

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Muhammad Shafi Siddiqui and
Ms. Sana Akram Minhas, JJ.

HCA No.349 of 2022
(Syed Qaseemul Hassan through legal heirs v. Late Mst. Kaniz Fatima & others)

HCA No.350 of 2022
(Mrs. Nadira Iffat & others v. Late Mst. Kaniz Fatima & others)

HCA No.351 of 2022
(Syed Qaseemul Hassan through legal heirs v. Mrs. Binte Fatima & others)

HCA No.352 of 2022
(Syed Qaseemul Hassan through legal heirs v. Syed Shamimul Hassan & others)

Date of Hearing: 29.04.2024

Appellants: Through Mr. Abdul Razzak, Advocate

Respondents: Through Mr. Arif Khan, Advocate a/w Mr. Abdul Majeed Khan, Advocate

J U D G M E N T

Muhammad Shafi Siddiqui, J: Four suits were filed by one set of legal heirs against other set of legal heirs of Syed Nasibul Hassan in respect of immovable properties, which at the relevant time existed in the names of individual legal heirs. Names of all the legal heirs of Syed Nasibul Hassan are as under:-

1.	Kaniz Fatima (widow)	Plaintiff No.1	In Suit No.943/1997
2.	Syed Shamimul Hassan	Plaintiff No.2	-----do-----
3.	Syed Hassan Abbas	Plaintiff No.3	-----do-----
4.	Miss Sultan Jehan	Plaintiff No.4	-----do-----
5.	Naeemul Hassan	Plaintiff No.5	-----do-----
6.	Reqeemul Hassan	Plaintiff No.6	-----do-----
7.	Iqbal Hassan	Plaintiff No.7	-----do-----
8.	Qamarul Hassan	Plaintiff No.8	-----do-----
9.	Mrs. Binte Fatima	Plaintiff No.9	-----do-----
10.	Syed Qaseemul Hassan	Defendant No.1	-----do-----

Some of the properties are in the name of one legal heir whereas some of the properties are in the name of the other legal heirs. Properties' descriptions are as follows:-

Sr. No.	Property particulars	In whose name exists	Remarks
1.	Partnership business in the name of Mohsin & Company i.e. defendant No.2	i. Plaintiff No.4 (Sultan Jehan) ii. Plaintiff No.8 (Qamarul Hassan). iii. Defendant No.1 (Syed Qaseemul Hassan)	Subject matter of Suit No.943 of 1997
2	Bungalow No.C-28, Block-VI, Gulshan-e-Iqbal, Karachi measuring 600 sq. yards.	Defendant No.1 (Syed Qaseemul Hassan (though plaintiffs claim the defendant to be benamidar)	Subject matter of Suit No.943/1997 and 825 of 2002
3.	Shop No.7, Taj Mansion, SB-6/57, Raja Ghazanfar Ali Khan Road, Sommerset Street, Saddar, Karachi.	It was taken on rent/Pugree basis in the name of defendant No.2 i.e. partnership business Mohsin & Co. And admittedly is sold/disposed of on Pugree basis.	Subject matter of Suit No.943 of 1997
4	Property bearing No.79, measuring 280 sq. yards in Block-3, C.P. & Berer Cooperative Housing Society, Karachi.	Defendant No.1 Bint-e-Fatima D/o Nasib-ul-Hasan (though plaintiffs claim the defendant to be benamidar in their suit No.174/99)	Subject matter of Suit No.174 of 1999
5	Property bearing No.39/3, measuring 283 sq. yards in Block-3, C.P. & Berar Cooperative Housing Society, Karachi	Defendant No.1 Syed Shamim-ul-Hasan S/o Nasib-ul-Hasan (though plaintiffs claim the defendant to be benamidar in their suit No.174/99)	Subject matter of Suit No.175 of 1999

2. The first suit that was filed by respondent No.1 is Suit No.943/1997 which involved property No.C-28, Block-VI, Gulshan-e-Iqbal, Karachi, measuring 600 sq. yds. whereas rest of the three suits were filed by the Appellants belatedly apparently as a counterblast as suits No.174/1999, 175/1999 and 825/2002. They all have prayed that the properties acquired under the respective names were in fact Benami and actual owner is Syed Nasibul Hassan. Separate issues were framed and separate evidence was recorded by the parties in the aforesaid four suits. Since the parties were common, though involved different immovable properties and evidence recorded separately, four suits were

taken up together and then in terms of para 20 of the impugned judgment 04 issues were re-casted/reframed as under and suits, at that stage were consolidated:-

