

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.1435 of 2015
Suit No.1191 of 2016
Suit No.567 of 2017

Date _____ Order with Signature of Judge _____

Present: **Mr. Justice Nazar Akbar**

1. Suit No.1435 of 2015

Plaintiff : Riaz Hassan, through
Mr. Muhammad Mansoor Mir, Advocate.

Versus

Defendants : Haseeb Hassan Khoso and 3 others
through Mr. Suresh Kumar, Advocate.

2. Suit No.1191 of 2016

Plaintiffs : Ms. Alia Hassan & 3 others,
through Mr. Suresh Kumar, Advocate.

Versus

Defendants : Fida Hussain and 5 others through
Mr. Muhammad Mansoor Mir, Advocate.

3. Suit No.567 of 2017

Plaintiffs : Rashid Hassan and 3 others,
through Mr. Aga Zafar Ahmed, Advocate.

Versus

Defendants : Riaz Hussain and 5 others
through Mr. Suresh Kumar, Advocate.

Date of hearing : **15.04.2021**

Date of Decision : **24.05.2021**

JUDGMENT

NAZAR AKBAR, J. By this common judgment I intend to dispose of above three suits, since by consent these suits were consolidated and common issues were framed in all the suits.

2. The Plaintiff had filed leading suit No.1435/2015 on **03.08.2015** against the Defendants for Declaration, Specific Performance of a contract and Temporary Injunction with the following prayers:-

- (a) Declaration that the Plaintiff is entitled for Specific Performance of the Agreement dated 6.12.2014.
- (b) Declare that the Suit Property has been given to the Plaintiff by (Late) Mir Hassan Khan Khoso father of the plaintiff against repayment of loan to Plaintiff and legally belongs to Plaintiff.
- (c) Direct the Defendant No.1 to attend the office of Mukhtiarkar Taluka Thull District Jacobabad, Sub Registrar Taluka Thull, City Surveyor Office or any other office to execute such Deeds and Documents which are necessary for the mutation of plots of Agricultural Lands in favour of Plaintiff. Failing which, this Honourable Court may graciously be pleased to direct the Nazir of this Honourable Court to execute the documents of mutation directly for and on behalf of the Defendant No.1 in favour of Plaintiff or his nominee for mutation of land in the name of Plaintiff.
- (d) An injunction restraining the Defendants, their agents, servants or any other person or persons acting on their behalf from creating any Third Party interest of any nature whatsoever in the aid land and to dispossess the Plaintiff till the disposal of the Suit.
- (e) Any other relief which this Honourable Court deems fit and proper in the circumstances of the case.
- (f) Award cost of the suit.

3. The defendants in the above suit No.1435/2015 were son and daughters of late Mir Hasan Khan Khoso from his second wife **Mst. Alia Hasan**. After one year widow of Mir Hasan Khan Khoso and her son and daughters filed a separate suit No.1191 of 2016 against Fida Hussain and the plaintiff of suit No.1435/2015 and his other brothers and sister who were sons and daughters of Mir Hasan Khan Khoso from his first wife late **Mst. Yasmeen** with the following prayers:-

- a) Declaration that deceased Mir Hassan Khan Khoso s/o Darya Khan Khoso was real owner of suit plot viz. plot

admeasuring 4-0 acres from Sector 3-B Corridor area Scheme-33, Karachi and the allotment/lease in favour of defendant No.1 being ostensible/Benami does not create any right, title or interest of defendant No.1 in the suit plot and that the plaintiffs have 41-2/3 paisa share in the suit plot.

- b) That suit plot be partitioned by metes and bound and plaintiffs may be put in exclusive possession of 41-2/3 paisa share equivalent to 1-24-7/10 acres of suit plot.
- c) Permanent injunction be issued restraining the defendant No.1 from alienating the suit plot in any manner or creating any third party interest.
- d) Any other relief this honorable court deems fit may be granted.
- e) Cost of the suit be borne by the defendant.

