

Form No: HCJD /A38
JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

JUDGMENT

Civil Revision No. **44182 of 2024**

Rab Nawaz deceased son of Abdul Haq through his legal heirs etc.
Versus
Mst. Samra Andleeb

Date of Hearing: **12.07.2024**

Petitioners by: Farzana Nazir Bhullar, Advocate.

MASUD ABID NAQVI, J. Concise facts of this civil revision are that the daughter of deceased Abdul Haq /plaintiff/respondent challenged oral gift mutation No. 132 dated 04.07.1996 allegedly entered/sanctioned by the plaintiff/respondent's deceased father in favour of his son/defendant No.1/predecessor in interest of the petitioners and also challenged the validity of general power of attorney No.712/4 dated 10.11.2001/Ex.D-3 allegedly executed by the plaintiff/respondent's deceased father/principal in favour of defendant No.1/his son/attorney who transferred the principal's property to his wife/defendant No.2/petitioner No.1-A through gift deed No.4000/1 dated 29.12.2004/Ex.D-1 without the special/express permission of principal. The suit was duly contested by the petitioners/defendants by filing written statement and by raising certain factual as well as legal objections. Out of divergent pleadings of the parties, issues were framed by the learned trial court. The parties produced their respective evidence and after recording the same, learned trial Court dismissed the suit of the

plaintiff to the extent of gift mutation No.132 dated 04.07.1996 and partially decreed the suit of plaintiff by declaring the gift transaction/gift deed gift deed No.4000/1 dated 29.12.2004/Ex.D-1 executed on basis of general power of attorney No.712/4 dated 10.11.2001/Ex.D-3 as void ab initio vide judgment and decree dated 08.06.2002. Feeling aggrieved, the plaintiff/respondent as well as defendants/petitioners filed their respective appeals and the learned Addl. District Judge, Sahiwal vide consolidated judgment and decrees dated 21.05.2024 dismissed both the appeals. Being dissatisfied, the defendants/petitioners have filed the instant civil revision and challenged the validity of the impugned judgments and decrees passed by the learned Courts below only to the extent of findings on gift transaction/gift deed No.4000/1 dated 29.12.2004 & general power of attorney No.712/4 dated 10.11.2001.

2. The learned counsel for the petitioners/defendants mainly argues that the disputed gift deed was registered by the defendant No.1/son of deceased Abdul Haq in favour of defendant No.2/his wife on behalf of his father after not only obtaining the oral permission/consent from his father/principal to gift the disputed property to his wife but also obtained an affidavit from his father, permitting the defendant No.1 to gift the land to his wife. On Court's query, the learned counsel for the petitioners concedes that the alleged affidavit has not been pleaded or exhibited in evidence by the defendants/petitioners in their evidence.

3. I have heard the arguments of learned counsel for the petitioners and minutely gone through the record as well as the impugned judgments and decrees.

4. There is no denial of the facts that the defendants/petitioners have neither specifically pleaded in the written statement about the alleged special/specific permission of the principal/father to his attorney/son/defendant No.1 to gift his property to his wife/defendant No.2/petitioner No.1-A through gift deed No.4000/1 dated 29.12.2004 or the original transaction of gift with time, date, day, month etc. nor three essential/basic/inseparable ingredients of valid gift i.e. offer, acceptance and delivery of possession. The defendants/petitioners have also not pleaded/exhibited any document(s) especially showing the written consent/permission of the principal to the attorney as is allegedly written in the disputed gift deed. On the basis of alleged general power of attorney No.712/4 dated 10.11.2001/Ex.D-3, alleged gift deed No.4000/1/Ex.D-1 dated 29.12.2004 was registered during the lifetime of the principal and it is strange that neither the principal himself exercised the right and power for the purpose of making a gift to alleged donee/his daughter in law by taking a mentally conscious decision nor signed disputed gift deed in favour of the alleged donee, who had no mental or physical incapacity at that time, pleaded by the defendants/petitioners themselves in their written statement. Power of attorney is an instrument in writing, conferring authority or power by a principal to his attorney to do certain acts in a specific and limited manner and in the disputed general power of attorney No.712/4 dated 10.11.2001/Ex.D-3, no specific powers were given by the principal/father to his attorney/his son to gift his land to attorney's wife/defendant No.2/petitioner No.1-A by clearly specifying the name of donee

and the power of attorney is also not clearly indicating/conveying the principal's knowledge, intention and consent for making gift of his land to his attorney's wife/principal's daughter in law. There is no cavil to the proposition that generally an attorney cannot utilize the powers conferred upon him to transfer the property to himself or his kith and kin, without special and specific consent/permission of the principal and in case of gift transaction, more strict conditions have been attached by the Superior Courts for proving the gift made by an attorney as a valid gift transaction because being voluntarily and gratuitous, gift reflects the personal sentiments of love, affection, kindness and compassion of donor for the donee or sometimes sentiments due to personal services rendered by the donee to the donor and personal sentiments of donor/principal cannot be expressed by an attorney on behalf of donor, therefore, the process of making valid gift must preferably be initiated & completed by the donor himself with the exception that the attorney may gift the property on the express permission and instructions of his principal. Strong personal sentiments of donor must necessarily be directly established in gift transaction in clear terms through pleadings and irrefutable evidence because alleged donor has allegedly deprived his daughter/plaintiff from his land. The resume of the discussion is that the defendants/petitioners miserably failed to plead and prove through evidence (i) execution of general power of attorney/Ex.D-3 & (ii) making of original oral gift transaction with its legal ingredients, valid gift with offer, acceptance and delivery of possession, express permission/instructions of donor/principal to his attorney for

making gift & execution of gift deed/Ex.D-1. Reference is made to the cases reported as “Mst. Shumal Begum Vs. Mst. Gulzar Begum and 3 others” (**1994 SCMR 818**), “Haji Faqir Muhammad and others Vs. Pir Muhammad and another” (**1997 SCMR 1811**), “Maqsood Ahmad and others Vs. Salman Ali” (**PLD 2003 S.C. 31**), “Jamil Akhtar and others Vs. Las Baba and others” (**PLD 2003 S.C. 494**), “Ijaz Bashir Qureshi Vs. Shams-un-Nisa Qureshi and others” (**2021 SCMR 1298**), “Syed Atif Raza Shah Vs. Syed Fida Hussain Shah and others” (**2022 SCMR 1262**) and “Babar Anwar Vs. Muhammad Ashraf and another” (**2024 SCMR 734**).

5. In view of above, challenged findings of the learned Courts below in impugned judgments and decrees to the extent of declaring the gift deed No.4000/1 dated 29.12.2004 as invalid transaction are **upheld / maintained**. Neither any misreading or non-reading of evidence on record nor any infirmity, legal or factual, has been pointed out in the challenged findings of the learned Courts below in impugned judgments and decrees passed by the learned Courts, therefore, this civil revision is, hereby, ***dismissed in limine.***

**(MASUD ABID NAQVI)
JUDGE**

Approved for reporting.

JUDGE