be no nexus between these Defendants insofar as their legal status before the Court is concerned. The stance of Defendant No.46 has been reiterated in the written statement which has been duly signed and adopted by Defendant No.40 as well; however, why this has been done is unclear. The Defendant No.46 claims that all shareholding and assets were and are owned by it as an independent entity, having nothing to do either with TMS or for that matter with Defendant No.40, who has purportedly signed the Strategy Plan; hence, the terms of the said Plan are not binding on it. This Court is at a loss to see any reason which has prevailed upon Defendant No.40 to adopt the stance of Defendant No.46, considering the fact that he is a signatory of the Strategy Plan which has not been denied unequivocally (notwithstanding that he has not sworn his personal Affidavit-but the written statement is a joint one). He in the given circumstances ought to have filed his Written Statement / response independently with his personal supporting affidavit, either denying or accepting the averment of the Plaintiff in Suit No.1148/2013. The only objection which has been raised by all learned Counsel for the contesting Defendants is that though Strategy Plan is not denied in specific terms; but an effort has been made by them that it is legally not enforceable. For the present purposes it is not the case before the Court as to the enforcement of the Strategy Plan to its fullest, as it is a matter to be taken care of at the trial and only then the Suit could be decreed and directed to be acted upon or may be dismissed, once the evidence has been led by the parties and the Court is satisfied to that effect. For the present purposes what is relevant is, that there is a Strategy Plan, which is firstly not denied in very specific terms; has rather been accepted with a revised version of the same; and secondly, pursuant to the said Strategy Plan, its execution at Serial No. "A" & "B" had been accomplished during lifetime of TMS, (*which according to the Defendants has been reverted back to its original position / owners, who have thereafter,*

transferred it further). Further, to overcome this contradiction and to wriggle out from it, what has been done is, that after filing of Suit No.1148, two separate Suits bearing Nos.550 & 551 of 2014 have been filed by some Directors of Defendant No.45 & 46, (Companies in question), challenging the Strategy Plan on the ground that the same is not enforceable against the Companies in question; but it is interesting to note that firstly the Companies have not come before the Court as Plaintiffs, and secondly, even the executants of the Strategy Plan have also failed to come as Plaintiffs before the Court. It is further interesting to note that during pendency of these proceedings and after completion of arguments of all, except a brief rebuttal by Plaintiffs' Counsel in Suit No.1148, on 16.12.2019 the Defendants No.3 (Mian Muhammad Abdullah) & (Sonax Housing Private Limited & Pakland Housing Private Limited) Defendant No.4 in Suit Nos.550 and 551 of 2014 filed application(s) under Order 1 Rule 10(2) CPC, for their transposition as Plaintiffs No.2 & 3 in the said Suits. This in fact was done when, it was in the knowledge of their Counsel that their arguments have been completed and the case was fixed on 19.12.2019 for Rebuttal by the Plaintiff's Counsel in Suit No.1148/2013. This Court is at a loss to understand such conduct of these Defendants and the advice, if any, given to them to act in such a manner. But for sure, this clearly reflects an afterthought on the part of these Defendants, who are already Defendants in Suit No.1148/2013 and have filed their written statement. While making submissions, their Counsel in Suit Nos.1148/2013, 550 & 551 of 2014 made an attempt to support the case of the Plaintiff in these two Suits. It is not understandable as to why such stance has been adopted by them so belatedly and after unfolding of the Plaintiff's arguments in Suit No.1148/2013. Nonetheless, I am of the tentative view, that this attempt of theirs, does nothing more; but supports the case of the Plaintiff in Suit No.1148/2013 for grant of the injunction application.

14. Insofar as the arguments to the effect that TMS owned various properties and in his life time he executed a Will, and therefore, he was not owner of any other property is concerned, it is of much importance to note that his relations with his brother

and sister were admittedly not cordial and were in fact estranged, which is a matter of fact as reflected from the pleadings in these cases. This goes on further to establish that such relations were not cordial from the fact that even in respect of the estates and properties owned by TMS, he divested 1/3rd share in favour of another Trust and had no intention to leave such assets for its distribution amongst his legal heirs to the fullest extent. This in fact created a motive for TMS to own and keep his assets as benami in the names of his employees and other confident persons. And for that in his Strategy Plan, he created 3 different Trusts, vesting in them such properties and so also the benefits in such Trusts, which were to accrue to the Plaintiff in Suit No.1148/2013 and Defendant No.1 and 40, as well. He being issueless, even made adoption of the Plaintiff of Suit No.1148 of 2013 as his daughter. Though, this has also been denied half-heartedly, but in view of the admitted fact that she was even a signatory to the purported revised Strategy Plan as well a Trustee of various Trusts established by TMS, such denial is whisked away, at least for the present purposes. It may also be noted that none of the Defendants in whose names the assets and shareholdings is claimed have produced before the Court their means for acquiring the assets / shareholdings; source of income by way of salary slip or tax returns, or in any other manner so as to discharge their initial burden and as to in what manner they got these assets. In fact they all have conveniently, avoided this aspect of the case and have failed to refer to any such material nor have led any argument to that effect, which could otherwise justify their stance.

