

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
II Appeal No.238 of 2024

Date	Orders with Signatures of Judges
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1. For hearing of MA No.7036/2024 (stay)
2. For hearing of main case

Date of Hearing: **19.05.2025.**
Date of Announcement: **23.06.2025.**

Appellants Muhammad Zulfiqar, Muhammad Ajmal and Azmatullah through M/s Liaquat Ali Hamid Meyo and Raees Ahmed, Advocates.
 Respondent No.1 Taj Muhammad through Ms. Irum Rasheed, Advocate.

SHAMSUDDIN ABBASI, J.- This second Appeal is directed against the conflicting findings of the Courts below. The learned 5th Senior Civil Judge, Karachi South, dismissed the suit No.306 of 2018 filed by the Respondent No.1 seeking declaration, cancellation of documents, possession and permanent injunction in respect of shop No.7, Sheet No.NP 07, Survey Number 15, measuring 142 square feet in Napier Quarters, Karachi, (the **Suit Property**) against his sons Muhammad Zulfiqar, Muhammad Ajmal and grandson Azmatullah. However, the learned 11th Additional District and Sessions Judge, Karachi South, set-aside the said Judgment and Decree dated 07.11.2022 and allowed Civil Appeal No.251 of 2022 vide impugned Judgment dated 20.05.2024.

Briefly facts of the case as pleaded are that the Respondent No.1 purchased the suit property in the names of his two sons and a grandson, as above, as a benamidar, as source of funds for its purchase was borne by him. Before the trial Court, the Respondent No.1 examined himself and one Usman Ghani while in defense the Appellants appeared in the witness box and examined themselves. The trial Court after hearing the parties, dismissed the suit, and the learned Appellate Court, after framing following three points for determination, set-aside Judgment and Decree and decreed the suit as prayed:-

1. Whether the suit property was purchased by the appellant in the name of respondents No.1 to 3 through Benami Transaction;
2. Whether impugned Judgment and Decree require any interference; and
3. What should the decree be?

Learned counsel for the appellants submitted that the impugned findings are based on sheer misreading and non-reading of evidence in as much as it has observed in paragraph 13 of the Judgment that appellants admitted in cross-examination that title documents and possession of the suit property were with the Respondent No.1 father. Per counsel the appellants has been running business in the suit property since long and all original receipts of payment through bank challan are in their possession while the Respondent No.1 father stolen the original file for which a publication was made in the newspaper and application made to the concerned police. Furthermore, the Respondent No.1 has miserably failed to produce the marginal witness of the sale agreement and receipt of payment dated 05.12.2011 on the false excuse of death of both of them. He further submitted that the Respondent No.1 failed to give the money trail regarding purchase of the suit property from his own funds. He pointed out that the Respondent No.1 admitted in cross-examination that he had not submitted the receipts of bank and produced any proof regarding his business. According to him, the Appellate Court failed to appreciate that the Respondent could not rebut the factum of deposits of huge amount by the appellants in his bank account before the drawing and execution of conveyance deed.

Conversely, the learned counsel for the Respondent No.1 supported the impugned Judgment on the ground that the Appellants in their cross-examination admitted they used to deposit the amount in the account of the Respondent No.1 while working in the suit property/shop No.7. She pointed out that the Appellants in their cross admitted that the sale consideration in respect of the suit property was paid to the seller through the bank account of Respondent No.1 and after purchase got transferred the suit property in the name of the Appellants. As to the previous conduct of the Respondent No.1, the learned counsel pointed out that Appellant No.2 Muhammad Ajmal in his cross categorically admitted that all the expenses of their marriage were borne by the Respondent No.1 and after the death of his brother Hanif, Appellant Azmat was brought up by the Respondent No.1. She submitted that as it has been proved that the sale consideration of the suit property was paid by the Respondent No1, who also produced original title documents of the suit property the Appeal be dismissed.

Heard learned counsel for the Appellants, Respondent No.1 and perused the material available on record. The learned IX Additional District Judge, Karachi South, while reversing the findings of the trial Court, has observed in the impugned Judgment that:-

“13. On the other hand evidence of respondents mainly based on the plea that they periodically deposited amount in the bank account of the appellant for several years more than rupees 10 million. They have admitted that respondents no.1 and 2 are appellant’s sons and appellant no.3 is his grandson. They did not deny title of original owner Akhtar Hussain in respect of the suit shop, nor they denied transfer of title from Akhtar Hussain to them. They did not claim to have personally entered into sale contract with Akhtar Hussain but they admitted that it was the plaintiff/the appellant who purchased the suit shop in their names. Only they claim that they had deposited more than rupees 10 million in bank account of the plaintiff hence the plaintiff/appellant purchased the suit shop from their amount. The said plea was raised by them in a vague manner. They admitted in cross examination that title documents were in possession of the plaintiff/Appellant, and that suit shop was also in his possession. They had no other business. They were brought up and maintained by the appellant, the expenses of their marriages were admittedly borne by him. In said situation the version of the appellant, that they deposited amount of the appellant i.e. earnings from his shop in his bank account as to assist him, appears to be more probable.”