4. Then defendants No.3 to 6 in the above suit No.1191/2016 after one year filed a separate suit No.567/2017 against the plaintiffs in Suit No.1435/2015 (their real bother) and defendants (step brother and sisters) in suit No.1435/2015 with the following prayers:-

- A. Declare that the following estate of late Mir Hassan Khan Khoso was in his exclusive and lawfully subsisting actual and beneficial ownership at all material times, and further Declare that the titles of the following properties in the names of Defendants No.3 – 5 were *benami*;
 - i) Apartment No.506, Abida Tower, Civil Lines, Karachi
 - ii) Agricultural land admeasuring 113 acres, Taluka Thul, District Jacobabad.
 - iii) Toyota Corolla model 2009 bearing Registration No.AVL-789.
 - iv) Bank Account with UBL – 0037100968
 - v) Bank Account with ABL – 0949-0126200648
 - vi) Bank Account with SCB – 0145-3936201
 - vii) Bank Account with HBL - 00957900106103
- B. Declare that the Plaintiffs and the Defendants are all legal heirs of the late Mir Hassan Khan Khoso and as such, are entitled to their respective legal shares in the estate of the deceased as given in clause A above;
- C. Direct the Defendants No.3 to 5 to pay the Plaintiffs their due share in the estate of their late father as aforementioned, or in the alternative, direct the Nazir to seize possession of the entire estate of the deceased Mir Hassan Khan Khoso and distribute the same

proportionately amongst all his legal heirs after portioning, and if necessary, auctioning the same;

- D. Appoint Nazir as administrator of the entire moveable and immoveable estate of the deceased Mir Hassan Khan Khoso and direct him to file accounts thereof with this Honorable Court on a periodical basis:
- E. Restrain the Defendants, their agents, assignees, attorneys, successors-in-interest and/or anyone claiming on their behalf or acting for them, from alienating the Suit Properties or from creating any third party interest therein during the pendency of this Suit;
- F. Grant costs of this Suit; and
- G. Grant any other relief that this Honorable Court deems fit under the circumstance.

5. Brief facts of leading suit No.1435/2015 are that the Defendants are step brother and sisters of the Plaintiff. Their father late Mir Hassan Khan Khoso had contested general elections in 2008 and prior to the election, he has incurred numerous unexpected and unaccounted expenses during the election campaign. Therefore he needed additional money which was provided to him in December, 2007 by their maternal uncle against repayment of the said loan, 40 acres of land which belonged to the mother of the Plaintiff was given to the maternal uncle of the Plaintiff. A further loan of Rs.10 Million, it is averred was also extended by the Plaintiff himself to his father for election campaign. The said 40 acres land given to the maternal uncle of the Plaintiff was out of the share of the Plaintiff by way of inheritance from his mother estate. The Plaintiff had also given loan Rs.30 Million to his father and therefore on **06.12.2014** the Plaintiff entered into an agreement with his father (who was also father of defendants) whereby he agreed to transfer the agriculture land measuring 56-18 acres in the name of **Defendant No.1** and another 56.08 acres of land in the name of defendants No.2 & 3. The land owned by Defendant No.1 comprises S. No.4 (5-21), S. No.5 ((5-05), S. No.6 (7-08), S. No.7 (2-34), S. No.8 (6-21), S. No.9, (6-13), S. No.10

