

HIGH COURT OF SINDH AT KARACHI

PRESENT:

*Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmad Khan*

High Court Appeal No.328 of 2018

Farrukh Afzal Munif Appellant

Versus

Muhammad Afzal Munif and others Respondents

Appellant : Through Khawaja Shams-ul-Islam, Advocate along with Mr. Imran Taj, Advocate.

Respondents No.1&2 : Through Mr. Muhammad Haseeb Jamali, Advocate.

Respondents No.3&4 : Through M/s. Umaima Mansoor Khan and Shumaila Saghir, Advocates

Respondent No.5 : Through Mr. Tahmasp Rasheed Razvi, Advocate.

Respondents No.7&8 : Through Mr. Ghulam Murtaza Malik, Advocate

Respondent/CDC : Mr. Abid Naseem, Advocate.

Respondent No.30 : Through Ms. Naureen Saeed Rao, Advocate.

Dates of Hearing : 29.09.2020, 06.10.2020, 26.10.2020 & 06.09.2021.

Date of Judgment : **10.09.2021.**

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J U D G E M E N T

Aqeel Ahmed Abbasi, J :- Instant High Court Appeal has been filed against an order dated 28.09.2018 passed by the learned Single Judge in Suit No.938/2017, whereby, an application filed under Order VII Rule 11 CPC being CMA No.7636/2017 by the respondent Nos.1 & 2 has

been allowed and the plaint is rejected while holding that the plaint does not disclose any cause of action and it is also barred by Section 42 of the Specific Relief Act, 1877 and Sections 29, 30 and 60 of the Sindh Mental Health Act, 2013.

2. Learned counsel for the appellant has vehemently argued that the learned Single Judge was not justified to pass the impugned order and to reject the plaint of suit filed by the appellant seeking declaration, injunction, cancellation, possession, directions, recovery and damages, which according to learned counsel for the appellant, required recording of evidence, therefore, plaint could not have been rejected under the facts and circumstances of instant case. Learned counsel for the appellant has further argued that the appellant, being the only son of respondent No.1, has a valid cause of action against the respondents, who while keeping the respondent No.1 under wrongful confinement fraudulently got large number of moveable and immoveable properties of the respondent No.1 transferred in their favour while depriving the appellant of the assets of his father i.e. respondent No.1. According to learned counsel for the appellant, respondent No.1 was admittedly suffering from the mental disease i.e. Alzheimer's and dementia (memory loss) along with other multiple diseases, whereas, respondents, while taking advantage of his mental health, got the moveable and immoveable properties as detailed in the plaint transferred in their names. It has been contended by the learned counsel that respondents did not allow the appellant to meet with his father and also did not produce him before the learned Single Judge of this Court for the purposes of examination of his mental health and deliberately took him to USA beyond the territorial limits of this Court so

that it could not be ascertained by the Court, as to whether the respondent No.1 was suffering from some mental illness (dementia) and, therefore, was not in a position to deal with financial as well as legal matters. According to learned counsel for the appellant, the appellant has sufficient documentary evidence to support his contention, which could have only been examined through recording of evidence, however, the learned Single Judge, while referring to provisions of Section 29, 30 and 60 of the Sindh Mental Health Act, 2013, and Section 42 of Specific Relief Act, 1877, has rejected plaint of the Suit in piecemeal, without realizing that the Suit filed by the appellant involved multiple relief(s) sought therein, which requires recording of evidence, therefore, the plaint could not have been rejected under the facts and circumstances of instant case. According to learned counsel, the appellant did not press the prayer clause (i) and (j), whereas, provisions of Sindh Mental Health Act, 2013, are not attracted in the instant case for the reasons that in terms of Section 29 of the Mental Health Act, 2013, the person should be within the jurisdiction of the Court, whereas, in the instant case respondent No.1 was taken to USA by other respondents. According to learned counsel for appellant, in terms of preamble of Sindh Mental Health Act, 2013, it is applicable to the mentally disorder person in respect of care, treatment, properties and other related matters, whereas, the respondent No.1 was suffering only from dementia. According to learned counsel, respondent No.1 was not a mentally disordered person as in terms of definition of the aforesaid clause, specially, 2(n) mental disorder means “a mentally ill person who is in need of treatment by reason of any disorder of the mind other than mental impairment and

