

Stereo.HCJDA 38.
Judgment Sheet
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

....

Civil Revision No.970 of 2012.

Mst. Irshad Bibi.

Versus

Ghulam Mustafa, etc.

JUDGMENT.

Date of hearing: **07.03.2023.**

Petitioner by: M/s Haroon-ur-Rashid Nizami & Shamsa Naz Zahra Lak, Advocates.
Respondent No.1 by: Muhammad Tanvir Ch., Advocate.
Respondent No.2-9 &
10-a to 10-f by: Khawaja Bashir Hussain Advocate.

AHMAD NADEEM ARSHAD, J. Through this single judgment I intend to decide above captioned Civil Revision as well as Civil Revision No.791 of 2012 titled as “*Ghulam Mustafa V. Irshad Bibi, etc*” as parties in both the petitions as well as subject matter is same and both civil revisions are arising out of same judgments & decrees of Courts below.

2. Facts in brevity are that petitioner/plaintiff Mst. Irshad Bibi (*hereinafter referred to as the petitioner*) instituted a suit for declaration on 31.10.2007 against the respondent No.1 & respondents No.2-9, 10-A to 10-F/defendants (*hereinafter referred to as the respondents*) by contending therein that she is owner in possession of suit property measuring 96 Kanals & 08 Marlas and impugned sale mutation No.110 dated 15.09.1988 as well as subsequent entries in the revenue record made on the basis of said mutation are against the facts & law, void ab-intio and infective upon her rights; that she never appointed Muhammad Aslam as her general attorney for sale of her property and the proceedings conducted by him are forged, fictitious and

based upon fraud; that she cancelled the general power of attorney being a forged document; that at the time of sanctioning of impugned mutation she was in *Dar-ul-Aman*, therefore, she did not appear before anyone; that neither she gave any statement nor received any consideration amount for sale of suit property; that all the proceedings with regard to sanctioning of impugned mutation are forged, fictitious, based upon fraud and result of collusiveness of revenue officials; that at the time of sanctioning of mutation Muhammad Aslam was shown to be her general attorney but she never appointed him as general attorney for the sale of suit property and if any such deed of attorney was shown to be executed, it is forged and fictitious and not applicable upon her, therefore, she is not bound to it; that impugned mutation was not attested by concerned Lumbardar; that impugned mutation was got sanctioned by Muhammad Aslam in favour of respondents by misusing power of attorney, which is against law & facts and liable to be set aside as neither general attorney can alienate the property of his principal to his legal heirs nor can alienate without her consent to any other; that impugned mutation is without consideration and result of impersonation; that petitioner neither appeared before any Revenue Officer or Patwari nor got recorded her statement; that petitioner is a Pardanasheen lady and according to the custom she did not use to go outside her house without the consent of her husband; that respondents had been giving share produce regularly to her at her house, so, she remained unaware about the impugned sale; that one week ago when respondents started claiming themselves owner of the suit property and also stopped to give share produce, then it came to her knowledge that suit property had been alienated in their favour; that respondents were asked time & again to get cancel the impugned mutation but they refused to do so, which constrained her to institute the suit.

3. On the other hand, respondent No.1 and respondents No.2 to 9 & 10-A to 10-F/defendants contested the suit by filing their separate written statements in contrast whereby they raised certain legal as

well as factual objections such as petitioner has no cause of action; that suit is not maintainable in its present form; that they are bona-fide purchasers with consideration; that petitioner made sale bargain of the suit property through her general attorney namely Muhammad Aslam with respondents (defendants No.1 to 3 & predecessor of defendants No.4 to 10-F) and through mutation No.110 alienated the suit property to them; that after sale of the suit property, petitioner while admitting said power of attorney got it cancelled, therefore, she is estopped from her own words & conduct to institute the suit; that the suit is barred by time. While replying on facts, they pleaded that petitioner made sale bargain of land measuring 48 Kanals & 08 Marlas for a consideration of Rs.3,75,000/- with respondent No.1/defendant No.1 through her general attorney Muhammad Aslam (her real brother) and received Rs.3,75,000/- in presence of witnesses and similarly received Rs.3,75,000/- from defendants No.2 & 3 and predecessor of defendants No.4 to 10; that before attestation of the mutation power of attorney was got verified; that general attorney paid the consideration amount to the petitioner; that petitioner through her general attorney appeared before concerned Patwari and Revenue Officer and the general attorney got attested the suit mutation and prayed for dismissal of the suit.

4. Owing to the divergent pleadings of the parties, learned Trial Court framed necessary issues and invited the parties to produce their respective evidence in support of their divergent stances. After recording evidence of the parties pro & contra, learned Trail Court dismissed the suit vide judgment & decree dated 03.05.2011. Feeling aggrieved, she preferred an appeal which was partially accepted vide judgment & decree dated 23.07.2012 and suit of the petitioner was decreed against respondent No.1 and oral sale mutation No.110 was cancelled to the extent of respondent No.1 regarding alienation of land measuring 48 Kanals 08 Marla, however, dismissed rest of her suit. Being dissatisfied, said Ghulam Mustafa has filed Civil Revision No.791 of 2012 for setting aside impugned judgment &

decree of appellate Court dated 23.07.2012, whereas, petitioner (Irshad Bibi) has filed Civil Revision No.970 of 2012 whereby she has prayed for decree of her suit in toto.

