

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Civil Revision Application No.144 of 2014

[Mst. Parveen Raza Jadun (deceased) through her legal heirs Mrs. Sadaf Hameerani and 4 others-Applicants vs. Bashir Ahmed Chandio and 5 others-Respondents]

and

Civil Revision Application No.145 of 2014

[Mst. Parveen Raza Jadun (deceased) through her legal heirs Mrs. Sadaf Hameerani and 4 others-Applicants vs. Muhammad Aslam Siddiqui and another-Respondents]

Date of hearing : 21.12.2018

Date of Decision : _____

Applicants : Through M/s. Irfan Ahmed Qureshi, Muhammad Umer Lakhani and Syed Ali Ahmed Zaidi, Advocates.

Respondents No.1 to 3 : Through Mr. Muhammad Najeeb Jamali, Advocates.

Respondents No.4 to 6 : Through Mr. Allah Bachayo Soomro, Additional A.G.

JUDGMENT

Muhammad Faisal Kamal Alam, J: Due to commonality, both these Civil Revision Applications are decided by this Judgment. The First Appellate Court has reversed the findings of learned Trial Court, whereby, the First Class Suit No.147 of 2008 was decreed and Suit No.83 of 2009 was dismissed.

2. An immovable property bearing No.221-A, in Block “C” Unit No.2, Shah Latifabad, Hyderabad (**“subject property”**), is the centre of dispute. It is also necessary to give a brief introduction of parties to the litigation. Civil Revision Application No.144 of 2014 has been

preferred by the legal heirs of Mst. Parveen Raza Jadun (*since deceased*), who was the real sister of Respondent No.1 (*Bashir Ahmed Chandio*), whereas, Respondents No.2 and 3, namely, Muhammad Aslam Siddiqui and Yameen have subsequently purchased this property from Respondent No.1 (*Bashir Ahmed Chandio*). Similarly, Civil Revision Application No.145 of 2014 is also preferred by the legal heirs of Mst. Parveen Raza Jadun but only against Muhammad Aslam Siddiqui and Yameen, who have been impleaded as Respondents, for the reasons that these two Respondents have instituted a separate First Class Suit No.83 of 2009, which has been decreed by the learned First Appellate Court and the decision of learned Trial Court has been reversed, which has dismissed this suit earlier.

Similarly, the said above named Applicant-Parveen Raza Jadun originally instituted a First Class Suit No.147 of 2008, claiming that the above subject property actually belongs to her and the said suit was decreed in her favour by the learned Trial Court, but the finding was reversed by the Appellate Court in the impugned decision.

For the sake of reference only, legal heirs of above named Applicant-Parveen Raza Jadun (deceased), will be called as '**Claimants**', whereas, Bashir Ahmed Chandio, is to be referred as '**Objector**' and the two private parties, namely, Muhammad Aslam Siddiqui and Yameen can be referred to as '**Purchasers**'.

3. Respondents No.4, 5 and 6 are the official Respondents, who have been impleaded in Civil Revision Application No.144 of 2014 only, as they were original parties in the above original First Class Suit No.147 of 2008 (preferred by the Claimants).

4. M/s. Irfan Ahmed Qureshi, Muhammad Umer Lakhani and Syed Ali Ahmed Zaidi, Advocates representing the Applicants/Claimants

have strenuously argued that the subject property when was purchased by deceased father (late Raees Ahmed Khan Chandio) of Claimants and Objector way back in 1957, then at the relevant time Objector / Respondent No.1 (Bashir Ahmed Chandio) had not attained majority and thus he was only benamidar and the real owner was the deceased father of Claimant and Objector No.1. The Legal Team of Claimants further elaborated this argument, that reason for purchasing the subject property in the name of Respondent No.1 (Objector) was that another Plot No.220-A was already purchased by the late father in his name, and because the regulations prevalent at the given point in time did not permit allotment of more than one plot to one person. It is further contended that the other property-220-A, was admittedly transferred to real sister of Claimant and Objector, Mst. Nasreen Brohi, but due to *mala fide* acts of original Respondent No.1 / Objector, the subject property could not be transferred in the name of Predecessor-in-interest of present Claimant, namely, Parveen Raza Jadun.