severe personality disorder". According to learned counsel, respondent No.1 has been suffering from Alzheimer's and dementia since last five years and was not capable to manage his personal affairs including businesses. He was unable to read and understand legal and other documents, therefore, taking advantage of the respondent No.1's health condition respondents No.3 & 5 have been secretly and illegally transferring properties and assets, including private and public company shares and different securities, in their own names. According to learned counsel, respondents taking advantage of mental incapacity of his father and by forging, faking his signatures on various documents i.e. cheque books, transfer certificates, shares certificates and property documents, get number of immovable and movable transferred in their names. Learned counsel for the appellant has further argued, that all the immovable and movable properties, as detailed in the plaint filed by the appellant in Suit No.938/2017, were purchased and acquired by the funds and resources of the respondent No.1, therefore, illegal and fraudulent transfer of such properties in the names of other respondents, while excluding the appellant through forged and manipulated documents and keeping respondent No.1 in their wrongful confinement and taking advantage of his mental illness (dementia); provides a valid cause of action to the appellant to file subject suit, seeking declaration, cancellation, possession, direction, recovery and damages, which require recording of evidence, therefore, the impugned order passed by the learned Single Judge on an application under Order VII Rule 11 CPC is misconceived and liable to be set aside. While concluding his arguments, learned counsel for the appellant has submitted that in view of hereinabove facts and circumstances of the

case and the documents attached alongwith plaint of suit by the appellant in support of his contention. It is clear that the appellant has a valid cause of action and the suit filed by the appellant is not barred by any law, nor it has a case of insufficient Court-fees, therefore, the learned Single Judge has failed in error, while rejecting the plaint through impugned order. It has been prayed by the learned counsel for appellant that the impugned order may be set aside and instant High Court Appeal may be decided in favour of the appellant, while directing the learned Single Judge to decide the suit after recording evidence of the parties in accordance with law. In support of his contentions, learned counsel for the appellant has placed reliance on the following cases: -

- 1) Al-Tamash Medical Society v. Dr. Anwar Ye Bin Ju and 9 others (2017 MLD 705);
- 2) Aroma Travel Services (Pvt.) Ltd. through Director and 4 others v. Faisal Al Abdullah Al Faisal Al-Saud and 20 others (2017 YLR 1579);
- 3) Searle IV Solution (Pvt.) Ltd. and others v. Federation of Pakistan and others (2018 SCMR 1444);
- 4) Arif Majeed Malik and others v. Board of Governors Karachi Grammar School (SBLR 2004 SINDH 333); and
- 5) Shahid Orakazi and another v. Pakistan through Secretary Law, Ministry of Law, Islamabad and another (PLD 2011 SC 365).

3. Conversely, learned counsel for the respondents No.3&4 has vehemently opposed the contentions of the learned counsel for appellant and has supported the impugned order passed by the learned Single Judge, while rejecting the plaint in Suit No.938/2017 filed by the appellant. It has been contended by the learned counsel for the said respondents that the appellant has no cause of action, nor was in possession of any document or evidence to support the allegation against the said respondents regarding illegal transfer of movable and immovable assets of the respondent No.1 in favour of the respondents No.3&4. According to the learned counsel for respondents, the appellant had no right or title over the movable and immovable assets admittedly owned and acquired by the respondent No.1 in his name or in the names of respondents No.3&4 out of his own freewill during the period he did not suffer from any mental illness, therefore, the appellant had no cause of action to dispute the right and interest of the respondents in such movable and immovable assets/properties and, therefore, the plaint has been rightly rejected by the learned Single Judge through impugned order for being barred in terms of Section 42 of the Specific Relief Act, 1877 and Sections 29, 30 and 60 of the Sindh Mental Health Act, 2013. It has been further contended by the learned counsel for respondents No.3&4 that the relief sought by the appellant in Suit No.938/2017 was barred by law and the appellant had no cause of action to invoke the jurisdiction of the learned Single Judge of this Court, seeking declaration, cancellation, possession, direction, recovery and damages in respect of movable and immovable assets admittedly owned and acquired by the respondent No.1 out of his own resources in his name and in the names of his wife and daughter,