5. I have heard learned counsel for the parties at length and perused the record with their able assistance.

6. It evinces from the record that petitioner challenged the vires of mutation No.110 dated 15.09.1988 (*Exh.P.1=Exh.D.1*) which was entered on the basis of *Rapat Roznamcha Waqiat* No.366 dated 31.08.1988 whereby her land measuring 96 Kanals & 08 Marlas was allegedly alienated through oral sale by her real brother/general attorney for a consideration of Rs.7,50,000/- to respondent No.1 namely Ghulam Mustafa (*real son of the general attorney*) and Muhammad Anwar, Sadiq Ali & Hashmat Ali (vendees). Petitioner also challenged the authority of general attorney regarding sale of the suit property. Although, general power of attorney No.1949 dated 21.12.1981 (original as *Exh.D.2, certified copy as Exh.D2/I*) was got cancelled by petitioner through revocation deed No.2586 dated 19.09.1988 (*Exh.D.4*) but before its cancellation, said general attorney had alienated the suit property to respondents. Stance of the respondents is that they are bona-fide purchasers for consideration and purchased the suit property from petitioner through her general attorney.

7. Suit property was sold by general attorney through oral sale mutation, therefore, in order to establish valid execution of the transaction, respondents have to prove not only the general power of attorney, the ingredients of sale but also the execution of the mutation through cogent and reliable evidence. In order to enforce a sale of immoveable property it was imperative for the vendees to establish that the transaction was undertaken with a title holder; there was an offer made which was accepted; the parties had no incapability; there was consensus ad idem; that it was settled against valid consideration and that it was accompanied by the delivery of possession. Transaction involving property of illiterate women was to be treated at par with *Pardanashen* lady and where a transaction

involved anything against her apparent interest, it must be established that independent, impartial and objective advice was available to her and the nature, scope, implication and ramifications of the transaction entering into was fully explained to her and she understood the same. Attestation of mutation by itself does not furnish proof of sale and whenever any such transaction was questioned, the onus laid on the beneficiary to prove the transaction and every ingredient thereof as well as the document if executed for its acknowledgment. Mutation was always sanctioned through summary proceedings and to keep the record updated and for collection of revenue, such entries were made in the relevant register under Section 42 of the Land Revenue Act, 1967 and it had no presumption of correctness prior to its incorporation in the record of rights. However, entries in the mutation were admissible in evidence but the same were required to be proved independently by the persons relying upon it through affirmative evidence. Oral transaction reflecting therein did not necessarily establish title in favour of the beneficiary. Mutation could not by itself be considered a document of title and may have been attested as an acknowledgment of past transaction.

8. To reach a just conclusion, scanning of the whole evidence is necessary as conclusion drawn by both the Courts below are at variance. Guidance sought from the judgment of august Supreme Court of Pakistan whereby in a case titled "Mst. Azra Gulzar V. Muhammad Farooq and another (2022 SCMR 1625)" held as under:

"In the case in hand, the fora below is at variance in their findings and in such like situation the High Court was supposed to give its findings after appraisal of the entire evidence."

9. Petitioner appeared in the witness box as P.W.1 and deposed that in lieu of her land situated at Noorpur Islambad, suit property was allotted to her in Chak No.7, Dunyapur which consisted upon 100 Kanals. Now the suit property remained 96 Kanal & 08 Marlas as 04 Kanals came in the road. She further deposed that her brother Muhammad Aslam who is father of respondent No.1 (Ghulam

Mustafa) used to look after the suit property. She maintained that property was being cultivated by the tenants and her brother used to give him share of produce in cash, sometimes to Rs.10,000/- annually and sometimes Rs.20,000/-. She also maintained that she did not give power of attorney to his brother with the mandate to sale the suit property rather the same was for the purpose to look after the suit property; after the death of her brother when she came on the suit property, then it came to her knowledge that the suit property had been sold. She deposed that mutation is based upon fraud as Muhammad Aslam general attorney neither obtained any advice/consent from her to sale the suit property nor paid her any consideration amount. She further stated that neither she gave any statement for sale of suit property nor put her thumb impression at any document. She also maintained that Muhammad Aslam wanted to marry her with his insane brother-in-law and when she refused to do so, he tortured her and she had life threats from him, therefore, she shifted to *Dar-ul-Aman* and due to that reason Aslam sold her land. She further deposed that she contracted second marriage with Raja Matloob. She deposed that respondents have no concern with the suit property. During cross-examination, she maintained that the power of attorney which was executed to look after the suit property was written with her consent. She admitted that she cancelled the power of attorney through revocation deed on 19.09.1988. She further deposed that 21/22 years ago she went to *Dar-ul-Aman* where she remained for 20/21 days and her second marriage was solemnized in *Dar-ul-Aman*. She also deposed that her brother Muhammad Aslam used to give her share amount by collecting the same from tenants. Despite lengthy cross-examination, respondents failed to bring anything favourable to them from the mouth of petitioner.

Petitioner produced Malik Ghulam Mustafa as P.W.2 in support of her claim. He supported her version and deposed that he never heard that petitioner sold her land.

In documentary evidence she produced copy of impugned mutation as Exh.P-1. Perusal of said document it appears that concerned Patwari incorporated factum of oral sale through Rappat Roznamcha Waqiat No.366 dated 31.08.1988. Through said mutation petitioner's land measuring 96-kanals 08-marlas was transferred by her general attorney Muhammad Aslam in favour of Hashmat Ali (640 shares), Muhammad Anwar and Sadiq Ali (320 shares) and Ghulam Mustafa (968 shares) for a consideration of Rs.7,50,000/- . Said mutation was witnessed by Muhammad Ibrahim s/o Nanik and Liaqat Ali s/o Jalal Din. Statements of the parties were recorded on 08.09.1988 whereas mutation was sanctioned on 15.09.1988. Many cuttings were found on the said mutation. Copy of mutation No.111 dated 28.10.1988 was produced as Exh.P-2, whereby Muhammad Aslam general attorney of petitioner gifted his land measuring 100-kanals to his son namely Mujahid through oral Tamleek, copy of record of rights for the years 1986-87 as Exh.P-3, which shows ownership of petitioner upon the suit property, copy of record of rights for the years 2006-07 as Exh.P-4, copy of record of rights for the years 2006-07 as Exh.P-5. Perusal of said documents it appears that ownership with regard to suit property was changed and alleged vendees stepped into the shoes of petitioner. Copy of Khasra Girdawari for Kharif 2008 was brought on record as Exh.P-6.