15. In the case reported as **Ch. Ghulam Rasool v Mrs. Nusrat Rasool (PLD 2008 SC 146)**, the Hon'ble Supreme Court had been pleased to observe that two essential elements must exist to establish the benami status of the transaction. The first element is that there must be an agreement, express or implied, between ostensible owner and the purchaser for purchase of the property in the name of the ostensible owner for the benefit of the person who has to make payment of the consideration and second element required to be proved is that transaction was actually entered

between real purchaser and seller to which ostensible owner was not a party. The properties in question were owned by the Companies i.e. Defendant No.45 to 54, whereas, the shareholders of the Companies as is evidenced from transactions at A & B of the Strategy Plan were holding such shares as benami owners of the actual owner of the Companies i.e. TMS, and therefore, they without any shillyshallying or objection transferred the shares held in their names, to the two Trusts i.e. *Saadi Private Benevolent Trust* and *Sonax Private Benevolent Trust*. For the purposes of grant of an injunctive relief it is sufficient for the present moment and the Plaintiff in Suit No.1148/2013 cannot be thrown out as contended by the contesting Defendants.

16. In the case reported as ***Muhammad Sajjad Hussain v Muhammad Anwar Hussain*** (1991 SCMR 703), the Hon'ble Supreme Court while laying down the requirements and ingredients of a benami transaction, has been pleased to hold that once the burden is shifted towards the benamidar, then it is incumbent upon such benamidar to discharge the shifted burden. In the instant case, in my view, at this stage of the proceedings, the burden has shifted upon the contesting Defendants and they have not been able to discharge this burden with any convincing argument or any supporting documents. The Hon'ble Supreme Court has held as under;

It is also well settled law the initial burden of proof is on the party who alleges that an ostensible owner is a Benamidar for him and that weakness in the defence evidence would not relieve a plaintiff from discharging the above burden of proof. However, it may be stated that 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. This is what has exactly happened in this matter. As noted above, the very conduct of the Benamidars whereby, they have acted in furtherance of the Strategy Plan during the lifetime of TMS, is enough for granting the injunction in this matter.

17. In the case reported as ***Muhammad Zaman v Shaikh Abdul Hameed*** (2002 CLC 1209) it has been held as under;

Testing the case in hand, at the touchstone of the above factors, we feel no hesitation in holding that if appellants / plaintiffs were shown to be owners on account of 'Benami' transaction, then the respondent /

defendant has to show the source of payment of amount, whereas, nothing has come on record to highlight this aspect of the case because on the one hand the respondent claims that he had paid the sale consideration in 1971 to the tune of Rs.3,796 at the time of attestation of mutation entry and simultaneously his stand is that he had responsibility to support his parents as well as his brothers, whereas, in 1971, he was in the Government Service and he failed to disclose his income / savings to substantiate that the sale consideration of the disputed plot was paid by him exclusively.

18. It is also a matter of record that the Strategy Plan to the extent of A & B had already been acted upon when TMS was alive and as soon as he expired; the Defendants in charge for managing the Companies as well as the assets of TMS being Directors or otherwise owners, entered into a compromise / settlement with his brother and his wife in the pending Suits, to the extent of the properties in the name of TMS, as mentioned in the Will. This appears to be an attempt to exclude the actual and legal share of TMS from the assets and properties held allegedly as benami by various persons including the Defendants in these Suit. As soon as his brother became aware of the Strategy Plan he has filed a fresh / separate Suit, wherein, he has come before the Court claiming to be the surviving legal heir of TMS along with his sister, and for the present purposes seeks an injunctive order in respect of the said assets of TMS held as benami by respective parties as mentioned in the Strategy Plan. All in all, after perusal of the material on record and a tentative assessment of the same, coupled with the fact that the Strategy Plan has been acted upon in respect of certain properties and in response to which there is no denial or any justifiable answer, as to how and in what manner the Strategy Plan was acted upon by them, I am of the view that the Plaintiffs in Suit No.1148/2013 and 380/2018 have made out a prima facie case for grant of an injunctive relief, and balance of convenience also lies in their favour, whereas, if the injunction is refused, they would definitely suffer irreparable loss and in fact have already suffered such losses by further transfer of the properties and shareholdings by the Defendants.

19. In view of hereinabove facts and circumstances of this case, the injunction applications bearing No.9743/2013 in Suit No.1148/2013 and CMA No.2798/2018 in Suit No.380/2018 are hereby allowed to the extent that the Defendants in these Suits

shall maintain status-quo in respect of the properties as mentioned in the Strategy Plan and shall not create any further third party interest, whereas, applications bearing CMA Nos.4470/2014 and 4472/2014 in Suit Nos. 550 & 551 of 2014 are hereby dismissed. CMA No.9744/2013 in Suit No.1148/2013 is dismissed as infructuous.

Dated: 15.01.2020

Ayaz

J U D G E