therefore, the plaint has been rightly rejected vide impugned order passed by the learned Single Judge. According to the learned counsel for the respondents No.3&4, the appellant has miserably failed to adduce any material or evidence to support the allegation against the respondents No.3&4 regarding illegal and fraudulent transfer of movable and immovable assets of the respondent No.1 in their favour, whereas, respondent No.1 has filed written-statement in the aforesaid suit, wherein, all such allegations have been denied. According to the learned counsel for respondents, keeping in view the immoral activities of the appellant, who attempted to cause harm and injury to the respondents, respondent No.1 did not want to see the appellant, who was not in visiting terms with the respondents for the last couple of years. It has been further contended by the learned counsel for the respondents No.3&4 that since all the relief sought through Suit No.938/2017 filed by the appellant was based on the allegation that the respondent No.1 was suffering from mental illness (dementia) and Alzheimer's, therefore, instant of filing sit before the learned Single Judge of this Court, on the original side, appellant could have availed remedy by approaching the Court of protection in terms of Sections 29, 30 and 60 of the Sindh Mental Health Act, 2013, therefore, learned Single Judge was justified to reject the plaint under Order VII Rule 11 CPC, as the suit was barred by law i.e. Section 42 of the Specific Relief Act, 1877 and Sections 29, 30 and 60 of the Sindh Mental Health Act, 2013. Without prejudice to hereinabove submissions, learned counsel for the respondents No.3&4 has also raised objection as to maintainability of instant High Court Appeal on the ground that during pendency of instant appeal, respondent No.1 has passed away on

24.06.2019, thereby, a new cause of action for inheritance approved, whereas, S.M.A. has been filed on 21.11.2019 by the respondent No.3/widow in respect of movable and immovable assets/properties left by the respondent No.1. According to the learned counsel for the respondents, since the respondent No.1 is no more alive, therefore, the suit filed by the appellant otherwise has become infructuous for the reason that the allegations to the effect that the respondent No.1 was suffering from mental disorder (dementia) and the movable and immovable assets owned and acquired by the respondent No.1 were illegally got transferred in favour of the respondents No.3&4 through fraud and forgery, which could have only be sustained by producing the respondent No.1 before the competent Court of jurisdiction under the Sindh Mental Health Act, 2013. Learned counsel for the respondents has further argued that since the other relief sought by the appellant in the suit was consequential in nature and dependent upon determination of the mental health capacity of respondent No.1, therefore, all such relief sought also become infructuous on the death of the respondent No.1. According to the learned counsel, the appellant being one of the legal heirs of respondent No.1 is entitled to the assets and liabilities of his father/respondent No.1, whereas, in case of any dispute with regard to the right and title of the respondents No.3&4 in the movable and immovable assets in their names, appellant is at liberty to file objection in the S.M.A. filed on behalf of the respondent No.3, which can be decided by the Court, while converting the same into administration suit, after recording of evidence, if so required, in accordance with law. While concluding his arguments, learned counsel has submitted that the suit filed by the appellant as well as instant appeal have become

infructuous on the death of the respondent No.1, hence liable to be dismissed. In support of his contentions, learned counsel for the respondents No.3 & 4 has placed reliance on the following case-law: -