10. In rebuttal, defendant No.1 appeared as DW-1, defendant No.6 as DW-2 and defendant No.2 as DW-3. They did not produce any independent witness in support of their stance. All the DWs deposed in the same line as narrated in their written statements. Respondent No.1 while appearing as D.W.1 deposed that general attorney Muhammad Aslam is his father who was appointed by petitioner as his attorney to look after the property and to sell the same. He maintained that attorney delivered the consideration amount of Rs.7,50,000/- to the petitioner and after getting the consideration amount she cancelled the power of attorney. During cross-examination, he admitted that mutation was sanctioned in the office of Patwari and at that time petitioner was not present. He further

deposed that petitioner did not appear before any Officer. He admitted it correct that his Phuphi (petitioner) went to *Dar-ul-Aman* as she was angry with them; that she went to *Dar-ul-Aman* on 09.08.1988 and came back on 29.08.1988. During cross-examination, he deposed that petitioner demanded her property as we were not marrying her as per her choice, thereafter, voluntarily said that she demanded amount after selling the suit property. He admitted that when petitioner contracted marriage with Raja Matloob, at that time she was in *Dar-ul-Aman*. He also admitted that her Phuphi (petitioner) is illiterate. He maintained that women in their family observed Parda. He also admitted it correct that share produce was given by his father to petitioner, however, voluntarily said that it was given before sanctioning of impugned mutation. He also admitted it correct that petitioner did not give any permission for sanctioning of impugned mutation, however, she got executed power of attorney.

Defendant No.6 namely Bashir Ahmad appeared as D.W.2. During cross-examination, he deposed that petitioner is real sister of attorney Muhammad Aslam; he did not know when power of attorney was executed. He also admitted it correct that at the time of sanctioning of impugned mutation petitioner was not present and when the payment was made even then she was also not present. He also admitted it correct that petitioner did not receive any amount from him.

Defendant No.2 Muhammad Anwar appeared as D.W.3 and deposed that consideration amount was paid to Muhammad Aslam general attorney. During cross-examination, he deposed that Irshad Bibi was consulted while purchasing the suit property and said consultation was made in his presence and in presence of Hashmat Ali. They did not depose anything about their source of income as well as never explained that how they collected consideration amount and paid to petitioner.

Respondents produced copy of mutation No.110 as Exh.D-1, original general power of attorney as Exh.D-2, certificate issued by the Sub-Registrar as Exh.D-3, copy of deed of revocation as Exh.D-4,

copy of separate vandaas of respondents as Exh.D-5, copy of application submitted by petitioner for going to *Dar-ul-Aman* as Exh.D-6, copy of Nikahnama of petitioner with Muhammad Yousaf as Exh.D-7, copy of record of rights of Khewat No.42 for the years 1987-88 as Exh.D-8, copy of record of rights of Khewat No.55 for the years 2006-07 as Exh.D-9, copy of Khasra Girdawari as Exh.D-10, copy of death certificate of Muhammad Aslam as Exh.D-11, copy of Form 'Say' as Exh.D-12, copy of general power of attorney executed by Mst. Maqbool Jan as Exh.D-13, copy of mutation No.558 as Exh.D-14, copy of mutation No.289 as Exh.D-15, copy of mutation No.493 as Exh.D-16, copy of mutation No.559 as Exh.D-17, copy of mutation No.560 as Exh.D-18, copy of mutation No.211 as Exh.D-19, copy of mutation No.212 as Exh.D-20 and copy of Khasra Girdawri Kharif 2009 Kharif 2010 as Exh.D-21.

11. Admittedly, petitioner remained in *Dar-ul-Aman* in the month of August, 1988. She moved an application for sending her in *Dar-ul-Aman* on 09.08.1988 (Exh.D.6) whereby she maintained as under:

"یہ کہ سائلہ نور پور شاھاں کی رہائشی ہے اور مسٹی محمد یوسف نے سائلہ کو علاق و کمپ اپنے زوجیت سے الگ کر دیا ہے۔ یہ کہ سائلہ کی اراضی دنیا پور ملتان میں ہے اور سائلہ کے بھائی مسٹی اللہ داد اور محمد اسلم پیر ان غلام محمد اور انکے بیٹوں کے خلاف سائلہ کی درخواست پر کارروائی انسدادی عمل میں لائی گئی ہے۔ سائلہ کی اراضی تھیانے کے لیے سائلہ کو جان سے مارنے کے در پر ہیں۔ یہ کہ سائلہ ملتفہ ہونے کی وجہ سے اپنے انہی بھائیوں کے پاس رہا۔ پر تھی اور اب سائلہ کے پاس کوئی معقول رہا۔ نہیں ہے۔ جبکہ مذکورہ بھائیوں سے سائلہ کو جان کا نظرہ ہے۔ اندر میں بالا استدعا ہے کہ سائلہ کو دارالامان کھجوانے کا حکم صادر فرمایا کہ سائلہ کو تحفظ فراہم کیا جائے۔"

She got recorded her statement before the Magistrate on 09.08.1988 wherein she stated as under:

"بیان کیا کہ میرے بھائی اللہ داد اور محمد اسلم میری شادی میری مرخصی کے خلاف کرنا چاہتے ہیں۔ مجھ کو اپنے بھائیوں سے محروم ہے۔ میں اپنی مرخصی سے دارالامان جانا چاہتی ہوں۔"

Respondents produced attendance register of *Dar-ul-Aman* as Exh.D.7. In the said register, petitioner who was given number 36, it was written as under:

"مورخ 29-08-1988 کو شادی کے بعد ادارے سے فارغ کر دیا گیا۔ خاوند کے ساتھ گئی"

Perusal of impugned mutation No.110, it appears that it was entered on 31.08.1988 and sanctioned on 15.09.1988. Petitioner was admitted in *Dar-ul-Aman* on 09.08.1988 and was released on 29.08.1988 after her marriage with Raja Matloob. She left the house

of her brothers due to dispute of her marriage as well as threat of her life and property as they were bent upon to deprive her from the property. Admittedly, those days disputes between the principal and attorney were at peak. In view of that it does not appeal to a prudent mind in presence of such a strained relations petitioner was consulted and got her consent qua selling the suit property and she was given consideration amount.