The Respondent No.1 in his evidence has maintained that the suit property was purchased by using the sale proceeds of his shops and his own income. The Respondent No.1 specifically denied the suggestion that Appellants used to deposit amount in his bank account. He maintained that the money deposited in his bank account by the Appellants was in fact his own money. He also produced original file of the suit property, including sale agreement alongwith receipt regarding full and final payment of sale consideration, etc and stated that the witnesses of sale agreement and payment receipt have died but failed to produce any documentary evidence in this regard. Defense witness Usman Ghani supported his claim, who, though was not amongst the attesting witnesses of the sale agreement, but stated in the cross-examination as under:-

“At the time of purchasing of a suit property by the plaintiff I was an employee of friend of plaintiff. The transaction of suit shop was made in between Akhtar Hussain the executant and present plaintiff and I was present there. The plaintiff purchased the suit property in sale consideration of Rs.40,00,000/-. The payment was made by plaintiff in cash. I myself saw the cash payment. At the time of agreement which was reduced in writing for purchasing the suit property by the plaintiff, there were 4/5 persons of local market were present. I was not a witness of such transaction, but there

were some other market fellows who were the witness, all of them are not alive. I was present when the agreement of purchasing and selling of property was being made in between Akhtar Hussain and present plaintiff.”

Appellants only examined themselves. Appellant Muhammad Zulfiqar stated in his cross that the Respondent was having a shop with the name of Safina Bedding Store. He further deposed that:-

“It is incorrect to suggest that suit shop was purchased by my father. Vol. says same was purchased by us from our own amount. It is correct to suggest that sale consideration amount of suit shop was paid to seller through our father being elder of family. I do not know that in which year suit shop was purchased and says that lease was executed in our favor in the year 2011. It is correct that my father after purchasing of suit shop got transferred in the names of me, Ajmal and grandson namely Azmat. It is correct that original documents of suit shop are in possession of our father. Vol. says same were lost for which an FIR was lodged and now we came to know that same are in possession of our father..... It is correct that deposit slips which I produced are in the name of plaintiff. Vol. says that we deposited amount in account of plaintiff earned by us.”
(emphasis added)

Appellant No.2 in his evidence has also stated that:-

“Sale consideration amount of suit shop was paid to the seller through the bank account of my father and amount was being deposited by us. My brother Zulfiqar used to deposit amount through my nephew Azmat in bank account of my father. We purchases suit shop against sale consideration amount of Rs.23,00,000/-. I do not know that in para-D of written statement of me it is mentioned that defendants never paid a single penny for purchasing the property in question. Suit shop was purchased in the year 2011 but I do not know date and month of purchase.”
(emphasis added)

He further deposed that:-

“It is correct that all the expenses that all the expenses of our marriage were borne by our father/plaintiff. It is correct to suggest that Azmat who is son of our deceased brother Hanif was brought up by our father. Vol. says that he illegally took custody of Azmat from her mother. It is correct that marriage of my nephew Azmat was arranged and conducted by my father. It is correct that on various payment slips cheques numbers are mentioned and same were used to be delivered to us by the parties which we used to deposit in bank account of our father.”

Appellant No.3 Muhammad Azmatullah in his cross stated that:-

“It is correct that I have deposed that we jointly paid sale consideration amount of suit shop to seller through bank account

of plaintiff but in para-D of written statement it is written that defendant never paid a single penny for the purchasing property in question.” (emphasis added)

He further deposed that:-

“We deposited an amount of Rs.10418500/- in bank account of plaintiff. It is correct that exact amount deposited in bank account of plaintiff is not mentioned in our written statement.”

From the evidence adduced by the parties it is apparent that the Appellants and Respondents have been dealing in the business of blankets, bed-sheets, etc. The Appellant No.1 deposed that the Respondent No.1 was having a shop with the name of Safina Bedding Store. The Appellants No.1 and 2 admitted in their depositions that the sale consideration of the suit property was paid to the seller through their father i.e. from his bank account. The appellant No.1 also admitted that Respondent No.1 after purchasing the suit property got it transferred in the names of Appellants and original documents were in possession of the Respondent No.1. They further admitted that the Respondent No.1 previously maintained the Appellants, brought up Appellant No.3 and borne expenses of their marriages. All the three appellants stated in their cross-examination that the sale deed was executed in the year 2011, however, in November, 2011 the sale agreement was executed between the Respondent No.1 and Akhtar Hussain, the seller while the sale deed was executed in the year 2012. They deposed that the sale consideration of the suit property was Rs.23,00,000/- but failed to produce any receipt of payment in this regard. Regarding payment of sale consideration, the appellant No.3 in his cross admitted that in paragraph D of the written statement it was mentioned that the defendant never paid a single penny for purchasing the property in question.

Moreover, Appellants in their evidence claimed the sale agreement and receipt produced by the Respondent as a fabricated one however, from the record it appears that on 18.08.2020 they have filed an application under Section 84 of Qanun-e-Shahadat for verification of signature of seller Akhtar Hussain on sale agreement, filed by the Respondent as annexure B with the plaint. However, before recording evidence, on 09.11.2020 their counsel appeared in Court and did not press the said application, which was dismissed as not pressed.

In case of *Mst. Asia Bibi Vs Dr. Asif Ali Khan and others*, reported in PLD 2011 Supreme Court 829, the Honorable Supreme Court held that “relevant factors for determination of benami transaction are source of consideration; who exercised custody over the original title deed and other relevant documents at the time they were introduced as evidence in Court; who undertook the consideration of property in question; who was in point of fact enjoying qua possession over the suit property and motive for benami transaction”. In instant case, the relevant factors for a benami transaction as propounded by the Honorable Supreme Court in the cited reported Judgment are available and the learned Appellate Court has rightly overturned the Judgment and Decree of the trial Court.

For the foregoing reasons, this Second Appeal is dismissed.

Judge