- 1) Ghulam Haider v. The Settlement Commissioner, Peshawar and others (1972 SCMR 559)
- 2) Rehmatullah and others v. Saleh Khan and others (2007 SCMR 729)
- 3) Syed Mehdi Hussain Shah v. Mst. Shadoo Bibi and others (PLD 1962 Supreme Court 291)
- 4) Multan Electric Power Company Ltd. v. Muhammad Ashiq and others (PLD 2006 Supreme Court 328)
- 5) Sardar Muhammad and others v. Mst. Sharifan Bibi (PLD 2006 Supreme Court 444)
- 6) Muhammad Tariq and others v. Mst. Shamsa Tanveer and others (PLD 2011 Supreme Court 151)
- 7) Fazal-ur-Rahim v. Islamic Republic of Pakistan and others (2005 MLD 859 [Karachi])
- 8) Noor Hussain and others v. Mst. Fatima and others (1984 MLD 438 [Lahore])
- 9) Muhammad Zahid v. Mst. Ghazala Zakir and 7 others (PLD 2011 Karachi 83)
- 10) Saifullah Khan and others v. Mst. Afshan and others (PLD 2017 Sindh 324)
- 11) Sheikh Haroon Buksh v. Shaikh Tahir Buksh and 2 others (PLD 2017 Sindh 563)
- 12) Saeed Zehri v. Nabi Bux Zehri and another (1996 CLC 497)
- 13) Muhammad Mansha and 5 others v. Muqadas Sultan and 6 others (2010 CLC 712)
- 14) Mst. Shagufta Parveen v. Qaiser Ijaz and 2 others (2015 YLR 2550)
- 15) Mst. Suriya Iqbal Chishti and another v. Mst. Rubina Majidullah and others (2019 CLC 211 [Sindh])

16) Rizwan Ahmed v. Jameel Ahmed and 9 others (2020 YLR 366 [Sindh])

4. Learned counsel for the respondent No.5 has also vehemently opposed the contentions of the learned counsel for appellant and has supported the impugned order passed by the learned Single Judge and has argued that the appellant had no cause of action to file the suit No.938/2017 against the respondents based on mere allegation without support of any material or evidence, whereas, the suit was also barred by law i.e. Section 42 of the Specific Relief Act, 1877 and Sections 29, 30 and 60 of the Sindh Mental Health Act, 2013, therefore, has rightly rejected the suit by the learned Single Judge through impugned order. According to the learned counsel for respondent No.5, the allegations leveled against the respondent No.5, besides being false and frivolous, but not supported by any material or evidence, moreover, no movable and immovable assets belonging to the respondent No.1 were transferred in favour of the respondent No.5. It has been further contended by the learned counsel for respondent No.5 that the appellant with malafide intention has wrongly dragged respondent No.5 in these proceedings, whereas, the appellant has no cause of action whatsoever to seek relief against the respondent No.5 in respect of movable and immovable assets owned and acquired by the respondent No.1 in his name as well as in the name of respondents No.3&4. According to the learned counsel for the respondent No.5, learned counsel for the appellant was not justified to refer the provisions of Sindh Empowerment of Persons with Disabilities Act, 2018, for the reason that Suit No.938/2017 was filed before enactment of the aforesaid Act, which is not applicable retrospectively, whereas, the provisions of the aforesaid Act are otherwise not attracted in the instant

case for the reason that Sindh Empowerment of Persons with Disabilities Act, 2018 was passed to give effect to the United Nations Convention on the rights of “Person with Disabilities” and the matter connected therewith or incidental thereto. According to the learned counsel for respondent No.5, as per allegations of the appellant respondent No.1 was suffering from mental illness (dementia) which does not fall within the definition of Mental Disorder, therefore, not covered under the Sindh Empowerment of Persons with Disabilities Act, 2018. Without prejudice to hereinabove submissions, learned counsel for the respondent No.5 has also raised objection as to maintainability of instant High Court Appeal in view of the death of respondent No.1 during pendency of instant appeal. Learned counsel for the respondent No.5 has adopted the arguments of the learned counsel for the respondents No.3 & 4 in this regard. In support of his contentions, learned counsel for the respondent No.5 has placed reliance on the following cases:

- 1) Multan Electric Power Company Ltd. v. Muhammad Ashiq and others (PLD 2006 SC 328);
- 2) Azhar Mukhtar v. Mst. Tazeen (PLD 2016 Sindh 381);
- 3) Saeed Zehri v. Nabi Bux Zehri (1996 CLC 497);
- 4) Sadbar Khan v. Amir Hussain (PLD 1995 Peshawar 14);
- 5) Maj. (Retd.) Pervez Iqbal v. Muhammad Akram Almas (2017 SCMR 831);
- 6) Khadim Hussain and 12 others v. Gul Hassan Tiwano (2014 MLD 574); and
- 7) Muhammad Zahid through Legal Heirs v. Mst. Shahzala Zakir and 7 others (PLD 2011 Karachi 83).

5. We have heard the learned counsel for the parties, perused the record and the impugned order passed by the learned Single Judge of this Court in Suit No.938/2017 with their assistance and also examined the relevant case-laws cited by the learned counsel for the parties. Through impugned order plaint of suit has been rejected by the learned Single Judge and the application filed under Order VII Rule 11 CPC (CMA No.7636/2017) by the respondent No.1 in the above Suit, has been allowed. Suit was filed by the appellant seeking declaration, injunction, cancellation, possession, directions, recovery of damages against the respondents, whereas, an application under Order 39 Rule 1 & 2 CPC (CMA No.5903/2017) was also filed seeking for restraining order against the respondents No.2 to 5 from counterfeiting the signatures of respondent No.1 and not to create any 3rd party interest in the properties mentioned in paragraphs 7 to 9 of the plaint with further restraining order not to transfer the shares and not to withdraw the amount from the banks. However, consequent upon decision of the learned Single Judge on CMA No.7636/2017, filed under Order VII Rule 11 CPC, whereby, plaint has been rejected, injunction application as referred to hereinabove has also been dismissed. From perusal of the impugned order passed by the learned Single Judge in the instant case, it has been noted that while taking stock of the relevant facts and material available on record and after examination of the plaint and relief(s) sought therein, the learned Single Judge reached to the conclusion that the allegations as contained in the plaint and multiple relief(s) sought by the appellant in Suit are mainly dependent upon determination of mental health of the respondent No.1, which according to learned Single Judge, could have been decided by the

Court of protection in lawfully instituted proceedings under the Sindh Mental Health Act, 2013, having exclusive jurisdiction in such matters. After having referred to various provisions of Sindh Mental Health Act, 2013, the learned Single Judge reached to the conclusion that as per assertions of the appellant in plaint, the respondent No.1 was suffering from the disease of dementia and Alzheimer, hence to be considered as mental disorder pursuant to the terms of Sindh Mental Health Act, 2013, therefore, instead of filing the subject Suit, the appellant should have approached the Court of protection in terms of Sindh Mental Health Act, 2013. In addition to hereinabove finding as to jurisdiction of the Court of protection in terms of Sindh Mental Health Act, 2013, relating to determination of mental health of the respondent No.1, the learned Single Judge has been further pleased to record his finding with regard to legal character as well as any right of the appellant in respect of any property admittedly owned/acquired/purchased by respondent No.1 and subsequently transferred in the name of his wife, in terms of Section 42 of the Specific Relief Act, 1877. Learned Single Judge has been pleased to hold that moveable and immoveable properties held in the names of respondent No.1 and respondent No.2, being the real father and mother of the appellant, cannot be disputed or challenged by the appellant, who has no legal character or right in any of the properties as mentioned in the plaint. As regard the assertion of the appellant in the plaint alleging that the moveable and immoveable properties as detailed in paragraph 7 of plaint are benami properties, the learned Single Judge has been pleased to hold that the appellant has no right and authority to challenge it as it is a matter strictly between the respondent Nos.1 & 2 i.e. husband and wife, whereas, such

