

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Suit No.189 of 1998 &  
Suit No.276 of 2000**

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Date \_\_\_\_\_ Order with Signature of Judge \_\_\_\_\_

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Present: **Mr. Justice Nazar Akbar**

**Suit No.189 of 1998**

Plaintiff : Naveed Islam  
through Mr. Muhammad Aziz Khan advocate

Defendant No.1 : Mrs. Munawar Jehan (deceased) through Lrs  
Pervaiz Islam and Naveed Islam

Defendant No.2 : Mrs. Surriya Kausar alias Nighat (deceased)  
through LR's Zafar Moeed and Ms. Samreena

Defendant No.3 : Miss Jabeen Islam  
All through Syed Wajahat Abbas, advocate.

Defendant No.4 : Pakistan Employees Cooperative Housing  
Society (PECHS). (Nemo).

**Suit No.276 of 2000**

Plaintiff : Parvez Islam

Defendant No.1 : Mrs. Surriya Kausar

Defendant No.2 : Miss Jabeen Islam

Defendant No.3 : Mr. Naveed Islam

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Date of hearing : 06.03.2018

Decided on : 05.04.2018

**JUDGMENT**

**NAZAR AKBAR, J.** By this common judgment, I intend to dispose of suit No.189/1998 and suit No.276/2000. Both the suits have been filed by two sons of late Hafiz Islamuddin, who died on **26.3.1987** against their mother Mrs. Munawar Jehan and two sisters Ms. Surraiya Kausar and Jabeen Islam. Through these suits both the brothers have challenged the title of defendant No.1 in property

bearing Plot No.109-H, Block-2, PECHS, Karachi (hereinafter referred to as the "suit property") on the ground that the suit property was purchased by their father from his own resources and their mother (defendant No.1) was only nominee. Therefore, transfer of the suit property by way of registered gift in **1988** by their mother in favour of their sisters was also illegal, and unlawful. However, **suit No.276/2000** was stayed by order dated **29.9.2003** under **Section 10 CPC** till the disposal of suit No.189/1998. Since the evidence has been concluded in which both the plaintiffs have been examined as witnesses and the common evidence would be considered for disposal of both suits, the suit which was stayed is also listed for final arguments. Both the plaintiff are also present in Court and they have no objection to the disposal of their suits simultaneously on the common evidence.

2. Brief facts of these cases are that the suit property was acquired by defendant No.1 in exchange of a plot belonging to the husband of defendant No.1 and father of the plaintiffs and the other defendants. The entire construction of double storied house was raised by the deceased out of his own funds, therefore, neither plot was owned by defendant No.1 nor the construction was raised by her and all the documents remained in possession of father of the plaintiff and utility bills were issued in the name of deceased Hafiz Islamuddin. Therefore, after his death, defendant No.4 illegal and in contravention of byelaws and rules of P.E.C.H Society has mutated the suit property in favour of defendants No.2 and 3. It is also averred that defendant No.1 is a household lady and had no source of income at all and there was no question of either acquiring the plot or raising construction from her own sources and defendant No.1 during the life time of deceased father of the plaintiff did not claim

any right or title in the suit property. Therefore, the Plaintiff on **26.02.1998** filed suit No.189/1998 for declaration and injunction with the following prayers:-

- a) *Declaration that the defendant No.1 is only a Benamidar and Hafiz Islamuddin, father of the Plaintiff was real owner of the property namely House No.109-H, Block-2, PECHS, Karachi.*
- b) *Declaration that the gift deed in respect of the House No.109-H, Block-2, PECHS, Karachi by defendant No.1 to defendants No.2 and 3 is void, inoperative and of no legal effect and it does not confer any right or title to defendants No.2 and 3 and does not effect the rights and title of the Plaintiff in the suit property namely house No.109-H, Block-2, PECHS, Karachi.*
- c) *Prohibit and restrain the defendants from dispossessing the Plaintiff from House No.109-H, Block-2, PECHS, Karachi, or otherwise interfering in peaceful possession and enjoyment of the said house by the plaintiff directly or indirectly themselves or through any other agency by any Process and in any manner whatsoever and/or selling , exchanging, gifting or in any manner encumbering the said property.*
- d) *Defendant No.1 to pay to the Plaintiff Rs.150,000/- with profit recovered thereon.*
- e) *Any other relief which this Hon'ble court may deem fit and property under the circumstances to grant.*