(8-39), S.No.11 (6-09) and S.No.12 (7-30) of Deh Khoso, Taluka Thul, District Jacobabad. Likewise land of **Defendants No.2 and 3** measuring 56-08 acres comprises of land bearing S.No.12 (1-22), S.No.13 (6-17), S.No.14 (5-11), S. No.15 (7-37), S.No.16 (6-00), S.No.17 (1-00) (by Defendant No.2) and S.No.17 (4-33, S.No.18 (5-34), S.No.19 (6-35), S.No.20 (5-23) and S.No.407 (4-36) (by defendant No.3). It was further averred that possession of the said land belonging to Defendants No.1, 2 and 3 was also given to the Plaintiff by their father to ensure that the land remained fertile and welcoming to cultivation. It was agreed between all parties that the land belonging to Defendant No.1 would be transferred in the name of the Plaintiff in order to clear the loan of Rs.30 Million. The father of the parties also purchased a flat located at Abida Tower in the name of Defendant No.1 who at the time of purchase was about 21 years of age. Thereafter, father of the parties Mir Hassan Khan Khoso died on **27.06.2015** and since then the Defendants are unwilling to honor the terms and conditions of the agreement dated **06.12.2014** and are deliberately neglecting to perform their obligations. It was further averred that it has come to the knowledge of the Plaintiff that Defendant No.1 is attempting to sell the property to some other party, though it has already been sold by their father to his another son, the Plaintiff, therefore, according to the Plaintiff it is a duty and obligation upon the Defendants to transfer and mutate the khata of the suit land in the name of the Plaintiff. Hence, the Plaintiff filed the instant suit against the Defendants for Declaration, Specific Performance and Temporary Injunction.

6. Notices of suit No.1435/2015 were sent to the Defendants and they filed their written statement and Counter Claim under **Order VIII Rule 6 CPC** read with **Rule 162, of the Sindh Chief Court Rules (O.S)** wherein they denied the claim of the Plaintiff by stating

that deceased Mir Hassan Khan Khoso on account of his cancer illness was not able to look after the lands of Defendants and the Plaintiff being the eldest son took control of the land and failed to pay the income of the land to the Defendants. They also denied that the Defendants had agreed to transfer the suit land to the Plaintiff. They stated that the Defendants and their mother were looking after their father and on **31.01.2015** Defendant No.2 took her father to London for treatment where the doctors advised to take him for further treatment to Canada. However, on account of paucity of funds, Defendant No.2 brought Mir Hasan Khan Khoso, her father and also father of Plaintiff back to Pakistan where he later on died. In their counter claim the Defendants have claimed that the Plaintiff is in possession of agriculture land about 500 acres of deceased father of parties by misrepresentation, fraud and under coercion and undue influence. They claimed that the Plaintiff is also in possession of a plot admeasuring 4-0 acres, situated in Sector 3-B Corridor area Scheme-33, Karachi purchased by deceased Mir Hassan Khan Khoso benami in the name of his brother Fida Hussain and after death of their father, the Defendants through their mother approached the Plaintiff to handover possession of the land of Defendants and also pay mesne profit to settle the matter in respect of suit land but the Plaintiff has kept the Defendants on false hopes and subsequently filed the instant suit against them. The Defendants in suit No.1435/2015 have also filed a separate suit No.1191/2016 not only against the plaintiff in Suit No.1435/2015 but also against other defendants for Declaration, Partition, Separate Possession and Permanent Injunction regarding some of the claim mentioned in their counter claim.

7. In rebuttal except the plaintiff in Suit No.1435/2015 who is also one of the Defendants in suit No.1191/2016, the other

defendants have also filed a separate suit No.567/2017 for Declaration, Administration, Partition & Permanent Injunction against the Plaintiff in suit No.1435/2015 and others defendants in respect of all the properties mentioned in both suit No.1435/2015 and suit No.1191/2016 alongwith other movable properties.

8. On **02.05.2018** from pleadings of the parties, followings consolidated issues were framed in all the suits:-

1. Whether the respective suit/s are maintainable and having cause of action?
2. What were the properties left by the deceased Mir Hassan Khan Khoso including '*benami*' which shall be amenable to succession?
3. What should the order be?