12. The suit property was alienated by general attorney on the basis of general power of attorney. It is settled principal of law that there must not be any uncertainty or vagueness in the power of attorney. Power of attorney should be construed strictly and only such powers qua the explicit object which were expressly and specifically mentioned in the power of attorney should be exercised by the agent as conceded to have been dedicated to him. The august Supreme Court of Pakistan in its esteem judgment titled "FIDA MUHAMMAD versus Pir MUHAMMAD KHAN (DECEASED) THROUGH LEGAL HEIRS AND OTHERS" (**PLD 1985 Supreme Court 341**) held as under: -

"It is wrong to assume that every "general" Power-of-Attorney on account of the said description means and includes the power to alienate/ dispose of property of the principal. In order to achieve that object it must contain a clear separate clause devoted to the said object. The draftsman must pay particular attention to such a clause if intended to be included in the Power-of-Attorney with a view to avoid any uncertainty or vagueness. Implied authority to alienate property, would not be readily deducible from words spoken or written which do not clearly convey the principal's knowledge, intention and consent about the same. The Courts have to be vigilant particularly when the allegation by the principal is of fraud and or misrepresentation."

The second aspect which needs caution on question of validity of acts under a Power-of-Attorney is that notwithstanding an authority to alienate principal's property, the Attorney is not absolved from his two essential obligations, amongst others firstly in cases of difficulty (and it will be a case of difficulty if the Power-of-Attorney is susceptible to doubt about its interpretation) to use all reasonable diligence in communicating with the principal and seeking to obtain his instructions, and secondly, if the agent deals on his own account with the property under agency, e.g., if he purchases it himself or for his own benefit, he in his own interest should obtain the consent of the principal in that behalf after acquainting him with all material circumstances on the subject, failing which the principal is at liberty to repudiate the transaction."

In the light of above referred judgment, when power of attorney was examined, it appears that principal gave authority as under:

"جو کہ فریق اول متأثرہ اسلام آباد ہے۔ مظہرہ کو اپنی اکیوائز شدہ اراضی کے مقابل پر مٹ برائے ضلع ملتان موصول ہو کر موضع پک نمبر M/7 تھصیل اودھر ان ضلع ملتان میں اراضی ½ 12 ایکڑ مریع نمبر 24, 25 (100) کنال الٹ ہو چکی ہے۔ چونکہ مظہرہ عورت ذات ہے اس لیے بنا تھی انتظام و انصرام کرنے سے قاصر ہے۔ مظہرہ نے اپنی جانب سے مسیحی محمد اسلم ولد غلام محمد برادر تحقیقی فریق دوستمنڈ کوہراہ الصدر کو اپنا مقام عالم مقرر کر کے حسب ذیل اختیارات تفویض و فاض کر دیے ہیں۔ اب وہ الٹ شدہ اراضی کے متعلق قیمت اراضی مقرر کر کے جملہ واجبات بذریعہ اقساط یا کمی مشتمل ادا کر کے مالکانہ حقوق حاصل کرے۔ بیچ نامہ اراضی مکمل کرائے، بیچ نامہ حاصل کرے، قبضہ اراضی حاصل کرے، مالپسند اراضی کا تبادلہ کسی دوسرے ضلع میں کرائے یا اسی ضلع میں کرائے یا خود کاشت کرے یا بذریعہ مزارع ان و پڑہ داران کاشت کرائے۔ مزارع ان کو بیدخل کرے، پڑہ داران تبدیل کرے، محمد انہار کے افسران سے رابطہ قائم کر کے نہری پانی منتظر کرائے۔ موگہ بندی، وارہ بندی کا تعین کرائے۔ جس قدر دعویٰ فریق اول کی جانب سے یا برخلاف فریق اول عدالت ہائے دیوانی موجود ارجی یا محکمہ مال یا دیگر محکموں میں متداشرا یا قابل داوری ہوں اُنکی پیروی یا جواب دھی کرے، بیان وے بیان طائفی دے ضلع کرے راضی نامہ کرے دستبرداری از دعویٰ جات اختیار کرے مسل معافیت کرے حکم اتنا عی حاصل کرے تو گری حاصل کرے، اجراء و تو گری کرائے، زر تو گری حاصل کرے، نقول حاصل کرے، مختلف محکموں میں درخواست ہائے دیگر مفاد ہائے حاصل کرے، محمد ڈاک تار سے کام لے، مختلف بینکوں میں حسابات مکھلوائے، چیک دے چیک لے اور اراضی مذکورہ کو بیعہ، رہن، بہبہ، تمکیک، تبادلہ و پڑہ وغیرہ کر کے دے، زر معاوضہ، زر بدر، زر شمن، زر پچانہ، زر پڑہ بانکی یا حصہ پیدا اور حاصل کرے، بیچ نامہ و شیقہ جات رجسٹری ہائے بذریعہ حکام مجاز تصدیق و منتظر کرائے اور ہر قسم کے کاغذات و استاویزات درخواست ہائے پر فریق اول کی بجائے اپنے و تحفظ کرے، گنو محاکمے اور ہر قسم کی کارروائی کرے۔"

From perusal of said general power of attorney, it appears that it did not contain a clear separate clause with regard to alienation/sale of the suit property. It evinces from the said deed of power of attorney that it was made to complete the allotment process and to look after the suit property. Power to alienate/sale was given in a general and vague manner, meaning thereby although authority of alienation was given but not specifically with express terms and by necessary implication. It is evident from record that Muhammad Aslam got the property rights of suit property in favour of petitioner through registered conveyance deed dated 20.01.1982 (Exh.D.3) by using said General power of attorney. Said attorney used the general power of attorney after seven years of its execution for transferring petitioner's property through impugned mutation without getting any fresh mandate from the principal.

