

Judgment Sheet
IN THE HIGH COURT OF SINDH, KARACHI
High Court Appeal No.228 of 2021
 (Shahid & another **vs.** Mst. Zainab widow of Abdul Karim & others)

Date _____ Order with Signature(s) of Judge(s) _____

For directions

1. For order on office objection as at A
2. For hg. of main case
3. For hg. of CMA No.2185/2023

09.09.2025

Mr. Zahid Hussain, advocate for appellants

Mr. Javed Ahmed Qazi, advocate for respondents No.1, 3, 4 & 5

JUDGMENT

Muhammad Iqbal Kalhoro, J: This appeal is filed against an order dated 28.02.2023, whereby an application under Order VII Rule 11 of CPC was allowed and the plaint was rejected on the ground that suit was barred by limitation.

2. The suit was filed by appellants for declaration, partition and permanent injunction against respondents, who are their brothers and sisters. As per facts, parties' father late Abdul Karim purchased 50% of a Plot bearing No.95/II, Commercial Avenue, Phase-IV, D.H.A. Karachi in the name of their mother, namely, Mst. Zainab (Respondent No.1). 50% of which was purchased by late Adam, father of respondent No.6, in the name of his wife Mst. Khadija Bai, who was doing joint business on partnership basis with equal share of 50% with appellants' father, who died and left behind appellants and respondents No.1 to 5 as his legal heirs. After his death, appellants and respondents No.1 to 5 became co-sharers and joint owners of the suit property up-to 50%. In respect of remaining 50% of the said plot purchased in the name of Mst. Khatija Bai by late Adam, there is no dispute as subsequently Mst. Khatija Bai also died leaving behind respondent No.6 as the only surviving heir.

3. It is the case of appellants that their mother, respondent No.1 is in control of respondents No.1 to 5 and is not ready to give them their due shares in the property. They have dispossessed them from the property and intend to usurp the same without giving them due shares. Hence, the suit with following prayers;

- “a) *To declare that the Plaintiffs are the sons/legal heirs of late Abdul Karim son of Muhammad Hashim, who was the lawful and absolute owner to the extent of 50% share in the undivided suit property, i.e. Plot, bearing No.95/II, Commercial Avenue, Phase-IV, D.H.A. Karachi, and the house constructed thereon.*

- b) To declare that defendant No.1 is benamidar/ ostensible owner to the extent of 50% share in the undivided suit property, i.e. Plot, bearing No.95/II, Commercial Avenue, Phase-IV, D.H.A. Karachi, and the house constructed on the said plot of land; therefore, the plaintiffs and defendants No.1 to 5, being legal heirs of deceased Abdul Karim are entitled to inherit to the extent of their respective shares in the suit property in accordance with law.
- c) To declare that the proforma defendant No.6 is the lawful owner to the extent of rest of the 50% share in the undivided suit property, i.e. Plot, bearing No.95/II, Commercial Avenue, Phase-IV, D.H.A. Karachi, and the house constructed thereon, being the sole surviving legal heir/son of Late Adam, the only partner having equal share with Late Abdul Karim in the suit property.
- d) To pass preliminary decree in favour of proforma defendant No.6 to the extent of 50% undivided share in the suit property i.e. Plot, bearing No.95/II, Commercial Avenue, Phase-IV, D.H.A. Karachi, and the house constructed thereon.
- e) To order for partition of 50% share of Late Abdul Karim son of, Muhammad Hashim in the suit property, i.e. Plot, bearing No.95/II, Commercial Avenue, Phase-IV, D.H.A. Karachi, and the house constructed thereon, amongst the plaintiffs and the defendants No.1 to 5 according to law/to the extent of their respective shares.
- f) To permanently restrain the Defendants No.1 to 5, their agents, nominees, and/or any other person(s) claiming through or under them not to forcibly dispossess the plaintiffs and defendant No. 2 from the suit property, i.e. Plot, bearing No.95/II, Commercial Avenue, Phase-IV, D.H.A. Karachi, and the house constructed thereon and/or also not to sell/create any third party interest in respect of the suit property.
- g) Cost of the Suit.”

4. After service, respondents filed a joint written statement, so also an application u/o VII Rule of CPC on the ground that suit was not maintainable; the plaintiffs had suppressed real facts; the plaintiffs had no *locus standi* in the matter; the plaint was hit by *estoppel*; the plaint was hopelessly time barred under Article 120 of the Limitation Act, 1908; appellants’ father had made no claim in his life time that respondent No.1 was the *benami* owner and the property was purchased by him; plaintiffs’ father had no title in the property in his name.

