

IN THE HIGH COURT OF SINDH, KARACHI

IInd Appeal No. 138 of 2023

[Sultan Tauheed v. Shams Tauheed and others]

Appellant Through Ms. Rubina Qadir Jatoi, Advocate.
Respondents Nemo
Date of Hearing & Order 24.09.2025

ARSHAD HUSSAIN KHAN, J.- The appellant through instant second appeal has challenged the concurrent findings of the courts below and sought relief as follows:

- 1) To set aside the Impugned Judgments and decrees dated 15-02-2023 passed by the Hon'ble Courts of District & Session Judge in Appeal No 137/2022. And Judgment and decree dated 09-09-2022 passed by IVth Senior Civil Judge at Karachi Malir, in Civil Suit No. 319/2015.
- 2) To pass the order to call the Record and Proceedings of Suit No. 319/2015 from the court of IVth Senior Civil Judge Malir at Karachi and call in proceeding of appeal No 137/2022 from the court of District Judge Malir for perusal of the documents.
- 3) To restrain the Respondents from taking any action regarding the ownership of the Premises i.e. House No A-4. Pioneer Park City Gulistan-e-Jauhar, Scheme No. 33 Karachi, Sector 39-B KDA.
- 4) Any other relief which this Hon'ble Court may deem fit and proper as per the circumstances of the case.
- 5) To grant cost of the Appeal.

2. Concisely, Respondent No.1-Shams Tauheed filed civil suit No.319/2015, before IVth Sr. Civil Judge Karachi [Malir] for **Declaration, Permanent Injunction, Benami Transaction & Cancellation**, with the following prayers:

- a) To declare the defendant is *Benami* owner of suit property and further declare the plaintiff is real owner of the property as the property was exclusively purchased from the amounts of the plaintiff.
- b) To direct the defendant No.2 to delete the name of the defendant No.1 from the sale deed by rectification deed as the defendant No.1 has no lawful right in the suit property being the BENAMI.
- c) Cost of the suit.

- d) And any other relief, which this Court may deem fit and proper in the circumstances of the case.

3. Before the learned trial court, the defendant/appellant-Sultan Tauheed filed his written statement wherein he denied the claim of the plaintiff/respondent; raised preliminary objections and prayed for dismissal of the aforesaid suit.

Subsequently, the trial court framed the issues in the matter and after hearing the counsel for the parties and examining the evidence brought on the record reached at the conclusion that the suit property was purchased as *Benami* and the plaintiff is the owner of the same and the defendant's name is required to be cancelled and deleted from the sale deed of the suit property. The suit of the plaintiff's was partly decreed, vide the impugned judgment of the trial court dated **09.09.2022**. The said order of the trial court was assailed before the District Judge Karachi [Malir] in Civil Appeal No.137 of 2022, which was dismissed and the judgment of the trial court was maintained, vide judgment of the appellate court dated **15.02.2023**. The appellant-Sultan Tauheed has challenged the above concurrent findings in the present appeal.

4. Learned counsel for the appellant has assailed the impugned judgments on multiple grounds, contending that both the trial and appellate courts fell into patent legal error and failed to adjudicate the matter in accordance with settled principles of law. It is submitted that the findings recorded by the courts below are the result of misreading and non-reading of material evidence available on the record, and that the judgments have been rendered in a cursory and hasty manner, without due appreciation of the factual matrix and legal issues involved.

Learned counsel argues that both courts failed to consider the legal plea raised by the appellant that the registered sale deed in question does not attract the mischief of a *Benami* transaction, and that the inclusion of the appellant's name in the title document was not without consideration. He submits that the appellant's name was incorporated in recognition of the services rendered by him to the respondent in connection with certain litigations pending in the province of Punjab, and that such an arrangement was based on

mutual understanding between the parties. It is further contended that the trial court failed to appreciate that no witness categorically denied the appellant's claim of co-ownership, and that the respondent himself voluntarily caused the appellant's name to be included in the sale deed. Learned counsel maintains that both courts below have misapplied the settled legal principles governing *Benami* transactions and ignored material aspects of the case. He concludes that the impugned judgments suffer from serious legal infirmities and do not reflect a proper or judicious appreciation of the evidence on the record, and are thus liable to be set aside.

