

Stereo. H C J D A 38.
Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Revision No.3123/2015
(Farkhanda Bibi etc. Versus Mehmood Munier etc.)

J U D G M E N T

Date of Hearing	23.10.2017
Petitioners by:	Mr. Ahmad Waheed Khan, Advocate. Mr. Ali Masood Hayat, Advocate. Mr. Muslim Abbas, Advocate.
Respondents by:	Mr. Naveed Shahryar Sheikh, Advocate. Ms. Humaira Bashir Chuadhury, Advocate. Mr. Talat Farooq Sheikh, Advocate. Ms. Ayesha Jabeen, Advocate.

Atir Mahmood, J. Brief facts of the case are that on 28.11.2008, the petitioners-plaintiffs filed a suit for declaration with permanent injunction with the averments that the predecessor of the parties namely Raheem Bukhsh was employee in Railway Department as a Station Master; that he purchased land measuring 542 kanals 3 marlas as Benami in the name of his minor/infant son Muhammad Munir vide sale deed No.594 registered on 08.04.1940 and the fact about the minority of said Muhammad Munir is evident from the contents of the above said sale deed; that accordingly, on 29.06.1942, mutation of sale bearing No.69 was sanctioned in result of above said sale deed in the name of Muhammad Munir; that the suit property remained in the sole possession of the predecessor of the parties till 1954; that throughout this period, Muhammad Munir was just a benamidar; that motive for getting the sale deed registered in the name of defendant No.1 i.e minor son was government service of Raheem Bukhsh; that Raheem Bukhsh was owner of agricultural as well as residential land measuring about 200 kanals in Chak Kacha Paka Tehsil Patoki District Kasoor and he purchased agricultural as well as residential land measuring about 184 kanals in Village Aaggian Wasoo Tehsil and District Lahore and sale deed was got registered as Benami in the name of his relative namely Hassan Din; that regarding

the said land, a case was filed by Muhammad Munir to get declared the sale deed as Benami which was afterward compromised by Muhammad Munir after receiving money; that Raheem Bukhsh in his life time again sold property to his son Muhammad Munir in the presence of close relatives/family members; that the real mother of the plaintiffs and daughter of Raheem Bakhsh namely Zuhra Begum alongwith legal heirs were entitled to their legal share in all the property owned by the said Raheem Bukhsh in all the three villages i.e. Chak No.39/UCC Tehsil Ferozewala District Sheikhupura, Saggian Wasoo and Chak No.43 Kacha Paka Tehsil Patoki District Lahore; that the suit property situated in Chak No.39/UCC Tehsil Ferozewala District Sheikhupura was only purchased in the name of defendant No.1 Muhammad Munir as Benami as at that time he was minor having no source/purchasing power and total consideration amount was paid by Raheem Bukhsh; that in 1949, the real mother of defendants No.1, 2 & 4 died and afterwards, the maternal grand parents of defendants No.1, 2 and 4 took them away from the custody of their real father Raheem Bukhsh because all of them were infants/children; that in 1954, maternal grandfather namely Muhammad Hussain of defendant No.1 pretending himself as guardian and putting undue influence on defendant No.1 and with mala fide intention got mortgaged the suit property in favour of his own son namely Muhammad Akhtar; that afterwards in 1960, the predecessor of the parties namely Raheem Bukhsh in result of an accident lost his eye sight; that during the above-mentioned period Raheem Buksh tried to receive his children back and to redeem the suit property from Muhammad Akhtar which was later on redeemed in 1973; that defendant No.1 after attaining the age of maturity continuously kept the property under encumbrances illegally with malafide intention inspite of having no exclusive title of the suit property and he was just as a trustee; that after the death of Raheem Bukhsh in 1967 Benamidar Muhammad Munir being just as a trustee of the suit property did not deliver the proper share of said property to the legal heirs of Raheem Bukshh; that defendant No.1 with the