5. This application was resisted by the appellants and by the impugned order and has been allowed and the plaint rejected as stated above.

6. We have heard learned counsel for the parties. Learned counsel for the appellants has argued that impugned order is not sustainable in law and has been passed without appreciation of evidence on record. The findings that the suit is barred by time is based on non-appreciation of law and facts. He has relied upon the case laws reported in **2003 YLR 2677,**

2000 CLC 150, 1993 MLD 2539, 1993 CLC 605, 1995 MLD 316, 1991 SCMR 703 and 2022 CLC 920.

7. His arguments have been rebutted by learned counsel for respondents, who has supported the impugned order.

8. We have considered their submissions. Essentially, the claim of the appellants is that the property was purchased by their late father Abdul Karim and their mother is only *benami* owner. Therefore, after death of their father, the property should devolve upon all the legal heirs as per their shares. We have seen that learned Single Judge has attended to such line of arguments in detail and has concluded the suit to be hopelessly time barred. Record shows, the father of the appellants died on 04.09.2003, whereas the suit was filed on 22.12.2018 after more than 15 years. Learned Single Judge has observed that if the mother of the appellants was *benami* owner and the father was the actual owner, then why for 15 years, neither any demand, nor an objection to the ownership of their mother was raised by the appellants, nor any claim was made by them for mutation of their shares in their favour in the record of rights. Challenging ownership of their mother after 15 years as being *benami* without any proof does not fulfill requirement of law whereby the plaintiffs are bound to establish the very fact, at least *prima facie*, that the property purchased by their father was mutated in the name of their mother only as a stopgap arrangement for the time being as *benami*.

9. Although, it seems to be the case that the property was purchased by the father of the appellants, but there is no evidence that it was done only to make mother as *benami* owner thereof. On the contrary, longtime undisputed ownership of mother over the plot since its purchase in 1992 shows that the property was purchased with the sole purpose of making the mother as its exclusive owner. The facts show that there were two partners with 50% share in the business, late Abdul Karim and late Adam. They purchased the said plot on the basis of 50% shares in the name of their wives and got the mutation recorded in their favour. Keeping in view such context, learned Single Judge has observed in the impugned order that none of the appellants, or even for that matter their late father in his life time, had ever challenged ownership of Mst. Zainab. Throughout after its purchase, Mst. Zainab Bai has remained the recorded owner of the subject plot without any objections from any quarter ever raised until 2018 when the suit was filed.

10. The death of father of the appellants was sufficient *raison d'être* to cause alarm in the mind of the appellants to press for enforcement of their rights in the property and mutation of their respective shares in their favour, but they remained silent. Learned Single Judge has rightly relied upon the case of *Ghulam Murtaza vs. Asia Bibi* reported in **PLD 2010 SC 569**, wherein the Supreme Court has rejected the similar claim of the husband raised in identical background. In that case, the suit property was purchased by the husband in the name of wife during subsistence of their marriage. In such transaction, both husband and wife were declared as co-owners and the claim of husband that he paid the entire sale consideration and the suit property was purchased in the name of wife only as *benami* was rejected.

11. In this case also the property was purchased in 1992, and in 1992 it was recorded in the record of rights in favour of Mst. Zainab to the extent of 50% share. The husband, who purchased the property in favour of his wife never objected to status of his wife as owner, nor he ever claimed to be the actual owner of the property and his wife as *benami* only. For 15 years after his death, none of the children of late Abdul Karim including appellants raised any alarm over the status of their mother as the actual owner of the property. Article 120 of the Limitation Act, 1908 prescribes a period of six years for filing a suit after the right to sue has accrued. In this case, father died on 04.09.2003 and in terms of said provision of law, the suit ought to have been filed within six years thereafter. Whereas, the suit was filed after 15 years regarding which no explanation has been given. In such circumstances, learned Single Judge has rightly observed in the impugned order that the suit is barred by time. We see no reason to disagree with him and substitute our findings for his findings and allow the appeal. The case laws relied upon by learned counsel for the appellant is on different facts and circumstances, therefore, distinguishable and not relevant. This being the position, this appeal is dismissed.

This appeal is disposed of in above terms along with pending applications.

JUDGE

JUDGE