5. The Legal Team of Applicants / Claimants have relied upon the following case law to augment their arguments relating to a benami transaction_

1. PLD 1960 (WP) Karachi page-852
(Ismail Dada Soomar vs. Shaorat Bano).
2. PLD 1971 Karachi page-763
(Sher Muhammad vs. Muhammad Sharif).
3. PLD 1984 Lahore page-117
(Sher Muhammad vs. Muhammad Sharif).
4. 1991 SCMR page-703
(Muhammad Sajjad Hussain vs. Anwer Hussain).
5. 1994 CLC page-811
(Kishwar Malik vs. Lt. Col Retd Sadiq Malik).
6. 1995 MLD page-316
(Mazhar Mahmood Khan vs. Khushal Jadoon).

7. PLD 2004 Lahore page-515
(Malik M. Zubair vs. Malik Muhammad Anwar).
8. 2005 SCMR 577
(Abdul Majeed vs. Amir Muhammad).
9. 2006 YLR page-599
(Kaleem Hyder Zaidi vs. Mehmooda Begum).
10. 2011 SCMR page-1550
(Wasi-ud-din vs. Fakhra Akhter)
11. PLD 2003 SC page-849
(Sher Baz Khan vs. Malkani Tiwana).
12. 2012 SCMR page-954
(Abdul Rehman vs. Zia ul Haq Makhdoom).

6. The Predecessor-in-interest of Claimant (late Parveen Raza Jadun) in her above mentioned suit has basically pleaded multiple sets of facts; **(i)** that the subject property in fact belongs to Claimant and the same was purchased by the deceased father from his own funds as at the relevant time (1957) Respondent No.1 / Objector had not attained majority and was depended on his parents; **(ii)** that Claimant had always remained in possession of the subject property; **(iii)** that in the year 1994 the Respondent No.1 (Objector) orally gifted the property in question to Claimant through Declaration of Oral Gift and lastly; **(iv)** that the Respondent No.1 illegally and fraudulently sold out the property to above referred Purchasers (private Respondents No.2 and 3) through the Registered Sale Deed dated 09.07.2008 and hence its cancellation is also sought.

7. The Legal Team of Applicants / Claimants primarily agitated the Issue of benami and subsequent sale transaction in favour of Purchasers.

8. Mr. Muhammad Najeeb Jamali, Advocate, representing the private Respondents, that is, Objector and Purchasers both, has

controverted the submissions of the Claimants' side. He has also relied upon number of reported decisions (mentioned herein under) not only relating to the benami transaction and onus to prove a benami transaction, but also pertaining to the limited scope of revisional jurisdiction and maintainability of present Revisions, because, as per contention of learned counsel for private Respondents, a Second Appeal lies and not the present proceeding_

1. 2010 YLR page-3214
(Major General Dr. Asif Ali Khan vs. Riaz Ali Khan).
2. PLD 2012 Lahore page-141
(Mst. Sharifa Bibi and others vs. Abdul Majeed Rauf).
3. 2014 YLR page-385
(Mst. Alim Taj vs. Mst. Sahib Jan).
4. 2009 SCMR page-124
(M. Nawaz Minhas vs. Mst. Surriya Sabir).
5. PLD 2008 SC page-146
(Ch. Ghulam Rasool vs. Mrs. Nusrat Rasool).
6. 2008 SCMR page-143
(Mst. Zohra Begum vs. Muhammad Ismail).
7. 1986 SCMR page-1591
(Ahmad Sultan Khan vs. Mst. Sanin Kausar).
8. 1991 SCMR page-703
(M. Sajjad Hussain vs. M. Anwar Hussain).
9. PLD 2010 SC page-569
(Ghulam Murtaza vs. Mst. Asia Bibi).
10. 2015 MLD page-642
(Sh. Muhammad Rafique vs. Sh. Muhammad Jameel).
11. 2016 CLC page-1284
(Manzoor Butt vs. Mahmed Sufi).
12. 2016 YLR page-75
(Haji Shaizullah Khan vs. Haji Nawab Through Lrs).

9. In a nutshell, the case of Objector and Purchasers is that the subject property is not a benami property and Objector (Respondent No.1 herein) was / is not an ostensible owner of the subject property

but is the real and actual owner, who in such capacity, has lawfully conveyed / transferred the subject property to Purchasers.