1. Whether the ownership of the properties claimed in Suits No.174 & 175 of 1999 were transferred depriving the other legal heirs? If so to what effect?
2. Whether the Defendant No.1 of Suit No.943/1997 late Syed Qaseemul Hassan was holder of the subject property in his own right? If so to what effect?
3. Whether the business of late Nasibul Hassan was acquired by only one of the legal heirs Syed Qaseemul Hassan depriving the other legal heirs? If so to what effect?
4. What should the decree be?

3. The four suits were then disposed of by way of the reasons assigned to the aforesaid four issues.

4. We have heard learned counsel for the parties and perused material available on record.

5. It is Appellants' case that the suits were heard on 17.3.2021 and the judgment was announced after almost more than 14 months i.e. on 04.06.2022. It is urged that not a single line of evidence was discussed in the judgment. Thus, it is their case that the judgment was announced without considering any part of evidence. He submits that the motive for ostensibility, in the first suit i.e. Suit No.943/1997 was not established at all and thus it could not have been decreed. The decision of ostensible ownership cannot be decided in the absence of a motive in terms of the judgment of the Hon'ble Supreme Court in the case of Muhammad Sajjad Hussain v. Muhammad Anwar (1991 SCMR 703) wherein the principle laid down was followed in several other judgments. Surprisingly, the Evidence File of one of the suits i.e. Suit No.174/1999 was also not traceable and is still not traceable yet the

learned Single Judge went on to announce the judgment and recorded no reasons for its unavailability. We have no material to show if efforts were made to reconstitute the missing evidence file. Why the evidence file was not reconstituted by office itself under the orders of the Court, is also a mystery.

6. We have perused the impugned judgment and there is no cavil that the depositions recorded on oath including cross-examination were not discussed to its effectiveness. It is perhaps on the strength of original pleadings and the principles that concern with the ostensibility, whether or not available in the case in hand, the issues were taken to the conclusivity. We have inquired from Mr. Arif Khan, learned Counsel appearing for Respondents No.2 to 6, who submits that he would not object if all properties be deemed as properties of late father Syed Nasibul Hassan son of Syed Ghulam Hussain and the properties be put to auction for the benefit of all legal heirs of Syed Nasibul Hassan. Mr. Abdul Razzak also concedes and added that the dispute triggered when only appellants property was questioned.

7. Mr. Abdul Razzak, learned Counsel for Appellants, who has filed these four Appeals has also not objected to Mr. Arif's statement as he himself submitted that he filed three suits subsequent to the filing of the first suit wherein his other siblings have brought a challenge to his title and sought declaration that he was holding a property as Benami. He also concedes that if all such properties, for the benefit of all the legal heirs of Syed Nasibul Hassan, be put to auction as being properties of their deceased father Syed Nasibul Hassan, they would surrender accordingly. Publication to effect service upon other respondents was also made and they did not appear.

8. At this point in time we are more concerned as to the reasons assigned by the learned Single Judge while disposing of the 04 suits; we

are of the view that as far as Suit No.943/1997 is concerned, one of the ingredients has not been established and that is the motive to acquire that property in the name of one of the sons. Surprisingly, Syed Nasibul Hassan bestowed title of other properties by way of some title or gift in the name of other legal heirs, why would he then deprive one of his sons whose title is challenged in Suit No.943/1997; the reasoning is not assigned based on evidence recorded. We are not giving any observation as to the ostensibility or otherwise since the parties and the Counsel before us have agreed to some understanding as disclosed above.

9. We, therefore, are of the view that the impugned judgment is devoid of reasoning and was announced after more than 14 months in the absence of evidence file in one of the suits. The suits were reserved on 17.3.2021 and announced on 04.6.2022. As agreed by counsels in attendance, the impugned judgment/decree is set aside and the suits are remanded to the learned Single Judge to dispose them of in accordance with law. It is expected that the four suits be decided at the earliest.

JUDGE

JUDGE