13. Hon'ble Supreme Court of Pakistan held that the power of attorney must be strictly construed while observing in a case titled as "MUHAMMAD AKHTAR versus Mst. MANNA and 3 others" (**2001 SCMR 1700**) as under: -

"It is well settled by now that the power of attorney must be strictly construed and it is necessary to show that on a fair construction of the whole instrument the authority in question may be found within the four corners of the instrument either in express terms or by necessary implication."

And endorsed said dictum in "MUHAMMAD YASIN and another versus DOST MUHAMMAD through Legal Heirs and another" (**PLD 2002 SC 71**) in following terms: -

"It is also well known principle of law that all such instruments of power of attorney in pursuance whereof attorney is authorized to act on behalf of principal are to be construed strictly."

14. It is also evident from the perusal of said power of attorney that no authority for oral sale was given to the attorney. He was given only authority to execute registered sale deed as under:

"بیوہ نامہ و شیخہ جات رجسٹری ہائے بنریجہ کام مجاز تصدیق و منظور کرائے"

The august Supreme Court of Pakistan in its judgment reported as "IMAM DIN and 4 others versus BASHIR AHMED and 10 others" (**PLD 2005 SC 418**) did not validate the oral sale on behalf of attorney despite the fact he was given authority to sell the property through registered sale deed and held that attorney was specifically authorized to sell the property through registered sale deed and in the light of strict construction of power of attorney, implied authority of oral sale could not be presumed and also observed as under: -

"The power of attorney is a written authorization by virtue of which the principal assigns to a person as his agent and confers upon him the authority to perform specified acts on his behalf and thus primary purpose of instrument of this nature is to assign the authority of the principal to another person as his agent. The main object of such type of agency is that the agent has to act in the name of principal and the principal also purports to rectify all the acts and deeds of his agent done by him under the authority conferred through the instrument. In view of nature of authority, the power of attorney must be strictly construed and proved and further the object and scope of the power of attorney must be seen in the light of its recital to ascertain the manner of the exercise of the authority in relation to the terms and conditions specified in the instrument."

The rule of construction of such a document is that special powers contained therein followed by general words are to be construed as limited to what is necessary for the proper exercise of special powers and where the authority is given to do a particular act followed by general words, the authority is deemed to be restricted to what is necessary for the purpose of doing the particular act. The general words do not confer general power but are limited for the purpose for which the authority is given and are construed for enlarging the special powers necessary for that purpose and must be construed so as to include the purpose necessary for effective execution. This is settled rule that before an act purported to be done under the power of attorney is challenged as being in excess of the powers, it is necessary to show on fair construction, that the authority was not exercised within the four corners of the instrument".

It was further observed that:

"Even if a presumption of existence of the power of attorney is raised, the transaction would still be not considered genuine and within authority of agent for want of explicit power of oral sale. The attorney was specifically authorized to sell the property through registered sale-deed and in the light of strict rule of construction of power of attorney, the implied authority of oral sale could not be presumed. The attorney was not given general authorization for disposal of property in any manner rather his authority of sale was restricted by registered deed and consequently, his failure to act in the manner as provided in the document would render the transaction invalid".

It was further observed that:

"The perusal of the attested copy of the power of attorney would show that various acts relating to the management of property, litigation and all other matters concerning the property, including the power of selling through registered sale-deed were mentioned therein in explicit terms and the attorney was bound to act strictly in the manner as specified in the power of attorney to ensure that the transaction was transparent and free of fraud and misrepresentation".

It was further observed that:

"The property in respect of which the power of attorney was executed, was allotted to the vendor by the Rehabilitation Department and the powers given therein in the power of attorney were in respect of the litigation of property with the departments, including the power of filing of suits, written statements, appeals, revisions in the Civil Court, High Court and the Supreme Court, the management of property, the ejection of tenant, receipt of produce and rent from the tenants to pursue litigation, civil and criminal to file affidavits and applications in the suits as well as in execution proceedings and let out property on lease. In addition, the attorney was also empowered to sell the property on receipt of the sale price through registered sale-deed and appoint the Advocate for his assistance. The perusal of this document would show that the power of sale of land was given to the attorney specifically by means of a registered sale-deed and probably the purpose of restricting the power of sale only by registered sale-deed was to avoid any misuse of the said power and to ensure that the sale was with the consent and knowledge of the principal, therefore, in the light of rule of strict construction of such instrument, it could be visualized that the oral sale was not within the authority of agent under the instrument".

15. Petitioner specifically pleaded in her plaint that she executed power of attorney only to look after her property and did not give any authority for alienation/sale of the suit property. While appearing in the witness box, she reiterated her version. Admittedly, petitioner is an illiterate lady, who was unaware of the technicalities and worldly affairs. Muhammad Aslam, her real brother was in position of a fiduciary on whose advice she was relying. Now, it was duty of the beneficiaries to prove that petitioner had complete knowledge

and full understanding about the contents of the document and that she had independent and disinterested advice in the matter before entering into the execution of the document. Respondents have to prove that petitioner was made to understand that she was also giving power to sell the property to her attorney. Endorsement of Sub-Registrar on the document showing that same had been read over to such lady was of routine nature and could not be construed therefrom that she had been specifically apprised that she was also giving power to her attorney to sell the property. Mere thumb marking a document would not tantamount to a valid execution, until & unless such lady was duly apprised and made to understand the true nature & contents thereof. In this case, neither scribe of the attorney deed nor its marginal witnesses were produced in order to establish that the document was duly made understandable to the petitioner and its contents were in her knowledge. Respondents also failed to examine Sub-Registrar who registered the document. In this way, they withheld the material evidence and no effort whatsoever was made to produce the same in the Court.