3. Exactly after two years, Pervez Islam another son of deceased Hafiz Islam on **17.2.2000** filed suit No.276/2000 for **Administration** of the same suit property as estate of deceased Munawar Jehan Begum, who has died on **18.10.1999** and impleaded plaintiff of Suit No.189/1998 as defendant No.3 and other were the defendants No.1 & 2. The plaintiff in suit No.276/2000, has repeated first three prayers from Suit No.189/1998 and added following prayers, (E), (F) and (G).

(E) For equitable distribution of the assets left behind by the deceased Mst. Munawar Jehan Begum amongst the legal heirs in accordance with Muslim Sunni Hanafi Law and Shariat.

(F) For putting plaintiff in possession of his 2/8<sup>th</sup> undivided share in the said bungalow 109-H, Block No.2, P.E.C.H.S., Karachi.

(G) For appointment of Receiver of the assets of late Mst. Munawar Jehan Begum.

4. Defendant No.1, in suit No.189/1998 and defendants No.2 and 3 had filed written statement wherein it is stated that suit property was acquired in the name of defendant No.1 and it was never intended by the deceased Hafiz Islamuddin to claim ownership of the disputed plot for himself or for any of his children either in his life time or thereafter but the same was exclusively intended to be owned and possessed by his wife, defendant No.1. Deceased Hafiz Islamuddin had acquired the suit property and had constructed the house thereon for his wife, defendant No.1 and mutation in the Revenue record was only formality and it can be done at any stage and there was no limitation for that. It was averred that defendant No.2, being divorcee, had no option but to reside with her parents and she was residing alongwith two children with her mother and sister, defendant No.3. It was further averred that the plaintiff and other brothers had full knowledge about the Gift since **1988** and they had never objected to it nor the same was done against their wishes. In fact the plaintiff was aware that the suit property was the sole and a absolute property of defendant No.1 and that defendant No.1 had full right to gift the same to her daughters or anyone else.

5. This Court from pleadings of the partiers on **04.02.1999** framed the following issues:-

1. *Whether the suit is barred by limitation?*
2. *Whether the plaintiff has any cause of action against the defendant?*

3. *Whether the defendant No.1 is only benamidar and late Hafiz Islamuddin was the real owner of the property in suit in dispute and the gift made by the defendant No.1 in favour of defendants Nos.2 & 3 is legal and valid?*
4. *Whether the plaintiff is entitled to the permanent injunction as prayed?*
5. *What should the decree be?*

Subsequently **suit No.276/2000** was filed after framing of issues. The plaintiff of suit No.189/1998 was defendant No.3 and in his written statement of suit **No.276/2000** he has conceded to the claim of administration of suit property. Defendants No.1 & 2 repeated their stance in written statement from their written statement in earlier suit. Therefore, second suit was stayed and no fresh evidence was required nor separate issues were prepared.

6. Mr. Zia Pervaz, Advocate was appointed as Commissioner for recording evidence. The plaintiff filed his affidavit in evidence as Ex.5 and produced several documents as Exh. 5/1 to Exh.5/13-A. The plaintiff also examined his brother namely Pervez Islam (Plaintiff in suit No.276/2000), who filed his affidavit in evidence as Exh.6. Both the witnesses were cross examined by learned counsel for the defendants. From defendants' side only Defendant No.1 Munawr Jehan filed her affidavit in evidence as Exh.7. She was cross examined by the plaintiff's counsel.

7. I have heard learned counsel for the parties at length and perused the record and evidence. My findings on the above issues with reasons thereon are as under.