10. The learned Additional Advocate General has argued the matter on the basis of record and in effect supported the case of private Respondents; Objectors and Purchasers. The learned Law Officer argued and so also mentioned in the Written Statement, available in the record of the present proceeding, which was filed in the suit instituted by Claimants, that the Respondent No.1 / Objector (Bashir Ahmed Chandio) is the allottee of subject property, which has been sold out through a Registered Sale Deed dated 09.07.2008 to private Respondents No.2 and 3 (*purchasers*).

11. Arguments heard and record perused.

12. It is not necessary to discuss each and every decision cited by Legal Team of both contesting parties about maintainability of present Civil Revision Applications, *inter alia*, because it is not the case of private Respondents that the present Civil Revision Applications are time barred or suffered from some inherent legal defect, but, instead of instant Civil Revision Applications, IInd Appeal should have been filed.

13. On the other hand, Legal Team of Applicants / Claimants has also cited decision(s) that it is the inherent power of a Court to convert the proceeding. Reliance is placed on a well-known Judgment of *Manager Jammu and Kashmir Property vs. Khuda Yar-PLD 1975 Supreme Court page 768*, wherein, *inter alia*, it is also held, that the revisional jurisdiction under Section 115 of CPC, is akin to *certiorari*, while holding that there is no strict rule that if other remedy is available, High Court cannot exercise revisional jurisdiction. In another reported Judgment of Hon'ble Supreme Court in the case of

Muhammad Yousuf vs. Mst. Kharian Bibi-1995 SCMR page 784, the learned Apex Court has maintained the decision of learned Lahore High Court for converting the IInd Appeal to a Revision Petition, by further elucidating that this can be done even on a verbal prayer made by the party concerned.

This discussion leads to the conclusion that if a revision is filed instead of IInd Appeal, it would not be a fatal error but rectifiable.

14. In view of the above discussion, both present Civil Revision Applications are maintainable.

15. Adverting to the merits of the case.

16. Vide order dated 31.01.2011 following consolidated Issues were settled by the learned Trial Court_

- “1. *Whether the defendant No.1 was adult and had his own source of income at the time of allotment of suit plot in the year 1957?*
2. *Whether the plaintiff remained in possession since the construction of bungalow over the suit plot?*
3. *Whether the suit property was purchased by deceased Raees Khair Muhammad for his daughter (plaintiff) as such the plaintiff is actual owner of the suit property?*
4. *Whether the defendant No.01 is became owner of the suit property?*
5. *Whether the defendants No.2 and 3 had acquired the knowledge regarding actual ownership and possession of plaintiff over the suit property before purchaser of the suit bungalow through impugned registered sale deed? If so its effect?*
6. *Whether the defendants No.2 and 3 (plaintiff in F.C.S No.83 of 2009) are bonafide purchaser of the suit land?*

7. *Whether the sale deed dated 09-07-2008 vide registration No.1871 book No.1 registered with the Sub-Registrar Latifabad under M.F. Roll No.U-537/14600 dated 28.07.2008 executed by defendant No.1 in favour of defendants No.2 and 3 is illegal and liable to be cancelled?*
8. *Whether suit is barred by law?*
9. *Whether the plaintiff in F.C.S No.83 of 2009 have no cause of action to file the suit?*
10. *Whether plaintiff in F.C.S. No.83 of 2009 are entitled for any relief?*
11. *Whether plaintiff Parveen Raza through his legal heir is entitled for any relief?*
12. *What should the decree be?"*

17. Since the First Appellate Court has reversed the findings of the learned Trial Court, therefore, record and proceeding of the Courts below have been examined.