16. The execution of power of attorney neither amounts to be divesting the principal of the authority over the subject matter nor does it amount to absolute right of the attorney over the property as its owner. The attorney has to act as an agent of the principal. There is a restriction that the attorney has to take the principal in confidence before converting the property of the principal on the force of the power of attorney into personal use or for the benefit of his near relatives. Admittedly, suit property was transferred by the general attorney to his son namely Ghulam Mustafa i.e. respondent No.1. If an attorney intends to exercise right of sale in his favour or in favour of next of his kin, he has to consult the principal before exercising that right and he should firstly obtain the consent and approval of the principal after acquainting her with all the material circumstances. In this regard, august Supreme Court of Pakistan in a case titled "Muhammad Ashraf & 02 others V. Muhammad Malik & 02 others (PLD 2008 SC 389)" held as under:

"It is a settled law by now that if an attorney intends to exercise right of sale/gift in his favour or in favour of next of his kin, he/she had to consult the principal before exercising that right. The consistent view of this Court is that if an attorney on the basis of power of attorney, even if "general" purchases the property for himself or for his own benefit, he should firstly obtain the consent and approval of principal after acquainting him with all the material circumstances. Here in the cases of Fida Muhammad v. Pir Muhammad Khan (deceased) through legal heirs and others PLD 1985 SC 341, Mst. Shumal Begum v. Mst. Gulzar Begum and 3 others 1994 SCMR 818 and Nisar Ahmad and others v. Naveed-ud-Din and others 2004 SCMR 619, can be referred, which are fully applicable to the case in hand."

The august Supreme Court of Pakistan in a case titled "Haq Nawaz & others V. Banaras & others (2022 SCMR 1068)" held as under:

"It was not even pleaded that she received any independent advice and/or that contents of the power of attorney were read over and explained to her before she executed it.

.... it was imperative for the appellants Nos.1 and 2 to have demonstrated and proved that at the time of the execution of the power of attorney, she was fully conscious of the fact that the document also contained power to sell and that the entire document was read out and explained to her fully and truly, and further that she executed it under an independent advice. They had also to prove that the lady was fully aware and conscious of the consequences and implications of executing the said document. However neither did they prove, nor even pleaded any of it. It therefore cannot be held that Ghulam Rasool, was in fact authorized by Mst. Channan Jan to sell the suit land. The impugned sale/transfer was thus liable to be set-aside on this ground alone. In any view of the matter, since admittedly, the power of attorney did not specifically authorized Ghulam Rasool, to convey the property to his sons, or for that matter to any of his near ones, nor has he been able to prove that, he was otherwise so authorized. The impugned sale mutation was liable to be cancelled as rightly done by the revenue hierarchy. Since long it is well established that an attorney cannot lawfully make transfer of a property under agency in his own name, or for his benefit, or in favour of his associates, without explicit consent of the principal, and in the event he does so, the principal, under the mandate of section 215 of the Contract Act, has a right to repudiate such transaction. Mst. Channan Jan having disowned the subject transaction, the same was rightly annulled as noted above."

It was also held by apex Court of Pakistan in case "Mst. Shehnaz Akhtar & another V. Syed Ehsan-ur-Rehman & others (2022 SCMR 1398):

"It is a settled law by now that if an attorney intends to exercise right of sale/gift in his favour or in favour of next of his kin, he/she had to consult the principal before exercising that right. The Court further held that the consistent view of this Court is that if an attorney on the basis of power of attorney, even if "general", purchases the property for himself or for his own benefit, he should firstly obtain the consent and approval of principal after acquainting him with all the material circumstances and also referred to the dictums laid down in the case of Fida Muhammad v. Pir Muhammad Khan (deceased) through legal heirs and others (PLD 1985 SC 341), Mst. Shumal Begum v. Mst. Gulzar Begum and 3 others (1994 SCMR 818) and Nisar Ahmad and

others v. Naveed-ud-Din and others (2004 SCMR 619). ”

17. Suit property was transferred through oral sale mutation No.110. Respondents also failed to prove valid execution of said oral sale mutation. Neither concerned Patwari who entered the mutation nor Revenue Officer who attested the mutation as well as witnesses in whose presence statements of the parties were recorded had been produced. They also failed to produce any proof regarding their death as no death certificates of these persons were brought on record. Article 80 of Qanun-e-Shahadat Order, 1984 provides the procedure how to prove when no attesting witness is found. It is obligatory upon the respondents to prove this fact that their witnesses had been died or cannot be traced out. In this regard, the august Supreme Court of Pakistan in “Ghulam Sarwar (Deceased) Through L.R.S., and others versus. Ghulam Sakina” (2019 SCMR 567) held as under: -

“Mere assertion that marginal witnesses of the mutations had died would not discharge the burden of a party. There is nothing to establish the death of said witnesses.” The petitioner failed to lead any evidence to establish death or disappearance of the said witnesses.”

It was further held by the august Supreme Court of Pakistan in case “MUHAMMAD SARWAR versus. MUMTAZ BIBI and others” (2020 SCMR 276) as under:-

“It is also noticeable that the concerned Tehsildar who had allegedly sanctioned the mutation namely Rehmat Ali and another witness of the mutation namely Anwar Hussain (Patidar) were material witnesses of the alleged gift mutation. They were however not produced for any valid reason. Therefore, the presumption of Article 129 of the Qanun-e-Shahadat Order by reason of withholding of the best evidence can also be drawn against the petitioner.”

