

**IN THE HIGH COURT OF SINDH  
AT KARACHI**

**Suit No. 195 of 2012**

Plaintiff : Khurram Zafar, through Mr. Asim Iqbal, Advocate.

Defendant No.1 : Mst. Sarah, through Mr. Haider Waheed, Advocate.

**Suit No. 613 of 2012**

Plaintiff : Sarah Khurram, through Mr. Haider Waheed, Advocate.

Defendant No.1 : Khurram Zafar, through Mr. Asim Iqbal, Advocate.

Dates of hearing : 23.08.2019 and 05.09.2019

**ORDER**

**YOUSUF ALI SAYEED, J** – The dispute underpinning these connected suits essentially pertains to the following immovable properties:-

- i. Plot No.219, 27<sup>th</sup> Street, Phase-VIII, DHA, Karachi admeasuring 2000 square yards (“**Plot 219**”), said to have been purchased on or about 27.12.2005 for approximately Rs.4.35 crores;
- ii. Plot No.218, 28<sup>th</sup> Street, Phase-VIII, DHA, Karachi admeasuring 2000 square yards (“**Plot 218**”), said to have been purchased on or about 20.05.2010 for approximately Rs.4.35 crores;
- iii. Plot No.36-E, Sahil Street No.28, Phase-v, Ext. DHA, Karachi admeasuring 300 sq. yards (“**Plot 36-E**”), said to have been purchased in the year 2005 for approximately Rs.55 lacs;

(hereinafter collectively referred to as the “**Subject Properties**”).

2. The main contesting parties are Khurram Zafar and Sarah Khurram, who were apparently husband and wife between 16.02.1992 till their divorce on 14.02.2012, and who espouse rival claims to the Subject Properties.
3. The title to the Subject Properties admittedly stands in the name of Sarah Khurram, who is the Defendant No.1 in Suit No. 195 of 2012 and the Plaintiff in Suit No. 613 of 2012, and is also in possession of the Subject Properties as well as the original title documents thereof.
4. Be that as it may, Khurram Zafar, who is the Plaintiff in Suit No. 195 of 2012 and the Defendant No.1 in Suit No. 613 of 2012, professes to be the real and beneficial owner of the Subject Properties, claiming that the same were acquired by him in her name as a benamidar out of 'cultural obligations' and for the purpose of 'tax avoidance', and alleging that there had never been any intention of transferring the title or any interest in her name. A declaration has been elicited to that effect and in terms of CMA Nos.1674/12 and 1675/12 it has been sought that the Defendant No.1 be restrained from selling and/or transferring and creating any third-party interest in the Subject Properties and be directed to deposit the title documents thereof with the Nazir. Conversely, through Suit No. 613 of 2012, Sarah Khurram has asserted her exclusive ownership of the Subject Properties, praying for a declaration in that regard, and vide CMA No.5361/2012 has sought an injunction to preserve her possession. It is these Applications that have been proceeded on and are to be determined in terms of this Order, which is common to both Suits. For convenience, further reference to the parties for purposes of this Order proceeds as per their designation in Suit No. 195 of 2012.

5. Learned counsel for the Plaintiff averred that it was he (i.e. the Plaintiff) who had been solely responsible for the payment of the sale consideration of the Subject Properties and paid for the construction of the house on Plot 219, it being contended that the Defendant No.1 did not have any source of income, hence lacked the means to have acquired the Subject Properties or raised construction thereon.
6. It was contended that the Plaintiff had been in possession of the Subject Properties and documents of title relating thereto, but, as stated in the Plaint, had been 'recently' dispossessed by the Defendant No.1 and those acting on her behalf prior to institution of the Suit, with it being stated further that the Defendant No.1 and her agents/representatives had usurped and occupied the valuable belongings of the Plaintiff, including the original title documents of the Subject Properties.
7. During the course of the hearing on CMA No.1674/2012, it was observed however that no material had been placed on record along with the Plaint to support the assertion of a benami arrangement inter se the parties or indicate that the Plaintiff had provided the funds through which the Subject Properties had been acquired.
8. Upon this being pointed out, learned counsel for the Plaintiff filed a Statement in Court on 23.08.2019, placing copies of various documents and bank statements on record, on the basis of which it was sought to be shown that the Plaintiff had received certain properties as part of a family settlement, which, per learned counsel, were then disposed of with the proceeds being applied towards purchase Plot 219 as well as another property bearing No.

207, 22<sup>nd</sup> Street, Phase VIII, D.H.A Karachi, measuring 1995 Square Yards, with it being contended that the latter property was then sold and the proceeds utilized in turn for the purchase of Plot 218.

