

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Civil Revision No. S – 89 of 2006

Ali Gohar and others v. Province of Sindh and others

Date of hearing: **14-02-2022**

Date of decision: **14-02-2022**

M/s Bhajandas Tejwani and Manoj Kumar Tejwani, Advocates for the Applicants.

M/s Abdul Naeem and Faisal Naeem, Advocates for Respondents No.3, 4 and 6.

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh.

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J U D G M E N T

Muhammad Junaid Ghaffar, J. – Through this Civil Revision Application, the Applicants have impugned judgment and decree dated 03-04-2006 passed by the 2nd Additional District Judge, Sukkur in Civil Appeal No.45 of 2000, whereby, while dismissing the Appeal, judgment and decree dated 30-09-2000 and 06-10-2000, respectively, passed by the 2nd Senior Civil Judge, Sukkur in F. C. Suit No.146 of 1989 has been maintained, through which the Suit of the Applicants was dismissed.

2. Heard both the learned Counsel and perused the record.

3. The case of the Applicants appears to be that the property in question was owned by their step mother as a *benami*, as in fact, it was the property of their father; hence, they sought a declaration, injunction and cancellation of the gift deed of the Respondents as well. It is a matter of record that they had by themselves pleaded in some other proceedings (Suit No.24 of 1998) that the property in question was gifted by their father to his second wife out of love and affection. This has come on record and has not been disputed except that the same might have been done due to some ill advice. Their further case was that the Suit property was purchased by their father out of his own income and resources and in support they also produced various documents by claiming that the property was maintained by their father. It is not in dispute that the Suit was filed as a counterblast to the suit bearing F.C. Suit No.97 of 1988 filed by the Respondent for possession, and in the written statement of the suit, they never took a plea

of any *benami* ownership in the name of Khursheed Begum. On this premise, they also challenged the gift deed executed by Mst. Khursheed Begum in favour of the Respondent. The learned Trial Court dismissed the Suit by holding as under:

“I have considered carefully the submissions submitted by the learned counsel for both the parties, perused the evidence adduced by the parties and case law cited at bar by the learned counsel for both parties. Perusal of R and Ps show that the plaintiffs have taken plea that the gift deed was not executed by the deceased Khurshid Begum. The plaintiffs have adduced evidence that possession was also not delivered by the deceased Khurshid Begum to the defendant NO.3 Madersia Ashrafia. The plaintiffs have produced rent agreement, through witness Ali Gohar at Ex.116. Perusal of it shows that which does not bear the signature or thumb impression mark of the executant. So also perusal of the same further shows that substance of the same was written with different ink and different hand and names of the witnesses were written with different pen. Perusal of lease agreement Ex.117 purported to have been executed in between Mst. Khurshid Begum and one Akhtar Ali shows that number of shop viz C-105/200 was written in the same with different type writer after removing the word already written in the same. So also the plaintiffs have failed to examine the tenant namely Anwar Ali who had retained/occupied the disputed premises in capacity of tenant. The contents of the document viz gift deed produced at Ex.100 show that possession was delivered to the defendant NO.3 by Mst. Khurshid Begum through gift deed. The boundaries of the suit property are mentioned in the gift deed. The gift deed is supported by the donee and attesting witnesses. The defendant NO.3 has produced list of articles lying in the disputed house which were also gifted by Mst. Khurshid Begum.

It is worth to mention here that plaintiffs on the one hand had taken plea that gift deed was not executed by Mst. Khurshid Begum, and they have stated in para NO.4 and 5 of their plaint that subsequently the plaintiff's father Rasool Bux purchased the property comprising C.S. NO.105/200 measuring 57-2 Sq. Yds. situated at Military Quarters nears Red Cross Hospital Sukkur, from the Settlement Department on 14.1.1971 in the name of Mst. Khurshid Begum. Consequently Mst. Khurshid Begum was merely ostensible owner while the real ownership in respect thereof vested in the plaintiffs father Rasool Bux Soomro exclusively and absolutely as well as entire consideration and other expenses incidental to the purchase of the property in suit from the Settlement Department ostensibly in the name of Mst. Khurshid Begum were borne by the plaintiffs father Rasool Bux. On the other hand they have stated in their written statement filed by them in F.C. Suit NO.97 of 1988 Re. Madersia Ashrafia Vs. Al Gohar and ors and stated that it is vehemently denied that house in suit is owned by the plaintiffs. Deceased Mst. Khurshid Begum never executed in favour of the plaintiff any gift deed, transferring the property in question to him. The plaintiff has manipulated the said forged and fraudulent gift deed in order to usurp the suit property to the detriment of the defendants who are the absolute and exclusive

owners of the said house having inherited the same from deceased Mst. Khurshid Begum.

It is also worth to mention here that the plaintiffs have not taken such plea of benami in the written statement filed by them in F.C. Suit NO.97 of 1988 Re. Madersia Ashrafia Vs. Ali Gohar. Which is fatal to the case of the plaintiffs.

Since the plaintiffs have failed to discharge the burden of proof of this issue, therefore, issue NO.5 is answered in the negative.”

4. This is the main finding of the learned Trial Court, and on such basis, other issues were also decided against the Applicants. Perusal of the aforesaid finding and the record available before this Court clearly reflects that the Applicants only filed instant Suit as a counterblast to the suit for possession filed by the Respondent. In filing written statement in that suit, they never agitated or claimed that the property in question was a *benami* property of their father. Though they have retained the possession, but the possession by itself cannot declare a person as an owner; whereas, they even had no *locus standi* to challenge the gift deed executed in favour of the Respondent. This could only have been done if they were able to prove that the property in question was a *benami* property, and once a declaration was given in the affirmative, only then as an owner they could have impugned the gift deed in question. It is matter of admitted fact that in their own pleadings, though in some other case, it was stated by them that the property was gifted by their father out of love and affection to their step mother Khursheed Begum, hence, any further plea of *benamidar* is out of question.

5. In view of hereinabove facts and circumstances of this case, it appears that both the Courts below have arrived at a correct decision after appreciating the evidence, hence, no case is made out. This Civil Revision Application does not merit any consideration, and therefore, by means of a short order, it was **dismissed** in the earlier part of the day and these are the reasons thereof.

Abdul Basit

J U D G E