Looking at the evidence of the parties to the dispute and particularly that of mother-Fatima Begum (of original Claimant and Objector), who deposed as Claimant's witness, the finding of First Appellate Court on consolidated **Issue No.1** relating to the age of Objector / Respondent No.1 (Bashir Ahmed Chandio) is not correct and it has wrongly reversed the finding of learned Trial Court. The evidence in this regard concludes that at the relevant time when the plot was purchased by late father, the Objector / Respondent No.1 had neither attained majority nor any independent source of income. But at the same time the pivotal Issues are consolidated **Issues No.2, 3 and 4**, because it is one of those unique cases in which it is not the deceased father or mother of Claimant and Respondent No.1, who have filed the proceedings with a plea that the Respondent No.1 was only an

ostensible owner of the subject property, because he was minor at the relevant time and had no independent source of income and was dependent upon the parents, but here the Claimant (late Parveen Raza Jadun), who was also a minor at the relevant time when the property was purchased and Allotment Order dated 29.06.1957 (Exhibit-60/C) was issued in favour of Respondent No.1, claimed that in fact subject property was purchased for her (Claimant) benefit and she is the actual owner. Hence, it is a case of **indirect benami/ostensible ownership** rather a direct benami case. *Secondly*, it is a distinctive case, where the Claimant wants a decision in her favour because the other property, being Plot No.220-A, which was admittedly purchased by the deceased father and Allotment Order was also issued in his name was later gifted to the sister Mst. Nasreen Brohi, who in the evidence also deposed in favour of the Claimant. But at the same time, it is also an admitted fact that the second Plot, which is not the subject dispute of the present proceeding, was jointly gifted by family members to the said Mst. Nasreen, hence this second type of plea can be termed as a **claim by reference**, that is to say, since the sister (above named) of Claimant was given a property by way of gift, the Claimant should also be given the same treatment.

18. More so, if the findings on the above consolidated Issues No.2, 3 and 4 as handed down by the learned Trial Court are restored and that of learned Appellate Court is reversed, then the sale transaction between Objector and Purchasers, that is, Respondents No.1, 2 and 3 herein would also be adversely affected.

19. The Claimant in her Suit No.147 of 2008 has claimed the ownership primarily on the grounds that she is in physical possession of the subject property and the same was handed over to her by her late father, but, as her husband was an Army Officer and was posted at different places, therefore, in that period, the subject property was rented out to tenants by Claimant and finally the latter (Claimant-late Parveen Raza Jadun) started living in the subject property since 1994 (as mentioned in paragraph-9 of her plaint). She has further challenged the transaction between the private Respondents, that is, Objector and Purchasers and sought the cancellation of Sale Deed dated 09.07.2018, which admittedly is a registered instrument (**Exhibit-60/B**). The said Claimant also filed her Written Statement in the above mentioned cross-suit, preferred by Purchasers. In the pleadings, the said Claimant has taken a specific stance that the Bungalow at the subject plot / property was constructed by the deceased father of Claimant solely for the Claimant and her family. In paragraph-4 of her Written Statement (filed in Revision Application No.145 of 2014), it is stated that construction of Bungalow took place in the year 1970-1971. Claimant was in possession since then and the subject property was let out to different tenants. Father of Claimant and Objector passed away in the year 1972 and more specifically mentioned by the Claimant **in paragraph-8 of her Written Statement (in Suit No.83 of 2009) on 17.01.1972.** It is further averred by Claimant in her Written Statement that **from 1989-1990 the Claimant started to reside in the subject property.**

20. The Claimant examined three witnesses, namely, Mst. Fatima Begum, who is maternal grandmother of present Claimants and mother of original Claimant-Mst. Parveen Raza Jadun as PW-1; Mrs. Nasreen Brohi, who is present maternal aunt of Claimants and real sister of

original Claimant and Dr. Aqsa Jadoon, who is one of the present Claimants and daughter of original Claimant. The first witness to a question has stated by acknowledging that late father-Raees Khair Muhammad Chandio did not claim the subject property during his life time. The witness No.2 (Mst. Nasreen Brohi) in her cross-examination to a question has stated that she does not know whether the subject property was purchased by her father as benami. With regard to period in which construction at the subject property was raised, she showed her ignorance in her cross-examination. She also did not deny the suggestion that due to non-construction at the subject property, Municipal Administration imposed a penalty upon Objector / Respondent No.1 (Bashir Ahmed Chandio), which was assailed by the latter (Respondent No.1) in Appeal. To a question about construction of the Bungalow at the subject property, she has stated in her cross-examination , that her late father got constructed the Bungalow for her at Plot No.220-A, which was later gifted to said Mst. Nasreen Brohi, whereas, the mother (above named Mst. Fatima Begum) got constructed the house at the subject plot / property; this deposition contradicts the claim of the Claimants.