connivance of revenue employees by misrepresentation and concealment of facts deprived defendants No.2, 4 and mother of plaintiffs from their legal share in the suit property; that later on Muhammad Munir defendant No.1 vide oral mutation of hiba No.239 attested on 12.03.1973 alienated the land measuring 141 kanals 4 marlas in the name of defendant No.4 Suraya Jabeen (deceased) defendant No.2 Jameela Begum in lieu of satisfying their shares in the property situated in village Saggian Wasoo and Chak No.43 Kacha Paka Teshil and District Lahore and defendant No.1 promised defendant No.4 that he is bound to transfer the legal share to all legal heirs of Raheem Bukhsh in the property situated in Chak No.39/UCC, Tehsil Ferozewala, District Sheikhupura and that will be transferred in their names accordingly; that since mother of plaintiffs namely Zuhra Begum was step sister of defendant No.1, she was totally deprived from her 1/5th legal share in the whole property, specifically in the suit property situated in Chak No.39/UCC, Tehsil Ferozewala District Sheikhupura; that defendant No.1 neither disclosed the suit property as well as the other property situated in other revenue estates nor the transactions in respect of the above mentioned property were disclosed to Zuhra Begum, mother of the plaintiffs till her death with malafide intention; that 8 months ago, the plaintiffs came to know that defendant No.1, Muhammad Munir with the connivance of defendant No.2, Jameela Begum had secretly alienated the land measuring 217 kanals 15 marlas, fully described in para 7 of the plaint, in order to deprive the plaintiffs and other legal heirs from their lawful rights; that the plaintiffs are owners of 1/5th share in the property illegally and fictitiously owned by defendants No.1 to 3 situated in Chak No.39/UCC, Tehsil Ferozewala District Sheikhupura; that sale deed No.594 dated 08.04.1940 and in result of that, mutation No.69 attested on 29.06.1940 in the name of defendant No.1 is a benami transaction and the above-said sale deed mutation and afterwards entries in the revenue record to the extent of suit property are illegal and fictitious; that all the entries in the revenue record regarding ownership of defendants No.1 to 3 are illegal, based on malafide and fraud as such,

these are inoperative upon the rights of the plaintiffs and liable to cancellation and the plaintiffs are entitled to land/property according to their legal share; that defendants No.1 to 3 have flatly refused to admit the claim of the plaintiffs and are bent upon to alienate the suit property, therefore, they be restrained to do so.

2. Summons were issued. Defendant No.2 was proceeded against ex parte whereas defendants No.1 & 3 contested the suit by filing written statement. Out of divergent pleadings of the parties, issues were framed. Evidence led by the parties was recorded whereafter learned trial court proceeded to dismiss the suit vide judgment and decree dated 16.04.2013. The petitioners-plaintiffs feeling dissatisfied preferred appeal which was also dismissed by learned lower appellate court vide judgment and decree dated 03.09.2015. Hence this civil revision has been filed by the petitioners-plaintiffs.

3. Learned counsel for the petitioners *inter alia* contends that the judgments and decrees of learned courts below are against law and fact; that the learned courts below have failed to apply their judicious mind; that the evidence of the parties has not been appreciated in its true perspective; that the plaintiffs being legal heirs of predecessor of the parties namely Raheem Bukhsh are entitled to their legal share in the property left by him; that the defendants have committed fraud and got transferred the property in their names in connivance of the revenue officials, therefore, the revenue entries showing ownership of the defendants over the suit property be struck down; that the instant civil revision be allowed, the impugned judgments and decrees be set aside and the suit of the petitioners-plaintiffs be decreed as prayed for. He has relied upon the law laid down in cases titled **Mst. Farida Malid and others v. Dr. Khalida Malik and others** (1998 SCMR 816) and **Mst. Asia Bibi v. Dr. Asif Ali Khan and others** (PLD 2011 SC 829).

4. On the other hand, learned counsel for the respondents has vehemently opposed this civil revision and fully supported the impugned judgments and decrees. He has placed reliance on the

dictums laid down in cases titled Ghulam Murtaza v. Mst. Asia Bibi and other (PLD 2010 SC 569), Muhammad Nawaz Minhas and others v. Mst. Surriya Sabir Minhas and others (2009 SCMR 124), Muhammad Sher and another v. Muhammad Sher and others (1986 SCMR 1592) and Chuttal Khan Chachar v. Mst. Shahida Rani and another (2009 CLC 324 Karachi).

