

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

IIInd Civil Appeal No. S – 01 of 2025

(Mukhtiar Ali Shaikh through his legal heir Abu Sabir v.

Province of Sindh & others)

Date of hearing : **10.04.2025**

Date of decision : **10.04.2025**

Mr. Abdullah Shaikh, Advocate along with appellant.

Mr. Muhammad Uzair Shaikh, Advocate for respondents No.6 to 9.

Mr. Sachal Bhatti, Advocate for respondents No.10 to 13.

ORDER

Zulfiqar Ahmad Khan, J. – This IIInd Civil Appeal has been filed under Section 100, CPC, against the judgment dated 06.02.2025 and decree dated 13.02.2025, passed by learned Additional District Judge-II, Sukkur in Civil Appeal No.12 of 2025, whereby the order dated 16.01.2025, passed by learned Senior Civil Judge-II, Sukkur in F.C. Suit No.09 of 2025 rejecting the plaint under Order VII Rule 11, CPC, was upheld, and the appeal was dismissed.

2. The essential facts giving rise to this appeal are that the appellant instituted the suit for declaration and permanent Injunction, which revolves around the dispute concerning two immovable properties i.e. Plots No. B-1 (604-6 square yards) and B-2 (612-2 square yards), situated at Millat Cooperative Housing Society, Main Shikarpur Road, Sukkur, which were ostensibly registered in the names of respondents No.6 and 7 during their minority by the late father of the appellant and private respondents, Mukhtiar Ali Shaikh, allegedly for *benami* purposes to avoid tax implications. The appellant contended that the properties were purchased on 22.05.1993 and 24.05.1993 and developed solely by their deceased father from his own funds and were intended to be used for establishing a charitable eye hospital in his father's memory. Following his death in January 1994, respondents No.6 and 7, despite lacking any independent financial means at the time of purchase, dishonestly claimed ownership

and instituted civil suits (Civil Suits No.36 and 37 of 2024). The appellant sought a declaration that the properties are *benami* and part of the inheritance shared by all legal heirs (appellant and respondents No.6 to 14), rectification of official records, and permanent injunction restraining respondents No.6 and 7 from interfering with the suit property or creating third-party interests therein.

3. Learned Counsel for the appellant argued that the learned trial and appellate Courts acted in undue haste, rejecting the plaint without proper judicial scrutiny, notice to respondents, or recording of evidence. He further argued that the plaint disclosed a valid cause of action and raised disputed questions of fact and law, particularly regarding the alleged *benami* transaction, which warranted a full trial. It was contended that limitation could not be determined summarily, and that the Courts below failed to appreciate the appellant's legal status, relying on technicalities rather than merits, thereby violating his right to fair trial under Article 10-A of the Constitution. He urged that the impugned decisions be set aside and the matter be remanded for adjudication on merits.

4. On the contrary, learned Counsel for respondents No.6 to 9 argued that the decisions of the learned trial and appellate Courts are well-reasoned, lawful and strictly in accordance with Order VII Rule 11, CPC. He further argued that the plaint was rightly rejected as it was time-barred on the face of it, and the plea of *benami* was speculative, devoid of supporting particulars or documentary evidence. He contended that the suit was filed approximately three decades after the execution of the lease deeds and long after the death of father of the appellant and private respondents, who during his lifetime raised no such claim. Thus, he argued, no triable issue arose warranting a full trial, and the plaint was rightly rejected at the preliminary stage.

5. Learned Counsel for respondents No.10 to 13, however, supported the submissions made by the appellant's Counsel, contending that the plaint disclosed disputed questions of fact concerning ownership, intention behind registration, and inheritance rights that could only be resolved

through evidence. He argued that rejection of the plaint without affording the other parties a chance to substantiate their claim undermines the right to fair trial, especially in a matter involving family property and alleged *benami* transactions. He contended that the trial Court acted prematurely, and urged that the matter be remanded for adjudication on merits.

6. I have carefully considered the submissions made by the learned Counsel for the parties and examined the material available on record.

7. The legal position governing the exercise of jurisdiction under Order VII Rule 11, CPC, is well settled. The test is whether, upon a plain reading of the plaint and assuming the facts pleaded therein to be true, the suit appears to be barred by any law or fails to disclose a cause of action. In the instant case, the suit was instituted in December 2024, whereas the transactions giving rise to the alleged *benami* claim were concluded in May 1993, and the deceased father of the private parties passed away in January 1994. The cause of action, as pleaded by the appellant, is said to have accrued either at the time of purchase or, at the latest, upon the demise of the father. However, the plaint is conspicuously silent regarding any continuing wrong, subsequent acknowledgment, or new factual progress that could be construed as reviving or extending the cause of action.

8. The law of limitation, particularly under Article 120 of the Limitation Act, 1908, prescribes a six-year period for declaratory relief based on proprietary rights. No explanation has been offered in the plaint to justify the inordinate delay, nor is there any plea regarding latent fraud, concealment, or suppression of facts. In view of the established principle that when the suit is clearly barred by limitation, the plaint may be rejected without proceeding to trial, the trial Court acted within its jurisdiction in rejecting the plaint.

9. As for the *benami* claim, it is trite law that the burden lies heavily on the claimant to plead and prove that the consideration was paid by one person, but the property was held in the name of another, with the intention that the beneficial interest would vest in the real purchaser. In this case, the plaint does not provide enough facts or details. It does not

explain where the money came from, what the deceased actually did at the time, or whether the people named on the property ever admitted they were holding it for someone else. Just making statements without real evidence or documents is not enough to support a *benami* claim.

10. The appellate Court, while exercising powers under Order XLI Rule 11, CPC, is empowered to summarily dismiss an appeal in the absence of any substantial question of law or material irregularity in the order appealed against. The appellate Court rightly found that the rejection of the plaint was justified on the face of record, and that no arguable question merited deeper scrutiny.

11. In light of the foregoing, no legal or jurisdictional error has been committed by the Courts below. Both the rejection of the plaint under Order VII Rule 11 CPC and the dismissal of appeal in *limine* under Order XLI Rule 11, CPC are well-founded in law and supported by judicial precedents. Accordingly, this IInd Civil Appeal is **dismissed**.

Above are the reasons of my short order dated 10.04.2025.

J U D G E

Abdul Basit