21. The third witness of Claimant-Dr. Aqsa Jadoon [who is one of the Claimants/Applicants No.1(c)] in both Civil Revisions, has produced number of documents during her examination-in-chief. She has reiterated the contents of her plaint. With regard to raising of construction at the subject property, she has also not denied the suggestion that penalty was imposed on Respondent No.1 by the Municipal Administration against which the Appeal was preferred. In her cross-examination, she has not disputed when confronted that in the document-Exhibit 60-H, the name of her mother (original Claimant) has been inserted by overwriting and striking out the name of Objector

/ Respondent No.1. This document Exhibit 60-H is the order of Hyderabad Municipal Corporation to distrain the subject property for non-payment of dues. Similarly, she has not disputed that the bank record produced by her as Exhibit 60-I does not disclose the fact about deposit of rents in bank. She has admitted the fact that private Respondents; Objector and Purchasers herein, have demanded the possession from the original Claimant (Parveen Raza Jadun). She has not denied the suggestion that a father can purchase a property in the name of his son, by voluntarily adding, that in the same manner father can also purchase the property in the name of her daughter. To a specific question on construction, the said witness has stated **that the construction at the subject property was done after 1975;** which means after the demise of late father (Late Raees Khair Muhammad Chandio) of original Claimant and Respondent No.1, which testimony is in conflict with the stance of Claimants as per their pleadings. To another very material question in her cross-examination, she has showed her ignorance that who has paid the costs of subject property to Municipal Administration. The said witness could not answer that when possession of the subject property was handed over to her mother (late Parveen Raza Jadoon).

The Sale No Objection Certificate (NOC) dated 01.07.2008 for sale of the subject property by Objector to Purchasers was produced in the evidence by above named Dr. Aqsa Jadoon, although with the intent to dispute and challenge it.

22. The Objector (Bashir Ahmed Chandio) examined himself. He produced the **original Lease Deed as Exhibit 66-A.** This document is perused. It is an ownership lease granted on 11.01.1968 to the Objector / Respondent No.1 through his attorney-Muhammad Yousuf by

Government of West Pakistan. Clause-2 states that construction should be completed within two years and eight months. The above named Respondent No.1 also produced order passed in Appeal preferred by the said Respondent No.1 before the Commissioner, in which the penalty for non-raising the construction was set-aside. In his deposition, the Respondent No.1 categorically denied that the subject plot was purchased for the benefit of his sister, that is, the above named original Claimant (late Parveen Raza Jadun). He has deposed that it was he (Respondent No.1), who got the approval of building plan and raised construction in the year 1975, although he could not produce approved building plan, but stated that it has been produced by the Municipal Authority. He has further testified in his cross-examination that cost of the subject property was finally paid by him, that is, the Objector / Respondent No.1, and in the year 1968, the aforementioned Lease Deed was issued in his favour. The above named Objector was not cross-examined on a material part of his testimony, when he stated in his examination-in-chief, that the Lease Deed of the subject property was executed in his favour during the life time of his deceased father but neither the latter (late father) nor the original Claimant (sister, deceased Parveen Raza Jadun) raised any objection.

23. One official witness, namely, Hashmat Ali produced the official record relating to the subject property, which includes the Noting Sheets, according to which, *inter alia*, the subject property has now been mutated in the name of above named Purchasers. The official record also contains Note Sheets-68 to 81, according to which, Allied Bank Limited with which the subject property was earlier mortgaged by Objector No.1, has been released as the said Objector No.1 paid off the loan.

The said official witness has also produced the ownership lease document dated 11.01.1968 in favour of Objector No.1 as well as the correspondence dated 15.09.1973 (page-513) Exhibit-64/J, issued by District Housing Officer-II, Land-grant Officer, Municipal Committee Hyderabad Sindh, for scrutinizing revised approved building plan. The said correspondence has mentioned the name of Objector as allottee, therefore, the testimony of above named Objector No.1, that he could not produce the approved building plan but the same has been produced by the above named official witness, is correct. The said official witness has also produced **Exhibit 64/K**, which is a permission to mortgage the subject property with House Building Finance Corporation for obtaining a house building loan. The said permission is given to the above named Objector No.1 whose name is mentioned in paragraphs-3 and 4 of this document. It has also come in the evidence as an undisputed fact that earlier the said Objector No.1 mortgaged the subject property with Allied Bank Limited, which was later redeemed.