5. I have heard the arguments advanced by learned counsel for the appellant and have also perused the record.

The arguments advanced by the learned counsel for the appellant, alleging misreading of evidence and non-application of judicial mind, are vague, unsubstantiated, and fail to point out any specific legal or factual infirmity. The claim that the appellant's name was included in the sale deed as consideration for services allegedly rendered in other litigation remains unsupported by any credible evidence or timely documentation. The submissions, being merely argumentative and lacking evidentiary foundation, do not raise any substantial question of law warranting interference.

6. Moreover, a thorough review of the trial court's judgment dated **09.09.2022** reveals that the court meticulously examined the evidence on the record and determined that the plaintiff had convincingly demonstrated exclusive ownership of the suit property. This conclusion was founded on the proof that the entire purchase consideration originated from the plaintiff's personal funds and that the original title documents were held by him. The court further founded that the defendant had neither made any financial contribution towards the acquisition nor provided any documentation substantiating independent means. The presence of the defendant's name on the sale deed was deemed devoid of any legitimate legal foundation, attributed solely to familial considerations. Applying established principles governing *Benami* transactions, the trial court declared the defendant as a *Benamidar*, lacking any lawful title or interest in the property.

7. An analysis of the appellate court's judgment dated **15.02.2023** indicates that the court upheld the trial court's decision after comprehensive scrutiny of the pleadings and evidence. The appellate court concurred that the plaintiff had met all requisite legal criteria to establish a *Benami* transaction. It emphasized that the entire sale consideration was discharged by the plaintiff from his own financial resources, the original title documents remained in his custody, and possession of the property was maintained by the plaintiff and his family. The appellate court also affirmed that the defendant/appellant did not contribute financially and that his name was inserted in the sale deed purely out of humanitarian or familial motives, without any legal entitlement. Consequently, the appellate court reaffirmed that the defendant was a *Benamidar* with no independent right, title, or interest in the subject property.

8. The findings recorded by both the trial and appellate courts, in my view, are mutually consistent, resting on a careful evaluation of the evidence and a coherent application of the legal criteria governing *Benami* transactions. The concurrent conclusions based on the established source of funds, retention of title documents, continued possession, and absence of financial contribution from the defendant reflect a reasoned and well-founded adjudication of the factual and legal issues involved in the matter. These concurrent findings of fact and law, rendered by both courts below, do not suffer from any jurisdictional error or perversity, and thus merit no interference by this Court in second appeal.

9. Besides, this Second Appeal has been filed under Section 100 C.P.C. Under Section 100 of the Code of Civil Procedure, 1908, a second appeal to the High Court lies only on any of the following grounds:(a) the decision being contrary to law or usage having the force of law; (b) the decision having failed to determine some material issue of law or usage having the force of law; and (c) a substantial error or defect in the procedure provided by the C.P.C. or by any other law for the time being in force, which may possibly have produced error or defect in the decision of the case upon merits. In the instant matter, none of the aforesaid grounds is attracted. The concurrent findings of the two courts below are based

on proper appreciation of evidence and application of settled legal principles. The appellant has not been able to point out any substantial question of law arising from those findings. The plea raised pertains solely to reappraisal of factual issues, which is impermissible in a second appeal. Therefore, the present appeal is not maintainable within the scope of Section 100 C.P.C.

10. It is also well settled law that concurrent findings of facts by the courts below cannot be disturbed by the High Court in second appeal, unless the courts below while recording the findings of fact have either misread the evidence or have ignored the material piece of evidence¹.

11. For the foregoing reasons, I am of the view that the concurrent findings of both the courts below do not require any interference by this Court as such the present appeal is dismissed in limine.

JUDGE

*Jamil**

¹ *Keramat Ali and another v. Muhammad Yunus Haji and another* (PLD 1963 SC 191), *Phatana v. Mst. Wasai and another* (PLD 1965 SC 134) and *Haji Muhammad Din v. Malik Muhammad Abdullah* (PLD 1994 SC 291).