9. It was submitted that at the present stage, when evidence has not been led, it was in the fitness of things that CMA No.1674/2012 be allowed, as no clear determination of facts could be made one way or the other in view of the position that had prevailed between the parties.
  
10. Conversely, it was pointed out by learned counsel for the Defendant No.1 that whilst the Plaintiff had made a broad assertion as to being the real owner of the Subject Properties and had alleged that the Defendant was his benamidar, he had failed to establish a prima facie case of benami ownership as nothing had been placed on record that would reflect the existence of any of the necessary ingredients in that regard. It was pointed out that a mere statement had been made in the Plaint that the Subject Properties had been kept in the name of the Defendant No.1 out of 'cultural obligations' and to 'avoid tax', without any further exposition whatsoever. It was submitted that such bare statement did not suffice and the reasons ascribed were at odds with one another.
  
11. It was submitted that the Plaintiff had failed to place any corroborative material on record along with the Plaint, and even the further material introduced at the time of hearing of the Application did not reflect any tangible link to the acquisition of the Subject Properties. Furthermore, the Plaintiff was also not in possession of the Subject Properties or the title documents relating thereto, and no cogent explanation had been furnished other than an allegation of dispossession/usurpation at the hands of the

Defendant No.1, but that too beggared belief and was not supported by any pleadings or material reflecting the steps taken by the Plaintiff in the wake of such alleged impropriety. It was pointed out that even a copy of any title document had not been placed on record by the Plaintiff and it was inconceivable that the real owner of any immovable property would be so hapless. As to the ingredients necessary to establish a case of benami ownership, reliance was placed *Abdul Majeed and others v. Amir Muhammad and others* 2005 SCMR 577, and *Muhammad Sajjad Hussain v. Muhammad Anwar Hussain* 1991 SCMR 703 and that the burden to satisfactorily establish a prima facie case also lay squarely on the Plaintiff.

12. Having considered the arguments advanced, it merits consideration that whilst the Plaintiff has broadly stated that it was he who had exclusively financed the purchase of the Subject Properties and the construction of the house on Plot 219, the particulars of the transactions whereby the Subject Properties were acquired was not disclosed in the Plaint, wherein the only payments that were referred to with specificity were those made to the concerned architect and contractor engaged for purpose of such construction, but that too from a bank account apparently maintained jointly in the names of the Plaintiff and Defendant, thus not indicative of exclusivity as alleged. No nexus could be shown at present between the transactions reflected in the bank statements appended with the Statement filed on 23.08.2019, which, barring one statement, even otherwise relate to accounts that were maintained jointly in the names of the Plaintiff and Defendant No.1, and nothing has been pleaded or otherwise placed on record by the Plaintiff to state or indicate as to how payments were made to the persons from whom the Subject Properties were acquired.

13. Furthermore, no proper explanation has been furnished in the pleadings or during the course of arguments as to how the Plaintiff came to be out of possession of the Subject Properties as well as divested of the documents of title. In the Plaint it has only been prosaically stated in this regard that *“The subject properties, it is submitted were in the exclusive, lawful and legal possession of the Plaintiff however, as will be described below, he has been recently dispossessed from them by the Defendant no.1 and those acting on her behalf. The Defendant No.1 and her agents/representatives have in a systematic and calculating fashion commenced the usurpation of and occupation of the valuable belongings of the Plaintiff including but not limited to the original title documents of the subject properties. The Plaintiff reserves his right to initiate criminal proceedings against the Defendant no.1 and anyone acting in concert and/or collusion with her for these criminal acts of omission and commission.”* However, no particulars/description of the manner and circumstances of dispossession/divestiture or even the particular date thereof were disclosed, nor the names of those persons who were complicit along with the Defendant, nor were any such criminal proceedings ever apparently initiated.
14. As such, where the Plaintiff has only made a general statement as to the motive said to underpin the alleged benami arrangement, without any material being shown to reflect such an understanding, and has also been unable to show that he was the source of consideration or adequately explain his lack of possession of the properties or custody of the title documents, a *prima facie* case of benami ownership, which is the primary determinant of whether discretion ought to be exercised in granting an interim injunction, is not discernible at this stage. Needless to say, the bare assertion of the Plaintiff cannot of itself suffice for such purpose.

15. On the other hand, there is ostensible unity of title and possession in favour of the Defendant No.1, and a prima facie case for preservation of such possession stands made out, with the balance of convenience also leaning accordingly.

16. Hence, the discretionary relief prayed for vide CMA Nos.1674/2012 and 1675/12 in Suit 195 of 2012 is refused, with those Applications being dismissed, whereas CMA 5361/2012 in Suit 613 of 2012 is allowed as prayed. The Office is directed to place a copy of this Order in the file of the connected Suit.

JUDGE

Karachi  
Dated \_\_\_\_\_