5. Arguments of learned counsel for the parties have been heard and record also perused.

6. The debatable points in this case are (i) as to whether the sale transaction by predecessor of the parties namely Raheem Bakhsh in favour of defendant No.1 Muhammad Munir was a benami transaction and (ii) as to whether the suit was barred by time.

7. There are certain ingredients of benami transaction including motive, consideration, possession of the property and possession of the original title document.

8. The benami transaction was alleged by the plaintiffs and the onus to prove the same was also put upon them. Admittedly, the suit property was purchased by Raheem Bakhsh vide registered sale deed No.594 dated 08.04.1940 in the name of his minor son-defendant No.1 Muhammad Munir. The motive as set up by the plaintiffs in the plaint is that their predecessor was a government servant employed as Station Master in Pakistan Railways, therefore, he, in order to save himself from certain prospective inquiries, avoided to purchase the suit property in his name and preferred to purchase the suit property in the name of his minor son Muhammad Munir. It is evident from the registered sale deed that at the time of the sale deed, Raheem Bakhsh had been retired from the service of Station Master. It appears that Raheem Bakhsh, after his retirement from service, purchased the suit property with the amount of his pension/gratuity. When Raheem Bakhsh was purchasing the property from his own declared funds/money, there was no need to hide the purchase from any one or purchase the same in the name of his minor son as a benami

transaction. Even if it is presumed that the property was being purchased through some black money, then, the transaction would not have been in the name of immediate legal heir of Raheem Bakhsh rather in the name of some other relative or friend. Being father of defendant No.1, it was right of Raheem Bakhsh to secure future of his only son which he could not be deprived from by any law of the land. Undeniably, defendant No.1, at the time of the sale deed, was a child having no source of income and the consideration amount was undoubtedly paid by predecessor of the parties. But mere infancy or childhood of defendant No.1 does not make the sale transaction in his favour a benami transaction. The Hon'ble Supreme Court in case reported as **Ghulam Murtaza Versus Mst. Asia Bibi and others** (PLD 2010 SC 569) has gone one step ahead to hold that once a sale transaction is made by father in favour of his minor child, he himself has no right to challenge the same. So far as possession of the suit property is concerned, it is candidly admitted by the plaintiffs that the same, after death of Raheem Bakhsh, has always been remained with defendant No.1. No party has brought on record the original title documents of the suit property on record, rather certified copies of the same after obtaining from the revenue department have been put on file. In the circumstances, the onus to prove that the impugned transaction was a benami transaction could not be discharged by the plaintiffs which leads me to the conclusion that the disputed transaction was not a benami transaction rather the property was knowingly and deliberately purchased by predecessor of the parties in favour of his only minor son due to love and affection.

9. The other debatable point in this case is as to whether the suit was barred by time. The suit property was undisputedly purchased by predecessor of the parties namely Raheem Bakhsh in 1940 in the name of defendant No.1. Raheem Bakhsh remained alive till 1967, according to version taken in the plaint by the plaintiffs themselves, but Raheem Bakhsh in his lifetime neither made any effort to get the suit property in his name nor challenged the same before any appropriate forum. Furthermore, the plaintiffs have admitted in the

plaint that defendant No.1 alienated some land through mutation of gift No.239 attested on 12.03.1973 in favour of her real sisters namely Mst. Jameel and Mst. Surriyya Jabeen and at that time, he promised that each and every legal heirs will get his/her share from the property of Raheem Bakhsh. Meaning thereby, they, at least in 1973, were aware that the suit property was in the name of defendant No.1. The mother of the plaintiffs in whose shoe the plaintiffs has stepped into was alive at that time and remained alive till 2000 but she never challenged the disputed transaction in her life time. Even, the plaintiffs have challenged the disputed transaction after eight years of death of their mother, therefore, the suit, in my considered opinion, was badly barred by time and was liable to be dismissed on this score alone.

10. There are concurrent findings against the petitioners which are immune from interference by this Court in its revisional jurisdiction unless there is some gross illegality floating on their surface. Learned counsel for the petitioners has miserably failed to point out any such illegality. No interference is warranted.

11. For what has been discussed above, this civil revision is bereft of any force which is accordingly **dismissed**.

(ATIR MAHMOOD)
Judge

Announced in open court on _____.

Judge

*Akram**