

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
IInd Appeal No.77 of 2023

Date	Order with Signature of Judge
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Iqbal Ahmed Siddiqui*Appellant*

Versus

Khalid Moudod Siddiqui and another*Respondents*

Date of hearing :06.05.2025

Date of order :06.05.2025

Syed Nadeemul Haq, Advocate for the Appellant.
Mr. Adnan Ahmed, advocate for the Respondents.

J U D G E M E N T

MUHAMMAD JAFFER RAZA, J: - Instant 2nd Appeal has been preferred against Impugned judgment and decree dated 09.03.2023 passed in Civil Appeal No.76/2021 by the IV-Additional District & Session Judge, Karachi Central. The said civil appeal emanated from the judgment and decree dated 26.02.2021 passed in Suit No.1173/2015 by the Xth Senior Civil Judge, Karachi Central, which was filed by the Respondent No.1. Facts of the case are summarized as follows: -

2. Suit No.1173/2015 was filed by the Respondent No.1, with the following prayers: -

- a) “defendants be directed to hand over vacant the peaceful vacant possession of the suit property bearing plot No.C1-199 admeasuring 120 square Yards, situated in Sector 16-B, North Karachi Industrial Area, Karachi;
- b) defendants further directed to ensure regular payment of utility bills of the suit property and continue the same till delivery of vacant possession and to submit the paid copies of utility bills before this Hon’ble Court;
- c) defendant No.2 be directed to pay/deposit regularly the monthly rent for first and 2nd floor of suit property @ of Rs.40,000/- with the Nazir of this Hon’ble Court, in the case the defendant No.2 fails to deposit said monthly rent, then the defendant No.1 be

directed to deposit before Nazir of this Hon'ble Court an amount Rs.2000/- as Mesne profit of the suit property w.e.f. 28.09.2014 till final disposal of instant matter;

- d) perpetual injunction be granted by restraining the defendants their legal heirs, servants, agents, attorney and or any other person and/or persons acting or claiming on their behalf from selling out renting out, mortgaging and/or creating any third party interest and whatsoever in respect of the suit property, i.e. plot No.C1-199, admeasuring 120 square yards, situated in Sector 16-B, North Karachi Industrial Area, Karachi;
- e) cost of the suit be awarded;
- f) any other relief deemed fit and proper by this Honorable court under the facts and circumstances of the case, may also be granted in favor of the plaintiff;”

3. Thereafter, evidence of the parties was recorded and the suit of the Respondent No.1 was allowed and decreed to the extent that the Appellant was directed to handover the vacant physical possession of the suit property to the Respondent No.1 and clear all utility bills of the suit property. The Appellant was further directed to pay mesne profit of the suit property to the Respondent No.1 at the rate of Rs.20,000/- per month till handing over physical possession of the suit property. The said judgment and decree were Impugned in Civil Appeal No.76/2021 and the same was dismissed vide Impugned judgment and decree. Learned counsel for the Appellant through the instant IInd appeal, has Impugned the concurrent findings of the Courts below.

4. Learned counsel for the Appellant has stated that the subject property was owned by the deceased father of the Appellant and Respondent No.1. He has further argued that the transaction pertaining to the subject property was undertaken between Respondent No.1 and Tariq Maudod Siddiqui (“**vendor**”), who is the real brother of the Appellant and Respondent No.1. He has further argued that the real owner of the subject property was the deceased father and the Respondent No.1 was only the benami owner. The said contention, according to learned counsel for the Appellant, has also been supported by the vendor, during cross examination. He has further argued that the Respondent No.1 has been

unable to discharge his burden and has not given any substantial proof i.e. receipts of payment regarding the transaction pertaining to the subject property.

5. Conversely, learned counsel for the Respondent has stated that there are concurrent findings of the Courts below, which can only be interfered with in exceptional circumstances. He has stated that he was able to establish during evidence, that the property was infact purchased by him and in that respect, he has produced the sale agreement dated 23.01.2014 and registered lease deed dated 26.08.2015, along with proof of payment and mutation in his name. He has further averred that the said vendor also appeared in the witness box and made a categorical statement regarding the said transaction in favour of Respondent No.1. The learned counsel has lastly stated that the instant appeal may be dismissed as it is against the concurrent findings of the Courts below.