The Plaintiff in **suit No.1435/2015** had failed to produce evidence in support of his claim on the suit property which is agriculture land of defendant No.1, 2 and 3 despite repeated chances given by the Commissioner for recording evidence, therefore, side of the Plaintiff for evidence was closed by the Court by order dated **17.11.2018**. The Defendants in **suit No.1435/2015**, who are Plaintiffs in **suit No.1191/2016** examined their mother/attorney Mst. Aliya Hassan. She was cross-examined by learned counsel for the Plaintiff in suit No.1435/2015 who also represents Defendants in suit No.1191/2016. She was also cross-examined by learned counsel for the Plaintiffs in suit No.567/2017.

9. Plaintiff No.1 in suit No.567/2017 who are also defendant No.3 in Suit No.1191/2016 filed affidavit in evidence through their attorney namely Tahir Hussain Khoso. He was cross-examined by the learned counsel for Plaintiffs in suit No.1191/2016 and defendant in Suit No.1435/2015.

10. I have heard learned counsel for the parties and perused the record. My findings with reasons on the issues are as follows:-

ISSUE NO.1

11. The counsel for the Plaintiff in Suit No.1435/2015 for specific performance of the contract in his argument has referred to **Section 12(a)** of the Specific Relief Act, 1877 and contended that the suit land was held by Mir Hasan Khan Khoso as Trust and as such he was fully entitled to settle the same at his Will. However, no such explanation is provided in the so called agreement of sale said to have been executed by the deceased Mir Hasan Khan Khoso on **06.12.2014**. In support of the agreement sought to be enforced through this Court the dis-interested plaintiff Riaz Hasan Khoso has not even orally asserted this fact that his father was holding the suit land of defendants as Trust. He has not appeared in the witness box to seriously contest his claim of specific performance nor he has produced original sale agreement. Therefore, the contention of learned counsel is devoid of any legal and factual support. The contention of defendants that the suit land was under exclusive ownership of the defendants as per revenue record since **11.10.2009** and this position has never been challenged by anyone amongst the legal heirs of late Mir Hasan Khan Khoso is un-rebutted. Additionally the perusal of record shows that suit No.1435/2015 is not maintainable for the following reasons;

- i. The perusal of photocopy of sale agreement shows that legal heirs / representative of the parties were not shown to be bound in the event of death of either party. Even first page of the agreement is not signed by the parties.
- ii. Admittedly, the Seller, Mir Hasan Khan Khoso, was not lawful owner of the suit property nor he was otherwise authorized to sell the same, therefore an agreement of sale

by him was not binding on the defendants who are the actual owners.

- iii. The plaintiff, even otherwise has failed to prove any transfer of sale consideration / payment of price of the agriculture land shown in the agreement as subject property. There is no date and time of payment/sale consideration even as loan by the plaintiff to his father.
- iv. The plaintiff knew that the party of the first part Mir Hasan Khan Khoso was suffering from cancer and he stipulated a time of 15 days' notice to get prepared for transfer / possession process but he never issued notice to the deceased Mir Hasan Khan Khoso between **06.12.2014** till his death i.e. **27.6.2015**.
- v. The so called agreement was not even proved when neither the plaintiff himself nor any of the witness before whom such agreement has been executed by the parties have appeared in the witness box.

In view of the above facts and discussion the suit was neither maintainable nor even otherwise the plaintiff in Suit No.1435/2015 has been able to prove the very execution of the alleged agreement. Even otherwise since the defendants have not entered into any agreement of sale in respect of the suit land owned by them, the plaintiff had no cause of action against the defendants to seek transfer of their agriculture land. Therefore, issue No.1 about maintainability of Suit No.1435/2015 is decided in negative.

12. However, while dismissing suit No.1435/2015 the essential issue of counterclaim raised by the defendants has to be decided too. The defendants have raised counterclaim of two different nature. First one is about loss of lease money of suit land since admittedly the suit property is in possession of the plaintiff who is seeking transfer of the title of the same to his name through the instant suit.