24. From the above discussion, the contradiction in the evidence of Claimants is very much apparent. The claim of original Claimant in her plaint of Suit No.147 of 2008, about the construction at the Plot, which is now a subject property, has been disproved by the conflicting testimonies of Mst. Nasreen Brohi and Dr. Aqsa Jadoon (the above named witnesses). In the pleadings, it is the stance of Claimant that late father of original Claimant got constructed the house, whereas, per deposition of Dr. Nasreen Brohi, who is maternal Aunt of present Claimant, the construction at the subject property was raised by the mother of Claimant, namely, Fatima Begum wife of late Raees Khair Muhammad. Similarly, the aforesaid Mst. Nasreen Brohi in her cross-examination has not denied the suggestion that she does not know that

whether the subject property was purchased by her later father as benami.

The Claimant has failed to prove that the house at the subject property was built by the father (late Raees Khair Muhammad) from his own funds, *inter alia*, as one of the Claimants' witnesses, the present Applicant No.1(c), herself has acknowledged that construction was raised somewhere in 1975; that is, when the above named grandfather of present Claimants was not alive.

Similarly, there is no convincing evidence produced on behalf of the Claimants that the latter (Claimants) were residing in the subject property as its real owners. The evaluation of the evidence done by the Appellate Court, *inter alia*, that Plaintiff (present Claimants) never remained in continuous physical possession also leads to the conclusion, that even if the Claimants did reside in the subject property for some time, that was because of close relationship of sister and brother between the original Claimant and the present Respondent No.1 (Objector).

25. It is an established rule that the initial burden to prove a benami transaction is on the party, who has taken the plea of benami (*ostensible ownership*).

The reported decisions of Hon'ble Supreme Court relied upon by the legal team of both Parties (Claimant and Objectors) primarily relate to the principle rather jurisprudence of benami transaction (*ostensible ownership*) evolved in the Sub-continent. Following reported decisions relied upon by the learned counsel for the parties should be mentioned: ***PLD 2010 Supreme Court page 569, 2005 SCMR page 577 and 2009 SCMR page 124.*** Précis of the case law cited by the learned counsel for the parties is that_

- i). Motive for ostensible ownership, that is, a party setting up a claim of benami, should satisfy the Court that why the property in question does not stand in the name of the agitator but in the name of his opponent;
- ii). source of payment;
- iii). who is in possession of the property, and;
- iv). in whose custody the original title document(s) of the property is.

A reported judgment of this Court-**1992 MLD page 2515**, is also very relevant, as in the said Judgment the concept of benami transaction has been explained, *inter alia*, from the perspective of Section 82 of the Trust Act, 1881.

The conclusion of the above discussion is that **(i)** the basic ingredients required by a Plaintiff, that is, the present Claimants, to succeed in a benami claim of the nature, which in fact is an indirect benami claim, as stated in the foregoing paragraphs, are completely lacking. Admittedly, it is not the case of Claimant that she purchased the subject property way back in 1957; because she herself was minor at the relevant time; **(ii)** her claim of raising construction by the father has been disproved; **(iii)** undisputedly it is not the claim of Claimants / Applicants, that at any point of time their income / funds were utilized in construction of the subject property; **(iv)** the original title document has been produced by the Respondent No.1 and the Claimant No.1(c)- Dr. Aqsa Jadoon only produced the photocopy of original title document in her evidence, as captioned in the document itself, which has been exhibited as Exhibit 60/A. Most importantly, the father-late

Raees Khair Muhammad died in the year 1972 and the lease was executed in favour of Respondent No.1 on 11.01.1968, and if the intention of the father, as claimed by the Claimant, was to gift or give the subject property in the name of Claimants, then the father should have or could have directed the Respondent No.1 to get the title document-Lease Deed executed directly in the name of Mst. Parveen Raza Jadun (original Claimant) but it was not done. It has also come on record, as an undisputed evidence, *inter alia*, by PW-1, above named Mst. Fatima Begum (mother), that the above named father during his life time never raised this issue of giving the subject property to original Claimant (late Parveen Raza Jadoon). The authenticity of the record produced by the official witness has not been challenged by the Claimants, therefore, presumption of genuineness as envisaged in Article 92 Read with Article 129, illustration (e), *inter alia*, that official acts have been performed regularly, are also attracted to the record produced by the above named official witness.