declaration, if at all, can only be sought by a person who can establish that said property has been purchased or acquired out of his own funds/resources, however, in the name of another person being ostensible owner and not the real owner of such property. Prima-facie, the above finding of the learned Single Judge does not suffer from any factual error or illegality, however, with a clarification that ouster of jurisdiction of Civil Court for determination of mental health of a person in view of provisions of Sindh Mental Health Act, 2013, may not be absolute, and would not be attracted in appropriate cases, particularly, in cases wherein the multiple declaration(s) and the relief(s) sought are otherwise lawful, and fall within the exclusive domain of the Court of civil jurisdiction. However, in the instant case, it appears that the declaration(s) and the relief(s) sought by the appellant were dependent and consequent upon determination of mental health of respondent No.1, therefore, could not be entertained in the subject suit, particularly, when the plaintiff failed to disclose any legal character or lawful cause of action to file subject suit. The finding of a learned Single Judge relating to absence of cause of action to file a suit, as the appellant failed to establish any legal character, as to the properties admittedly owned and acquired by respondent No.1 in the name of respondent No.2 in the instant case does not suffer from any legal error, therefore, it was within the discretion of the learned Single Judge in terms of Section 42 of the Specific Relief Act, 1877, to examine as to whether under the facts and circumstances as referred to hereinabove the suit filed by the appellant and the relief(s) sought therein is barred by any law. We are mindful of the fact that the provisions of Order VII Rule 11 CPC have limited scope and can be invoked in four situations (a) where

it does not disclose a cause of action; (b) where the relief claimed is under-valued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; and (d) where the suit appears from the statement in the plaint to be barred by any law, whereas, provisions relating to dismissal of a suit at any stage in terms of provisions of CPC, are different in nature and scope. However, in the instant case, the learned Single Judge after having taken into consideration the relevant facts, and the averments in the plaint and after examination of material available on record reached to the conclusion that since plaintiff has no legal character or any lawful cause of action in respect of properties which were not owned or purchased by the appellant and were admittedly owned/acquired or purchased by respondent No.1 in the name of respondents No.2 & 3 being his wife and real daughter. While approving the finding of the learned Single Judge relating to rejection of plaint under Order VII Rule 11 CPC in the instant case, we are also inclined to hold that the allegation of the appellant regarding benami properties in the name of respondent No.2 or illegal and fraudulent transfer of moveable and immoveable properties of respondent No.1 in favour of respondent Nos.2 and 3, particularly, when respondent No.1 is alive and has never disputed ownership of such properties in the name of respondent No.2 or respondent No.3, can never be approved, merely on the basis of allegations, and in the absence of any tangible material or evidence produced to this effect by the plaintiff. The

appellant has also failed to refer or produce any material or evidence before this Court as well, which could otherwise support the contention of the appellant, whereas, respondent No.1 has reportedly denied such in allegation the written statement filed on verification. We are of the opinion that a declaration to this effect otherwise, can be sought only by, that person who claims that any moveable or immovable property standing in the name of another person, is actually owned by him as, it was acquired from his own resources and funds, whereas, the person in whose name such property is purchased or transferred is merely an ostensible owner (benamidar). However, no 3rd party having no right or interest in such property, can make such an allegation nor can seek a declaration to this effect, for the reason that neither any cause of action is available to such person nor such person has any legal character, right or interest, whatsoever, in respect of such properties. Moreover, if a person purchases any property in the name of his wife or children and also hands over possession and documents of title accordingly, then the legal presumption is that right and title in respect of such property vests in such person in whose name such property has been purchased or transferred, particularly, when possession and documents of title is also handed over by the purchaser to such person in whose name properties have been purchased or stood transferred. In the case of *Ch. Ghulam Rasool vs. Nusrate Rasool (PLD 2008 S.C. 146)*, the Hon'ble Supreme Court has been pleased to hold 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 the ostensible owner and the purchaser for the purchase of the property in the name of ostensible owner for the benefit of such