This property as described by the plaintiff himself in paragraph 7 and 8 of the plaint is as follows:-

| Sr.# | Name | Survey Nos. | Area |
|------|----------------|---|-------------|
| 1 | Defendant No.1 | 4,5,6,7,8,9,10, 11 & 12 | 56-18 acres |
| 2 | Defendant No.2 | 12,13,14,15,16 and 17 and 1-0 acre out of S.No.17 | 28-07 acres |
| 3 | Defendant No.3 | 18,19,20,407 and 4-20 acres out of S.No.17 | 28-01 acres |

The other part of counterclaim of defendants is their claim of share by way of inheritance in a plot land measuring 4 acres in Sector 3-B Corridor area Scheme No.33 Karachi allegedly owned by their father late Mir Hasan Khan Khoso. The claim of inheritance in the property is out of the scope of the suit for specific performance of a contract and the said property is neither in exclusive control of the plaintiff of Suit No.1435/2015 nor he is the only legal heirs of deceased Mir Hasan Khan Khoso to acknowledge share of the defendants by inheritance, if any, in the said property of late Mir Hasan Khan Khoso. May be for this reason, the defendants in Suit No.1435/2015 have already filed another suit bearing Suit **No.1191/2016** to settle their claim of inheritance in the said property which is outside of the scope of Suit No.1435/2015.

13. Admittedly suit property of suit No.1435/2015 is in possession of the plaintiff since **2012** when Mir Hasan Khan Khoso fell ill and after three years long illness died on **27.6.2015**. The plaintiff is enjoying the income of the suit property for which the defendants have claimed mense profit @ of Rs.25 lacs per year from **01.09.2012** till decision of the instant suit. In this context an order dated **02.6.2017** in suit No.1435/2015 passed on an application bearing CMA No.18435/2015 for appointment of Receiver is very relevant

whereby Nazir of this Court was appointed as Receiver. The Nazir has taken over possession of the suit land and auctioned the annual lease / Mukada of agricultural land (suit land). The parties to the suit also participated in the bidding process and lease/ Mukada was awarded to the plaintiff @ **Rs.21,000/-** per acre. This lease/ Mukada by order of this Court dated **15.6.2020** with consent of the defendants was extended for further one year @ **Rs.22000/-** per acre and the lease money has been deposited with the Nazir by the plaintiff.

14. In view of the above facts and discussions while dismissing suit No.1435/2015 as not maintainable and even on merit for want of evidence, I hold that defendants are entitled to the counterclaim / mense profit only to the extent of their entitlement of lease money at the rate of **Rs.20,000/-** per acre with 10 percent per annum increase for the period from **01.9.2012** till the date of appointment of Nazir as Receiver at the ratio of their ownership mentioned in para-11 above. Consequently the Nazir of this Court already in possession of the suit land as Receiver is directed to hand over its possession to the defendants or to their attorney in suit No.1435/2015 alongwith the lease money already deposited in the Nazarat pursuant to the orders of this Court. The plaintiff is also directed to pay lease money to the defendants at the rate of **Rs.20,000/-** per acre with 10% annual increase in respect of the suit land from September, **2012** till the date the defendants are put in possession of the suit land after deducting the lease money / Mukada already deposited by him with the Nazir of this Court pursuant to the order dated **02.6.2017**.

Suit Nos.1191/2016 and 567/2017

15. Learned counsel for the plaintiff in both the suits have not pressed the issue of maintainability, therefore, findings on **issue No.2**

are needed for disposal of these two suits. The properties in these two suits are as follows:-

Properties of suit No.1191/2016

- i) Plot admeasuring 4-0 acres from Sector 3-B Corridor area, Scheme-33, Karachi.