26. The decision handed down by Hon'ble Supreme Court in *Fakhra Akhter* case (*supra*), relied upon by the Claimants' side, besides other decisions, which are mentioned in the foregoing paragraphs, I am afraid, do not lend support to the arguments of Claimants. Rather in the aforesaid decision of *Fakhra Akhter*, it was held that the properties involved in the dispute belonged to the father of Respondent and were not benami, because Appellants, who were the maternal Uncle of Respondent (of the reported case), did not claim the property during the life time of the father of Respondent; conversely, this observation of the Hon'ble Supreme Court in the above case is also attracted to the facts of present Civil Revision Applications, because admittedly Claimants never brought the proceeding of the nature during the life time of late Raees Khair Muhammad (Maternal grandfather of

Claimants and real father of original Claimant); the original Claimant should have brought an action at law when the above afore mentioned Lease Deed (Exhibit 66/A) was executed in favour of present Respondent No.1 / Objector way back in the year 1968.

What is relevant (to a certain extent) to the facts of present proceeding, is the reported decision given in *Ghulam Murtaza* case (*ibid*) (*PLD 2010 Supreme Court page-569*). In this case, parties were husband and wife but due to some irreconcilable dispute, they got separated and respondent (Mst. Aysha Bibi) brought a suit claiming her title to the properties purchased in her name. The suit was resisted by the Appellant (her former husband), primarily on the ground that the properties were benami as the same were purchased from the funds / income of Appellant (husband). The Hon'ble Apex Court has held, *inter alia*, that in benami transactions, **motive part 'is the most important one'**. Every other transaction in which one party has purchased some property in the name of another cannot be held as benami. It is relevant to reproduce paragraphs-7 and 8 of the Judgment_

“7. At this juncture, we may clarify that the motive part in the benami transactions is the most important one. A transaction cannot be dubbed as benami simply because one person happened to make payment for or on behalf of the other. We come across innumerable transactions where a father purchases property with his own sources for his minor son or daughter keeping in mind that the property shall vest in the minor. Such transaction subsequently cannot be challenged by father as benami simply because the amount was paid by him. There are people who, with positive application of mind, purchase properties in the name of other with intention that the title shall vest in that other.

8. As said earlier, there are certain transactions in peculiar circumstances of those peculiar cases where, for reason of certain emergencies or contingencies, the properties are purchased in the name of some other person without the intention that the title shall so vest permanently. If such motive is available and also is reasonable and plausible, a transaction can be held as

benami, otherwise not. A property purchased with ones own sources in the name of some close relative like wife, son or daughter cannot be dubbed as benami when purchased with full intention of conferring title to the purchaser shown. If this principle is denied and that of benami attracted simply because the sources of consideration could not be proved in favour of the named vendee, would shatter the most honest and bona fide transactions thereby bringing no end to litigation.”

[underlined for emphasis]

Finally, the Hon'ble Supreme Court came to the conclusion that property was purchased by the husband in the name of his wife at a time when they were living happily, thus subsequently, no one can turn around to claim exclusive title when the relations become strained and the spouses fall apart. To sum up, in this reported Judgment a rule has been laid down that if near relations purchased a property in the name of their family members, it is not necessary that the same is a benami transaction, but a property is purchased considering the closed relation between the parties, for the benefits of the one in whose name the property is purchased.

Therefore, in the present case also it is held that deceased father (Raees Khair Muhammad) purchased the subject property in the name of his son and brother of Claimant, viz. the present Respondent No.1 / Objector and that is why when after 09 years the authorities executed the ownership lease in favour of Respondent No.1, no objection was raised from any quarter. It was a routine family transaction between father and a son.

