IN THE HIGH COURT OF SINDH, KARACHI

HCA No.194 of 2020

(Zeeshan Pervez Vs. Muhammad Nasir)

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Muhammad Osman Ali Hadi

For hearing of CMA No.1664/2022

16.04.2025

Mr. Haad Abid Paggawala, advocate for the appellant.
Mr. Muhammad Vawda, advocate for the Respondent.

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JUDGMENT

MUHAMMAD IQBAL KALHORO, J:- This appeal was dismissed vide judgment dated 24.05.2022 and against the said judgment, appellant Zeeshan Pervez through his legal heirs filed a CPLA No.812-K of 2022, before Supreme Court of Pakistan, which too was dismissed by the Supreme Court vide judgment dated 21.05.2024. Listed application u/s 12(2) CPC r/w Section 151 CPC and 94 CPC was filed by applicant, who happens to be mother of appellant late Zeeshan Pervez on 01.06.2022 after the judgment was passed in this appeal by this Court on 24.05.2022.

2. As per brief facts Zeeshan Pervez and respondent Muhammad Nasir executed an agreement of sale in respect of a Plot bearing No.72/III, measuring 550 Square Yards, 16th Lane, Phase VII, DHA Karachi along with Bungalow/construction thereon. During pendency of the said agreement, a Suit No.1114 of 2013 was filed by the vendor seeking cancellation of the agreement alleging that vendee had failed to pay the requisite amounts within stipulated time. In rebuttal, the vendee filed a Suit No.1214 of 2013 seeking specific performance of agreement. Both the suits were consolidated and joint issues were framed. Both the suits were decided by a common judgment dated 31.08.2020 and decree dated 15.09.2020 by the learned Single Judge of this Court. The Suit No.1114 of 2013 filed by the vendor was dismissed, whereas, the suit No.1214 of 2013 filed by the vendee was decreed. The common judgment and decree landed before a Divisional Bench of this court in this HCA. The judgment and decree passed by learned Single Judge was upheld and the appeal filed by the vendor/appellants was dismissed vide judgment dated 24.05.2022, as stated above. Finally the matter went up to the Supreme Court and the Supreme Court decided in favour of vendee vide judgment dated 21.05.2024.

3. We have heard learned counsel for the parties on the listed application filed u/s 12(2) CPC on the ground that judgment and decree was obtained by respondent through fraud and misrepresentation. What has applicant alleged in her affidavit is that she is the beneficial owner, and in possession of the plot, her son was benamidar only whom she had gifted the property but never handed over its physical possession, hence the gift by her to late son was nothing but a benami transaction. His son was holding the property for the benefit of her. She in her affidavit has also claimed that her son Zeeshan Pervez was neither in possession of the property nor was holding any title in the property as he was merely a benamidar, his action of entering into sale agreement in respect of the property with respondent was tainted with fraud and surreptitiousness. Learned counsel for applicant has further argued that applicant is a real owner of the property the proceedings of sale of property by her son with respondent were illegal, void ab-initio. Malafide of respondent is writ large from the fact that he did not make her party in the suit. Even when her son died and his wife and kids were made party as legal heirs in the appeal, she was not impleaded as a party.

4. On the other hand, learned counsel for respondent has stated that his claim has been upheld up to the Supreme Court. Nothing has been left for agitating between the parties anymore. Filing of application by mother of owner is a last ditch effort to deny fruit of judgment passed by Supreme Court to him after a long litigation.

5. We have heard the parties and perused material available on record. The only ground agitated by applicant in this application is that her son was benamidar owner of the property, whereas, she is the actual owner, her son, being benamidar, was not even entitled to enter into a sale agreement with respondent. Nonetheless, her claim is not supported by any of the document filed by her son in the pleadings of bot the suits. At the time of sale agreement, her son Zeeshan Pervez was the recorded owner of the property, which she had already gifted to him and therefore had no concern with it. Neither, in the plaint nor in the written statement filed by her late son in the suit filed by the respondent, he suggested to the fact that he was a simple benami owner of the property without any right to enter into sale agreement. Then, here, no prima-facie evidence has been produced by the applicant establishing her son was the benami owner of the property. That said, the claim made by the applicant seems to be preposterous, against the common

prudence in that it was she who had gifted the property to her son and before such gift and consequential mutation in favour of her son, she was the recorded owner of the property. It is not explained, what was the need for her to gift the property to her son and create confusion by making him benami owner without any power to dispose of the property. Even if her intention was to make her son a simple benami owner of the property only for the purpose of making record, it was not without consequences. The owner assumes the powers over the property including the power of selling, alienating and disposing of it in the manner he wishes. At the time of gift, no such condition was attached that the gift was to be made in favour of his son only to make him benamidar owner with a condition that he would not have competency to sell out the property. Once a gift was made and it was duly executed and the property shifted hands, the gift was complete in all respects.

6. The late coming of applicant in the court through this application is not understandable either, as she has not explained as to why she did not join proceedings of the suits before the Single Judge with the claim as raised by her in this application. Or even after death of her son, when his wife and children were joined as appellants, why she did not come forward and make her claim known. The long silence on the part of applicant in filing this application only after the two Courts had already decided the lis in favour of respondent is self-explanatory that this application is nothing but an attempt to deny fruit of the judgment and decree to the respondent.

7. We have also reservations over maintainability of this application before this court, as admittedly, the final judgment in this matter has been passed by the Supreme Court and not by this Court. We, therefore, find no merits in this application and accordingly dismiss it. These are the reasons for our short order dated 16.04.2025.

JUDGE

JUDGE