Properties of Suit No.567/2017

- i) Apartment No.506, Abida Tower, Civil Lines, Karachi.
- ii) Agricultural land admeasuring 113 acres, Taluka Thul, District Jacobabad.
- iii) Toyota Corolla model 2009 bearing Registration No.AVL-789.
- iv) Bank Account with UBL - 0037100968
- v) Bank Account with ABL – 0949-0126200648
- vi) Bank Account with SCB – 0145-3936201
- vii) Bank Account with HBL - 00957900106103

16. In my humble view, both the parties have halfheartedly filed these suits in reaction to suit No.1435/2015 or with a view to complicate the issue between the parties in suit No.1435/2015. Suit No.1435/2015 was filed by only one son of Mir Hasan Khan Khoso from his first wife (**Mst.Yasmeen**) as plaintiff against the only son and daughters from his second wife (**Mst.Alia**) as defendants. The defendants in their written statement in suit No.1435/2015 have raised counter claim which was limited to the plaintiff of suit No.1435/2015 and his other real brothers and sisters were not in Court, therefore, to bring them in Court, they decided to file **suit No.1191/2016** through their mother and themselves jointly against one of their uncle Fida Hussain and also impleaded remaining step brothers and sisters. In their suit No.1191/2016 they have prayed for declaration that plot measuring 4-0 acres, in Sector 3-B Corridor Area, Scheme-33, Karachi was property of their late father Mir Hassan Khan Khoso and defendant No.1 Fida Hussain (brother of

their father) was benami owner, therefore, the plaintiffs are entitled to share in the said plot by way of inheritance. The title of the suit was simple declaration, partition and separate possession of suit plot, though it ought to have been a suit for Administration of property of their deceased father when they have also impleaded other legal heirs who are their step brothers and sisters and they wanted distribution of suit property by way of inheritance.

17. After service of suit No.1191/2016 real brothers and sisters of plaintiff in suit No.1435/2015 filed counter suit No.567/2017 for administration and partition of some other immoveable and moveable properties of their late father including suit property in suit No.1435/2015 but excluding the suit property in Suit No.1191/2016 and therefore, they did not implead their uncle Fida Hussain but impleaded their own real brother/plaintiff in Suit No.1435/2015, as one of the defendants who did not contest any of the suits after the order of appointment of Receiver in his suit No.1435/2015 by order dated **02.06.2017**. He neither filed appeal against the order of appointment of Receiver nor produced evidence in support of his claim in Suit No.1435/2015. He also did not file even written statement in Suit No.567/2017 filed by his own real brother/sisters to keep the title of defendants in suit property of suit No.1435/2015 under challenge as long as they can.

18. In this background both the suits No.1191/2016 and 567/2017 were in the nature of suits for administration of the properties allegedly left by late Mir Hassan Khan Khoso. The disinterested parties to the suits seem to have filed suit for the sake of filing of suit. None of the disinterested parties ever prayed for preliminary decree which is mandatory in a suit for administration of

properties of any deceased person in terms of **Order 20 Rule 13**

CPC which reads as follows:-

13. Decree in administration suit.__ (1) Where a suit is for an account of any property and for its due administration under the decree of the Court, the Court **shall**, before passing the final decree, **pass a preliminary decree, ordering such accounts and inquiries to be taken** and made, and giving such other directions as it thinks fit.

(2) In the administration by the Court of the property of any deceased person, if such property proves to be insufficient for the payment in full of his debts and liabilities, the same rules shall be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being, within the local limits of the Court in which the administration suit is pending with respect to the estates of persons adjudged or declared insolvent; and all persons who in any such case would be entitled to be paid out of such property, may come in under the preliminary decree, and make such claims against the same as they may respectively be entitled to by virtue of this Code.

19. The plaintiffs in suit No.567/2017 did not file even a formal application for immediate attachment of moveable properties viz; Toyota Corolla, model 2009 and three bank accounts claimed to be benami accounts held by the defendants. It goes without saying that Toyota corolla car of 2009 in the year 2017 when the so-called suit for administration was filed must have been reduced to zero value. Out of two immovable properties in suit No.567/2107, one was Apartment No.506, Abida Tower, Civil Lines, Karachi and the other was same Agriculture land measuring 113 acres in District Jacobabad, which was subject matter of suit No.1435/2015 filed by their real brother as plaintiff for specific performance but neither the plaintiffs of suit No.567/2017 tried to become intervener in Suit No.1435/2015 nor plaintiff of Suit No.1435/2015 filed written statement in suit No.567/2017. It could not be believed that deceased Mir Hassan Khan Khoso has left only few properties mentioned in the two plaints. The failures of plaintiffs to request for a