28. As already observed that this case is also unique in the sense that here a benami *claim* is raised not by the one, who has purchased the property; in other words, it can be said that the claim of ostensible ownership / benami is not raised directly by a person who has purchased the property in favour of his son-Respondent No.1, but an

indirect claim has been raised by the daughter / sister of Respondent No.1, that is, the original Claimant, who **admittedly** has neither purchased the property nor at **any stage invested any amount towards construction of the property.**

The claim of the nature warrants higher degree of proof than is required in a general benami case; however, Applicants / Claimants failed to discharge the onus of proof. The case / stance of Objectors in respect of benami transaction is also adversely affected by Article-118 of the Evidence Law, which for convenience is reproduced herein below_

“118. On whom burden of proof lies: The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

Even the second proposition mentioned in the foregoing paragraphs about **the claim by reference, cannot be recognized in the present case,** *inter alia*, because it has come in the evidence that the other plot was gifted to the sister-Mst. Nasreen Brohi by consent of all the family members, which consideration is lacking in the present case. More so, the claim of present Claimant about gifting of the subject property by Respondent No.1 / Objector to the original Claimant has not been seriously agitated as already discussed hereinabove.

29. From the evidence of the parties it can be concluded that it is in fact the Objector No.1, who is exercising his control over the subject property and not the Claimants. The essential ingredients for succeeding in the claim of benami / ostensible ownership cannot be proved by the Claimants' side, as, admittedly the original ownership document has come in the evidence from the custody of Objector No.1; the official record produced by the above named official also endorses

the stance of Objector No.1, particularly redemption of mortgaged and obtaining fresh House Building Loan, by Objector No.1, all are incidents of ownership. Similarly, the Claimants could not prove that either they or the original Claimant were in possession of the subject property as its owners, therefore, the findings of Appellate Court on the above consolidated **Issues No.2 and 4** are correct and based on the proper appreciation of the evidence. However, finding on the consolidated **Issue No.3** is not correct; thus is corrected / modified to the extent only that the deceased father (late Raees Khair Muhammad) purchased the subject property in the name of and benefit for the Respondent No.1 / Objector (Bashir Ahmed Chandio). However, in view of the above discussion, since finding of the learned Appellate Court is not a material irregularity, hence, interference in this revisional jurisdiction is neither justified, nor will make an overall impact on the impugned Judgment, because it has already been held in the foregoing paragraphs that the present Objector / Respondent No.1 is the actual owner of the subject property.

Consolidated Issues No.5, 6 and 7.

In view of the above discussion and the evidence that has been brought on record, it is now a proven fact that since the Objector No.1 was / is the lawful owner of the subject property, therefore, while exercising his ownership rights, he has sold out the subject property to Purchasers for a valid sale consideration and through a registered Sale Deed, which has been produced in the evidence of Claimants as Exhibit 60/B. The official witness deposition clearly states that in the official record, the subject property has been duly mutated in the name of Purchasers. The relief as claimed by the Claimants to cancel the above Sale Deed on the basis of their main stance, that the subject property

was actually owned by the original Claimant (late Paveen Raza Jadun) has already been decided hereinabove, therefore, the above Sale Deed (**Exhibit 60/B**) and the sale transaction between the Objector and Purchasers can neither be declared as illegal nor cancelled, as sought (by Claimant), thus, the finding of the First Appellate Court does not require any interference.

Consolidated Issues No.8, 9, 10 11 and 12.

Suffice to observe that the plaint in Suit No.147 of 2008 preferred by the original Claimant (late Parveen Raza Jadun) is available on record in which paragraph-18 states that cause of action firstly arose in the year 1957, then in the year 1968 when the father of the Plaintiff/Claimant constructed the house and then on 03.07.1994 when a formal Gift Deed was executed in favour of the original Claimant and finally on 09.07.2008 when the sale transaction happened between the Objector and Purchasers. No plausible answer could be given by the Claimants that why the present proceeding was not filed during the life time of deceased father, who has admittedly purchased the property in the name of Objector No.1 and particularly when the ownership lease (Exhibit-66/A) was executed in favour of Objector No.1, without any objection from the original Claimant. In view of this undisputed fact, the finding of learned First Appellate Court does not require any interference as suit of present Claimant does not have any merits and is liable to be dismissed.

The learned Appellate Court has exercised the revisional jurisdiction properly and there is no material irregularity found in the

impugned Judgment, which requires interference in this revisional jurisdiction.

The upshot of the above findings is that both Civil Revision Applications are dismissed.

Dated: _____

M.Javid.PA

JUDGE