person and second element required to be proved is that transaction was actually entered between the real purchaser and the seller to which ostensible owner was not party. Similarly, in the case of *Abdul Majeed v. Amir Muhammad (2005 SCMR 577)*, the Hon'ble Supreme Court has been pleased to hold that the question whether a transaction is benami character or not has to be decided keeping in view a number of factors/consideration, i.e. (i) source of consideration (ii) from whose custody the original title documents and other documents come in evidence (iii) who is in possession of suit property and (iv) Motive of for Benami transaction. In the instant case, the appellant being the real son of respondents No.1 & 2 and brother of respondent No.3, has alleged that certain properties in the name of respondent Nos.2 and 3 purchased by the respondent No.1 in the name of respondent Nos.2 and 3 are benami properties. We are of the opinion that primarily respondent No.1 has the right to seek a declaration to the effect that he is the actual owner, whereas, respondent No.2 is merely a ostensible owner (benamidar) of such properties, however, the appellant has no right and authority to dispute or challenge the nature of such transaction or the ownership of such property on the allegation of fraud or benami transaction. We are afraid that any other legal presumption in respect of properties acquired and purchased by any person in the name of any other person, particularly, in the name of his wife or children, would lead to opening the Pandoras box, and would encourage the frivolous litigation by unscrupulous persons, otherwise having no right, or title upon such properties purchased or transferred by any person, particularly, in the name of his wife or children. Accordingly, the finding of the learned Single Judge in this regard is hereby affirmed.

6. It is pertinent to note that during pendency of instant High Court Appeal, it was learnt that respondent No.1 has expired, therefore, learned counsel for the respondents have vehemently argued that since respondent No.1 is no more alive, the suit filed by the appellant as well as instant High Court Appeal have become infructuous, hence liable to be dismissed. It has been further argued that a petition for issuance of Succession Certificate/Letters of Administration in respect of properties left behind by the respondent No.1 has also been filed by respondent No.2, therefore, the claim of the appellant, if any, in respect of such properties would be recognized in such proceedings. We are persuaded with such contention of the learned counsel for the respondents for the reason that the main relief sought in the suit filed by the appellant related to a declaration regarding mental health of respondent No.1, whereas, admittedly, the appellant did not press clause (h) and (j) relating to such declaration, therefore, in the absence of any declaration regarding mental health of the respondent No.1 the consequential reliefs sought therein would also become redundant. Moreover, since the respondent No.1 has expired, therefore, it cannot be ascertained as to whether the allegation of the appellant regarding mental health of respondent No.1 is true or

otherwise, as such person can no more be produced before the competent Court of jurisdiction for the purposes of verification as to his mental health, nor it can be determined as to whether the properties acquired or purchased by respondent No.1 in the name of respondent Nos.2 and 3, are benami. Similarly, it will not be possible to ascertain as to whether the properties which stood transferred in the name of respondents No.2 and 3 by respondent No.1 was the result of some fraud or forgery or not, particularly when appellant failed to point out the relevant dates during which the respondent No.1 allegedly suffered from mental illness of such a nature that he was incapacitated from entering into transaction of sale/purchase or transfer of any property subject matter of the suit.

7. In view of hereinabove facts and circumstances of the case, we are of opinion that since respondent No.1 has expired, therefore, the relief(s) sought through Suit No.938/2017 are no more available to the appellant, hence no useful purpose will be served if the suit is restored to its original position, and allowed to be proceeded on the given facts and legal position emerged in the case, therefore, instant High Court Appeal, has become infructuous, the same is hereby dismissed along with listed application. However, with a clarification that the appellant will be at liberty to file objections, if any, in the petition filed by respondent No.2 for issuance of Succession Certificate/Letters of Administration in respect of moveable and immoveable properties left behind by respondent No.1 including the disputed properties, if any, which shall be considered by the learned Single Judge in accordance with law, without being influenced by any observations made in the instant case.

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