

ORDER SHEET  
IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD

Ist Appeal No.182 of 2002

Ist. Appeal No.183 of 2002

DATE

ORDER WITH SIGNATURE OF JUDGE

12.03.2018.

Mr. Arbab Ali Hakro, Advocate for the applicant/  
appellant.

Mr. Suresh Kumar, Advocate for the respondents.

Mr. Wali Muhammad Jamari, Assistant A.G.

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These two appeals arise out of proceedings bearing F.C.Suit No.08/1996 (Old No.104/1989) F.C.Suit No.01/1997 (Old No.75/1989) and commonly decided by the impugned judgements and decrees dated 30.08.2002, wherein the proceedings initiated by the appellant for declaration of "Benami" were dismissed whereas the proceedings initiated by the respondent Ali Khan for possession were allowed. The contestation between the parties were in respect of subject land bearing Survey Nos.305 and 318, admeasuring 02-15 acres, Survey No.309, 306, 307, 308, 314, 310, admeasuring 8-12 acres, Survey Nos.303/A,B, 304, 323/A,B, admeasuring 10-6½ acres, Survey Nos.306, 307, 308, 309, 310, 317 admeasuring 16-24½ acres, situated in Deh Kakeji and Survey Nos.256, 257, 255, 258 admeasuring 11-32½ acres, total admeasuring 49-10½ acres, who claimed by the appellant to be Benami standing in the name of Ali Khan (hereinafter referred to as the private respondent) whereas rest of the land stood in the name of his



Learned counsel for the appellant contends that the matter had proceeded before the learned District Judge, Sanghar, and as such the right of appeal may be considered to the extent of Hind appeal being available and as such these first appeals. It is further contended on part of learned counsel for the appellant that though the trial Court has considered the leading authority in the matter and the required grounds have been considered, yet the findings as reached therein are not in accordance with the evidence as was led before the learned trial Court. It is further contended on part of learned counsel for the appellant that learned trial Court has failed to consider that the appellant has brought up evidence in documentary as well as supportive oral evidence thereto. It is further contended on part of said learned counsel that the source of income was in favour of the appellant as the presence of the registered sale deed and the acknowledgment of partial payment supports his claim alongwith the oral evidence of the witnesses namely Mubarak Ali and Kamaluddin, included the witnesses to the documents of sale deed. Learned counsel for the appellant further contends that the ground of custody of documents has not been properly considered and has been decided in favour of the respondent despite the appellant having produced the same. As to the extent of possession, it is contended on part of learned counsel for the appellant that to the ground of possession, no clear findings has been given. Learned counsel further contends that the motive as brought forward by the

appellant was not considered in its proper prospective. Learned counsel for the appellant apart from relying upon his written synopsis also relies upon the case laws reported at 1991 SCMR 703, PLD 2002 S.C. 615, PLD 1997 Lahore 153, PLD 1969 SC 60, 2003 MLD 185 Lahore, 1995 MLD 397 Karachi, 2002 CLC 1295 Karachi, 2002 CLC 879, 2002 CLC 1209 Lahore, 2002 CLC 1502 Karachi, 2001 CLC 1599 Karachi, 1995 CLC 242 Lahore, 1986 CLC 2057 Lahore and 1982 CLC 2271 Lahore.

Learned counsel for the private respondent on the other hand contends that the learned trial Court has rightly decided the issues and has referred to sale deed, which according to him specifies the presence of the parties and not the money coming from the appellant. It has also been contended on part of learned counsel for the private respondent that motive has been reasonably discussed and that the stamp paper in the matter was purchased by the said respondent. He relies upon case laws reported at 2005 SCMR 577, 2009 CLC 324, 2006 CLC 732 and PLD 2004 Karachi 17.

Learned A.A.G. supports the impugned judgment and further submits that it has come in the evidence that the appellant had 03 other sons and that the private respondent was having much more of land available to him whereas the appellant was only serving as chairman of the Union Council.

Learned counsel for the appellant in rebuttal states that the matter of possession in accordance with the pleadings was admitted to have been with the private respondent as Hari



and not as an owner. He further contends that the limitation in the matter cannot be considered a resistance on the basis of cause of action and that procuring the stamp paper does not decide the right and title of the property.

Having heard learned counsels, gone through the record with their assistance.

This being an appeal, it is for this Court to see as to the propriety, legality and correctness of the issues decided. The private respondent admittedly alongwith the other co-appellant in the appeal bearing No.183/2002 namely Akhtar Hussain (who is the son of the main appellant) are co-owners bearing from the single sale deed. The appellant Raees Ahmed Bux Khan and Ali Khan are real brothers. The appellant claims that the portion available to the said private respondents is Benami. However, no reason has come up as to why the whole of the subject property was not purchased in the name of single person. It is also missing on part of appellant as to why he has not mentioned the nature of ownership in the registered document, which otherwise was available to him as the private respondent is admittedly an illiterate person. No history of relationship between the parties has also come up to construe that a cause of action accrued to the appellant as stated in respect of Kharif crop (Fasal) of the year 1988/1989. The same being the associated circumstances also liable to be considered.

In the circumstances, it is apparent that the subject property was purchased in the name of the private respondent

against his own consideration. Perhaps, whole of the property was available and the appellant was able to purchase the same alongwith the respondent in the respective proportion as stated in the sale deed from funds in the respective share. Balance of evidence as present in the matter may be questioned but to prove the case before a Court of law sufficient material has to be brought up in order to enable the Court to decide the matter conclusively. The appellant was required to bring sufficient material to disturb the sale deed as was present and in absence thereof cannot be considered to have proved this case of Benami. As to the pending applications, the same even if allowed, may bring forth further question, which may go both ways irrespectively, the same not qualifying to change the fate, are not considered.

With the above forgiven reasons, the appeals stand dismissed alongwith costs throughout.

Sd/- MEHMOOD A. KHAN,  
JUDGE.