6. I have heard the learned counsels for the parties, perused the record with their able assistance. I have also asked the learned counsel for the Appellant specifically whether he has sought any cancellation of said registered lease deed in favour of the Respondent No.1. Learned counsel for the Appellant in this respect has replied in the negative and stated that no such suit has been filed. I have further inquired whether any suit for declaration has been filed claiming or seeking a declaration that the subject property was owned by his deceased father. Expectedly, the answer of this question was no different. Learned counsel has further stated that his sister namely, Shabnum Siddiqui, was the custodian of the said property, which was to be held in trust for the purposes of administration. However, it is noted that the said individual i.e. sister did not file any application to be impleaded as a party in the above-mentioned suit. Learned counsel has stated that in this respect he had filed an application to call his sister as a witness and the said application was dismissed by the learned trial Court. The said order was not Impugned and therefore attained finality. The ingredients of benami were

elaborated by the Honourable Supreme Court in the case of **Ch. Ghulam Rasool versus Nusrat Rasool**¹ wherein it was held as under: -

“This may be seen 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 purchase of the property in the name of ostensible owner for the benefit of the person who has to make payment of the consideration and second element required to be proved is that transaction was actually entered between the real purchaser and seller to which ostensible owner was not party.” (Emphasis added)

7. Reliance in this regard can also be placed on the case of **Manzoor Butt versus Mahmud Sufi**² wherein the ingredients pertaining to benami were expounded in the following words: -

“It is pertinent to observe that this is a Suit for Benami declaration and per settled law the onus lies on the plaintiff in such matters. The reason being that it is the plaintiff who has come to the Court to seek such declaration which is in fact a positive declaration being sought by the plaintiff. In terms of Article 117 of the Qanun-e-Shahadat Order, 1984, the onus to prove a claim is on the person who asserts such claim. It is not that plaintiff can come to the Court and thereafter, on the basis of defendants evidence tries to make out its case. It is the plaintiffs who have sought a declaration of benami transaction and have prayed to give judgment as to their alleged legal right on the basis of facts asserted by them, therefore, it is for them to prove that those facts exist for which the burden lies on them.

9. In a Suit for Benami declaration, the plaintiff has to show that firstly there was a motive and reason to buy such property as Benami, and thereafter once such motive has been shown, the plaintiff must also show that, the subject property was purchased from its resources. If these two things are missing in a positive manner, then perhaps the Court cannot consider any further evidence.” (Emphasis added)

8. Admittedly, none of the above ingredients were even pleaded by the Appellant and the courts below have correctly observed that the entire defense of the Appellant was based on his oral and unsubstantiated assertions. It is also observed that the case of the present Appellant is at weaker footing in comparison with the judgement in the case of **Manzoor Butt** (supra) for the reason that the said Appellant never filed a suit for declaration and cancellation pertaining to the subject property. This for the Appellant, proved to be fatal to his claim. It is held

¹ PLD 2008 SC 146

² 2016 CLC 1284

in the same vein, that the learned trial court correctly placed the burden of proving the benami transaction on the Appellant and the same was in accordance with Article 117 and 119 of the Qanun-e-Shahadat Order 1984.

9. Further, certain admissions made by the Appellant during his cross examination also extinguished his plea pertaining to his claim. Relevant portions of the cross examination are reproduced below: -

“It is correct to suggest that all the title documents of the suit property are in possession of the plaintiff. Vol. says that initially the property documents was with me but later on I had handed over the same to the plaintiff as he is my younger brother and the property was in the name of Tariq Maudood Siddiqui. It is correct to suggest that I have first time disclosed in the reply of Legal Notice that the suit property was the Benami transaction. It is correct to suggest that I have not produced documentary proof to show that my father had purchased the suit property in the name of Plaintiff. Vol: says that all record of the suit property is available at concerned department. It is correct to suggest that I have filed a Civil Suit No. 1744/2019 against all my brothers, sisters and mother before Honorable High Court of Sindh, Karachi. Voluntarily says that I had filed the said Suit for partition of all the properties of my deceased father. It is correct to suggest that the Civil Suit No. 1744/2019 is in respect of properties bearing No. C-64, Block-10 Federal B Area. Karachi and B-596, Block-13, Federal B Area, Karachi. I am fully aware about the contents of Civil Suit No.1744/2019 filed by me before Honorable High Court of Sindh, Karachi, it is correct to suggest that I have not disclosed in Civil Suit No. 1744/2019 that the present suit property is also benami transaction.”
(Emphasis added)

10. I have perused the Impugned judgments of the Courts below and find no infirmity to seek interference by this Court under Section 100 CPC. It is settled principle of law that the jurisdiction under Section 100 CPC is restricted as the same was expounded in the case of **Faqir Syed Anwar Ud Din Versus Syed Raza Haider and others**³. Relevant excerpts of the said judgment are reproduced below: -

“The defendants had assailed the concurrent findings of two courts by filing a regular second appeal before the High Court under section 100 of the C.P.C. It is settled law that concurrent findings are not interfered with under section 100 of the C.P.C. unless the lower courts have misread the evidence on record, or may have ignored a material piece of evidence on

³ P L D 2025 Supreme Court 31

record through perverse appreciation of evidence. It is also settled law that reappraisal of evidence on record by the second appellate court is not permissible while exercising jurisdiction under section 100 of the C.P.C. The High Court had rightly dismissed the regular second appeals filed by the defendants on the touchstone of the aforementioned principles.”

11. Learned counsel for the Appellant has failed to highlight any misreading and nonreading of evidence by the courts below. For the aforesaid reasons, instant appeal warrants no consideration, therefore, is dismissed with no orders as to cost.

Judge

Nadeem