preliminary decree from both side was not without purpose. Rather both have deliberately avoided mandatory and necessary inquiry under a preliminary decree in terms of **Order XX Rule 13** of the CPC. May be they knew that there is hardly any life in their respective suits, therefore, for face saving both the plaintiffs have agreed for formal disposal of their respective suits to be decided by answer to only one issue i.e *Whether the properties left by the deceased Mir Hassan Khan Khoso including 'benami' which shall be amenable to succession?*

20. My findings on this issue are as follows.

21. As far as the property in suit No.1191/2016 namely four acres agriculture land is concerned, it is leased in the name of Fida Hussain since 2009 and the first burden was on the plaintiffs to prove that in 2009 whatever amount was utilized towards payment of price of the suit land it was paid by late Mir Hassan Khan Khoso. No payment receipt has been produced in evidence showing the transfer of consideration from the pocket of Mir Hassan Khan Khoso. In support of alleged claim the plaintiff has relied on seventeen counterfoils of cheque from a cheque book of Mir Hasan Khan Khoso. The perusal of these counterfoils shows that these cheques bears dates of 2011, 2012, 2013 and 2014 whereas the suit property was officially leased in favour of Fida Hussain on **3.6.2009**. These counterfoils, therefore, cannot be considered as proof of payment of sale consideration of suit property in 2009, hence the burden of proof on the plaintiffs of suit No.1191/2016 was not discharged and, therefore, it was never shifted on defendants. Likewise the plaintiffs of suit No.567/2017, have failed to establish that the Apartment No.506, Abida Tower, Civil Lines, Karachi and Toyota Corolla, model 2009 were purchased by late Mir Hassan Khan Khoso.

21. The Plaintiff in Suit No.567/2017 neither with the plaint nor in affidavit-in-evidence has filed even a photocopy of the title documents of the properties mentioned in para-2(i) & (iii) of the plaint and reproduced in para-4(i) & (iii) of his affidavit-in-evidence. The plaintiff who does not know the date and time of sale and purchase of the suit property and I may say since he has not even seen any title documents, he cannot challenge the ownership of the said property. Additionally, in his cross-examination the plaintiff has admitted that the title documents of the properties at Sr.No.4(i) & (iii) are in possession of the defendants and merely because someone was minor at the relevant time alone is not enough to challenge his ownership as benami. There is hardly any cogent evidence on the record as proof that these properties were purchased from the fund of late father of the parties. About the bank statements too, the plaintiff has not produced any evidence whatsoever to show that these accounts were held by the deceased father in the name of the defendants. About the agriculture land at Sr.No.4(ii), the plaintiffs' own real brother/plaintiff in suit No.1435/2015 has admitted that property at serial No.4(ii) is owned by the defendant and claims it was sold to him by their father through a sale agreement and he has approached High Court for specific performance of alleged contract. The Plaintiff himself has admitted that the said property is in the custody of Court (in suit No.1435/2015). The solitary evidence of one plaintiff or legal heir of deceased is not enough to prove anything in a suit for administration of properties of a deceased person unless such evidence is corroborated by other legal heirs and they also come forward to assert their claim on oath. This shows that the plaintiff had not seriously challenged title of the defendants in respect of suit properties. In any case the burden of proof on the plaintiff in suit

No.567/2017 was also not discharged and since the burden of proof was not shifted on the defendants, therefore evidence of defendants is not required to be discussed, though it has otherwise been sufficiently rebutted the claim of the plaintiff in Suit No.567/2017.

22. In view of the above, both the suits bearing No.1191/2016 and 567/2017 are dismissed.

JUDGE

Karachi, Dated:24.05.2021

Ayaz Gul