In another case titled “Sheikh Muhammad Munir V. Mst. Feezan (PLD 2021 SC 538)” held as under:

“The Article states that it must be proved that the witness had either died or could not be found. Simply alleging that a witness cannot be found did not assuage the burden to locate and produce him. The petitioner did not lead evidence either to establish his death or disappearance, let alone seek permission to lead secondary evidence.”

The respondents had a way to prove the factum of death by leading secondary evidence but they failed to do so. In this way, best evidence was withheld without showing any justification, thus

inference of Article 129(g) of Qanoon-e-Shahadat Order, 1984 has to be drawn against him. They also remained failed to comply with the requirements of Article 17 & 79 of Qanoon-e-Shahadat Order, 1984.

18. Admittedly, there are numerous cuttings on the alleged oral sale mutation. The said cuttings which have been made on the mutation were sufficient to declare the impugned sale null & void. Reliance is placed upon the case law cited as "Mst Hameedan Bibi & another V. Muhammad Sharif (2017 YLR 239)."

19. Respondents failed to prove the sale which constituted basis of the mutation or even the mutation itself. Neither they established on record that they had source of income to generate such a huge amount of Rs.7,50,000/- in the year 1988 nor established through concrete and trustworthy evidence that said consideration amount was transferred to the principal. Neither any independent witness was produced in this regard nor they tendered any receipt with regard to payment of consideration amount.

20. General attorney namely Muhammad Aslam transferred the suit property through impugned mutation No.110 dated 15.09.1988 by using power of attorney dated 21.12.1981. Petitioner cancelled the said general power of attorney just after four days of sanctioning of the mutation through revocation deed dated 19.09.1988. After sanctioning of impugned mutation, deed of general power of attorney became useless. If transaction of sale was in her knowledge, then definitely she did not revoke the general power of attorney as it lost its importance after alienation of suit property.

21. Through written statement, respondents took a legal objection that suit of the petitioner is barred by limitation. Learned Trial Court framed issue No.5 in this regard which was decided by the Trial Court against the respondents. Respondents did not prefer any cross-objections while challenging said findings. However while arguing their case before learned lower appellate court, the respondents agitated the point of limitation. The learned appellate court repelled

their contention. Respondents No.2 to 9 and 10-A to 10-F did not file any cross-revision before this Court.

Record reflects that petitioner instituted the suit on 31.10.2007 whereby she took the stance that she came to know about the impugned transaction one week before institution of the suit. Petitioner has specifically alleged that the impugned transaction is result of fraud & mis-representation.

22. It is well settled principle of law that fraud vitiates even the most solemn transaction. Any transaction based on fraud would be void. Limitation does not run against void transaction. Mere efflux of time did not extinguish the right of any party. Notwithstanding the bar of limitation, the matter can be considered on merit so as not to allow fraud to perpetuate. In this regard, I seek guideline from the cases of Hon'ble Supreme Court of Pakistan reported as “*PEER BAKHSH through LRs and others vs. Mst. KHANZADI and others*” (**2016 SCMR 1417**); “*Muhammad Iqbal versus Mukhtar Ahmad*” (**2008 SCMR 855**) “*Mst. Raj Bibi etc. versus Province of Punjab, etc.*” (**2001 SCMR 1591**) and “*Hakim Khan versus Nazeer Ahmad Lughmani*” (**1992 SCMR 1832**).

With regard to point of limitation, the august Supreme Court of Pakistan in case titled as “*KHAN MUHAMMAD through L.Rs and others versus Mst. KHATOON BIBI and others*” (**2017 SCMR 1476**) held as under:-

“As far as the question of limitation in filing suit for declaration is concerned, we also would like to discuss it in some detail. In general, the time provided for such suit under Article 120 of the Limitation Act, 1908 is six years. Different aspects regarding reckoning/calculating this period of limitation have been considered and some yardsticks have been settled by this Court in different nature of cases and the situation cropping-up according to the facts and circumstances of the cases. In the cases of simple correction of revenue record, it is settled by now that every fresh wrong entry in the record of rights would provide fresh cause of action provided the party aggrieved is in possession of the property as owner needless to say that it can be either physical or symbolic possession. Similarly, in the cases of claiming right of inheritance, it is well settled that the claimant becomes co-owner/co-sharer of the property left by the predecessor along with others the moment the predecessor dies and entry of mutations of inheritance is only meant for updating the revenue record and for fiscal purposes. If a person feels himself aggrieved of such entries, he can file a suit for declaration within six years of such wrong entries or knowledge. Any such repetition of the said entries in the revenue record would again give him a fresh cause of action or when the rights of anyone in the property are denied it would

also give fresh cause of action. Similarly, it is again settled by now that no limitation would run against the co-sharer. We for instance can quote few judgments covering all these aspects like "Ghulam Ali and 2 others v. Mst. Ghulam Samar Naqvi" (**PLD 1990 SC 1**), "Riaz Ahmad and 2 others v. Additional District Judge and 2 others" (**1999 SCMR 1328**), "Mst. Suban v. Allah Ditta and others" (**2007 SCMR 635**), "Muhammad Anwar and 2 others v. Khuda Yar and 25 others" (**2008 SCMR 905**) and "Mahmood Shah v. Syed Khalid Hussain Shah and others" (**2015SCMR 869**)."

August Supreme Court of Pakistan in judgment "Muhammad Yaqoob V. Mst. Sardaran Bibi & others" (**PLD 2020 SC 338**), held as under:

"In addition, any transaction/document which is the result of fraud or misrepresentation can neither be perpetuated nor can it be protected on the ground of expiry of the period of limitation, whenever such transaction is assailed in a Court of law."