**Issue No.1 & 2.**

8. On the question of limitation for filing of this suit in 1998 to question the status of gift deed register in 1988, learned counsel for plaintiff has attempted to argue that the suit has been filed in 1998

when it came to the notice of the plaintiff in response to their letter informed. Defendant No.4 has informed about gift since 1988 through a later dated **10.2.1998** (Ex:5/3). Learned counsel for the plaintiff has contended that in the suit property was owned by their father deceased Hafiz Islamuddin and defendant No.1 was shown only as nominee. She was not owner of the property and, therefore, she had no right to transfer the same by way of registered gift deed in favour of defendants No.2 and 3. On perusal of record it is transpired that the actual documents whereby the property was acquired by way of registered exchange deed has been filed by the defendant No.4 with written statement as annexure D/4-1 and, therefore, it cannot be said that it was not in the knowledge of the plaintiff that defendant No.1 was registered owner of suit property from day one. Learned counsel for the plaintiff has relied on the case of *Malik Safdar Ali Khan and another vs. PUBLIC-AT-LARGE and others* (**2004 SCMR 1219**) on the point of authority of "Nominee" in respect of anything to be done by such Nominee after the demise of Nominator.

9. Learned counsel for the defendants in rebuttal has referred to the evidence of the plaintiff wherein it has been clearly mentioned that the plaintiff was aware of the transaction from day one and as such in **1998** there was no need to write a letter to P.E.C.H.S (defendant No.4) after 11 years of the demise of Hafiz Islamuddin in 1987 to seek relief of cancellation of gift deed executed in **1988**. He has further contended that in his evidence the plaintiff has conceded that he was fully aware of the fact that the suit property was in the name of the mother and that is why in 1988 when he realized his share in inheritance of late Hafiz Islamuddin, his father, he did not claim inheritance in the suit property. Plaintiff Naveed Islam in his cross examination has admitted that:-

*In 1981 my father went for Hajj at that my mother told me about the transfer of property on Plot No.109 in her name. It was effected through an exchange deed. -----*

*I received my share of the sum of Rs.4 lacs approximately in the year 1988 through my elder brother Jawaid Islam. He came from London on the death of my father. as far as I remember the amount was paid by cheque. At that time I was a minor all matters were looked after by Mr. Jawaid Islam.*

The plaintiff's other witness was his elder brother who is also the plaintiff of suit No.276/2000. The witness Ex.6 in his evidence about the knowledge of the gift has conceded that:

*It is in my knowledge that my mother gifted the property to my sisters. I was living in the property when it was gifted. It is correct that I shifted for the sake of comfort of my mother and sisters.-----*

*It is correct that I gave the writing on plain paper. It was my no-objection to transfer.*

In view of the above evidence, the contentions of plaintiffs Naveed Islam and Parvez Islam, real sons and brothers of done and donors, that they were not aware of gift deed till receipt of letter dated **10.2.1998** (Ex.5/3) from P.E.C.H.S (defendant No.4) in response to their own letter in February, 1998 is not confidence inspiring. The record shows that the suit property was acquired in the name of defendant No.1 in **1979** and the father of plaintiffs has died in **1987**. The plaintiffs had not brought any evidence on record that their father had claimed that the property belongs to him or that by his conduct in his life time he has expressed his intentions to claim the suit property as an exclusive owner. Otherwise being a builder and developer, the deceased knew that how the ownership of the property is established. After the death of the real owner it cannot be established by the legal heirs that a property which was from day one in the name of their mother was the property of her deceased

husband and the registered owner was a “Benamidar”. The very fact that the plaintiffs themselves have never claimed share in the suit property at the time when the succession proceedings were initiated on the demise of late Hafiz Islamuddin confirms that right from day one their deceased father had not claimed ownership rights in the suit property. The source of income of defendant No.1 is disclosed by the plaintiff in their evidence when in cross he admitted that:-

*“There was a partnership firm formed under the name and style of M/s. National Builders and Developers. It was a firm formed by my father the partners were myself, my mother, my brother Pervez Mr. Saeed Ansari was the managing partner, my sisters Surriya Kausar and Jabeen Islam. It has not yet been disclosed”.*

The plaintiffs have not led any evidence to show that the title documents were not in possession of defendant No.1. In fact the terms for the original title documents to defendants with gift deed on registration confirms that she was in possession of title documents. The plaintiffs have not produced any document to show that defendant No.1 was “Nominee” and not the registered owner. The plaintiff had made false statement in para-6 of the plaint that she was just nominee. Relevant para from undisputed Exchange Deed of property (annexure D/4-1) is reproduced below:-