Section 18 of the Limitation Act, 1908 is the most pivotal provision providing relief in computing the limitation period, applicable to a person who claims to be deprived of the knowledge of his right to sue based on the fraud of the other party. That section is reproduced for ease of reference:

"18. Effect of fraud. Where any person having a right to institute a suit or make an application has, by means of fraud, been kept from the knowledge of such right or of the title on which it is founded, or where any document necessary to establish such right has been fraudulently concealed from him, the time limited for instituting a suit or making an application---

*(a) against the person guilty of the fraud or accessory thereto, or
 (b) against any person claiming through him otherwise than in good faith and for a valuable consideration,
 shall be computed from the time when the fraud first became known to the person injuriously affected thereby, or, in the case of the concealed document, when he first had the means of producing it or compelling its production."*

Where a person is by means of fraud kept from the knowledge of his right to institute a suit. In such circumstances, the period of limitation commences from the date when the fraud first became known to the "person injuriously affected". Such injuriously affected person can, therefore, institute a suit within the limitation period specified for such suit in the First Schedule ("Schedule") to the Limitation Act, but computing it from the date when he first had knowledge of the fraud, whereby he was kept from knowledge of his right to institute the suit. Thus, section 18 of Limitation Act is an umbrella provision that makes the limitation period mentioned in the

Articles of the Schedule, begin to run from the time different from that specified therein.

Therefore, it is the date of knowledge of the "person injuriously affected" of the fraud mentioned in section 18, and of his right to sue that is relevant for computing the limitation period.

Thus, the limitation period of six years provided in Article 120 of the Limitation Act is to be computed from the time mentioned in the said Article, that is, when the right to sue accrued. It reads:

<i>Description of suit.</i>	<i>Period of limitation.</i>	<i>Time from which period begins to run.</i>
<i>120. Suit for which no period of limitation is provided elsewhere in this schedule.</i>	<i>Six years.</i>	<i>When the right to sue accrues.</i>

The provision clearly declares that for computing the limitation, the period of six years would commence from the date of accrual of right to sue. To ascertain, when does the right to sue accrue, to seek a declaration of her ownership right over the suit property shown to have been transferred to see another provision of law, that is, section 42 of the Specific Relief Act. A suit for declaration of any right, as to any property is filed under section 42 of the Specific Relief Act, which reads:

*"42. Discretion of Court as to declaration of status or right--- Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.
Provided that no Court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so."*

It becomes evident by reading the above provisions that the right to sue accrues to a person against the other for declaration of his right, as to any property, when the latter denies or is interested to deny his such right. The august Supreme Court of Pakistan in its recent judgment titled "RABIA GULA and others Vs. MUHAMMAD JANAN and others" (**2022 SCMR 1009**) while interpreting two

actions that cause the accrual of right to sue, to an aggrieved person: (i) actual denial of his right or (ii) apprehended or threatened denial of his right, held as under:-

"8.13 Now, what "actions" can be termed as an "actual denial of right", and what a mere "apprehended or threatened denial of right", in the context of adverse entries recorded in the revenue record. It is important to note that a person may ignore an "apprehended or threatened denial" of his right taking it not too serious to dispel that by seeking a declaration of his right through instituting a suit, and may exercise his option to institute the suit, when he feels it necessary to do so, to protect his right. For this reason, every "apprehended or threatened denial" of right gives a fresh cause of action and right to sue to the person aggrieved of such apprehension or threat. However, this option to delay the filing of the suit is not available to him in case of "actual denial" of his right; where if he does not challenge the action of actual denial of his right, despite having knowledge thereof, by seeking declaration of his right within the limitation period provided in the Limitation Act, then his right to do so becomes barred by law of limitation.

Petitioner specifically pleaded in her plaint that respondents used to pay share produce to her at her home. While recording her statement she deposed that suit property was cultivated by the tenants and her brother collected the share produce from them and then paid to her. After the death of her brother they stopped to pay the share produce. She also clarified that after death of her brother when she visited the suit property then it came to her knowledge that the suit property had already been sold by her brother to the respondents by using the general power of attorney. Respondent No.1 while recording his statement as DW-1 during cross-examination admitted that it is correct his father used to pay the share produce of the suit property to the petitioner. However he voluntarily said that his father gave to suit produce before sanctioning of the mutation. From the above it can easily be gathered that Muhammad Aslam had been giving share produce to the petitioner and after his death when respondents stopped to pay the share produce, alienation of suit property came to her knowledge and she promptly instituted the suit to safeguard her interest.

23. In the light of above discussion, suit of the petitioner was within the limitation, hence, learned Courts below have rightly decided issued No.5 qua limitation against the respondents and in favour of petitioner. I also endorse the findings of Courts below on this particular issue.

24. I have minutely gone through the record available on the file, evidence of the parties as well as the impugned judgments and decrees passed by the learned courts below. Learned Trial Court has erred in law while dismissing suit of the petitioner, whereas, learned Appellate Court has also not properly appreciated the evidence of the parties while partially allowing the appeal. The findings of the Courts below qua dismissing suit of the petitioner are merely based on surmises and conjectures, which is against facts and law, having not based upon proper appreciation of oral as well as documentary evidence.

25. In the wake of above discussion, this Civil Revision is allowed. Consequently, the impugned judgments and decrees of the Courts below dated 03.05.2011 & 23.07.2012 are hereby set-aside to the extent of dismissal of petitioner's suit. Resultantly, the suit instituted by the petitioner is decreed as prayed for. The connected Civil Revision No.791 of 2012 titled as "Ghulam Mustafa V. Irshad Bibi, etc." is dismissed having no force. No order as to cost.

(AHMAD NADEEM ARSHAD)
JUDGE.

Approved for Reporting

JUDGE

Announced in Open Court on _____

JUDGE.

M. Arsalan*