(g) *NOW THIS DEED WITNESETH that in pursuance of the aforesaid agreement the said Mr. Mohammad Yunus Qureshi, the party of the First Part, does hereby convey to Mrs. Munawwar Jehan, wife and nominee of Mr. H. Islamuddin, the party of the Second Part, the house and the premises bearing No.II/109-H, P.E.C.H.S, Karachi-29 more fully described in Schedule No.1 and the said Mr. Hafiz Islamuddin, the party of the Second Part, does hereby convey to Mrs. Mukarram jehan Chughtai, wife and nominee of Mr. Mohammad Yunus Qureshi the party of the First Part, the house and the premises bearing No.IV-D/1-22, Nazimabad, Karachi-18 more fully described in the 2<sup>nd</sup> Schedule and **it is hereby declared that Mrs. MUNAWWAR JEHAN and Mrs. MUKARRAM JEHAN CHUGHTAI have power and authority***



**to give, grant, convey, and dispose the properties conveyed by Mr. Mohammad Yunus Qureshi and Mr. Hafiz Islamuddin respectively by these presents.**

Learned counsel for the plaintiff was confronted with the exchange deed of the property which was registered on **28.5.1979** and confirms that she was not just "Nominee" rather she was registered as owner.

9. The plaintiff's dishonest behavior in targeting the suit property after more than eleven years of the demise of their father is obvious. Their dishonesty may be appreciated by looking to their conduct. Their deceased father Hafiz Islamuddin had purchased several properties in the name of even plaintiffs themselves at the time when they themselves were not capable to purchase immovable properties but they have not included the said properties purchased in their names from the funds of deceased Hafiz Islamuddin for distribution in inheritance to all the legal heirs of the deceased according to sharia law. The plaintiff in his evidence has admitted that:-

*During his life time my father purchased (i) a plot measuring 400 sq yds located in Gulistan-e-Jauhar in my name, voluntarily says it was an A category plot and was of about 300 sq yds. It is also correct that (ii) a shop situated in Federal B Area at Saghir Centre, was purchased by my father in my name. I do not recall the exact year. It is correct that (iii) a house on 240 sq yds was booked by my father in my name in Phase-I, Gulshan-e-Hadid.*

To a similar question the plaintiff of the other suit Pervez Islam in his cross examination has admitted that:-

*It is correct that (i) a plot No.C-74 situated at Gulistan-e-Jauhar was purchased by my father in my name. In addition to this my father also purchased property in my name. It is (ii) house No.B-198, Steel Town.*

In view of the above evidence of the plaintiffs when it has come on the record that their deceased father has purchased five other properties mentioned in the cross-examination quoted above from his own funds, but none of these properties despite being admittedly BENAMIDAR in the name of plaintiffs, themselves have been included in the suit for administration filed by Pervez Islam. Therefore, if the plaintiffs have filed suit for administration of the properties of the deceased, Hafiz Islamuddin then these five properties and all other should have also been included in the Estate of the deceased for administration amongst all the legal heirs including deceased defendant No.1, widow and defendants No.2 and 3 two daughters as well as Jawaid Islam elder son of deceased Hafiz Islamuddin. It is pertinent to mention here both the plaintiffs have not impleaded **Jawad Islam** in either of the suits though all the legal heirs are necessary party in suit for administration. But, the plaintiffs have not mentioned the other properties as 'benami' properties nor they have offered inheritance in these properties to the other legal heirs.

10. In view of the above, I hold that the suits were time barred as the plaintiffs want cancellation of documents of immoveable properties which were registered in **1979** and **1988** and from day one they were fully aware of existence of registered document. In fact they have no cause of action and, therefore, the gift made by defendant No.1 in favour of defendants No.2 and 3 cannot be questioned by the dishonest plaintiffs as they are also owners of benami properties and have never offered the same to be part and parcel of the properties left by deceased Hafiz Islamuddin, therefore, the issues No.1 and 2 are decided in the affirmative.

**Issues No.3, 4 and 5.**

10. In view of the findings of issues No.1 and 2, the issues No.3 and 4 are also decided in against the plaintiffs. The gift was lawful and valid and the plaintiffs are not entitled to any relief. Consequently, both the suits are dismissed with no orders as to cost.

JUDGE

*Karachi*  
*Dated:05.04.2018*

*Ayaz Gul/PA\**