

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, RAWALPINDI
BENCH, RAWALPINDI
JUDICIAL DEPARTMENT**

Civil Revision No.314-D of 2015

Syed Monis Raza & others

Versus

Mst. Asia Bano & others

J U D G M E N T

Date of hearing: 04.09.2024
Petitioners by: Syed Kazim Raza Naqvi, Advocate.
Respondents by: Dr. Muhammad Aslam Khakhi and Yasmin Haider, Advocates.
Mr. Imran Shaukat Rao, Assistant Advocate General.

MUHAMMAD SAJID MEHMOOD SETHI, J.: Through instant revision petition, petitioners have challenged judgment and decree dated 10.02.2015, passed by learned Additional District Judge, whereby appeal against judgment and decree dated 02.07.2012, passed by learned Civil Judge, Chakwal, was accepted and petitioners' suit was dismissed.

2. Brief facts of the case are that petitioners filed a suit for declaration, cancellation of mutation No.387 dated 25.05.2001 (regarding land measuring 11 kanals 17 marlas, situated in Khewat Nos.108, 222, 613 & 607 in Mauza Dhoke Bodlay Shah, Tehsil & District, Chakwal) and possession along with mandatory injunction against respondents alleging therein that their deceased father Syed Munir Hussain Shah (died on 23.03.2009) was owner in possession of suit land; that the deceased executed a general power of attorney in favour of respondent No.1 / her daughter on 01.08.1997, which was later on duly cancelled by the deceased on 28.04.2001; that respondent No.1 was well aware of the cancellation of general power of attorney, however she transferred the suit land in favour

of her husband / respondent No.2 on 25.05.2001, with the connivance of official respondents; that petitioners came to know about said fraudulent transaction after death of their father, about two weeks prior to institution of the suit. Respondents contested the suit by filing written statement. Learned Trial Court, after framing issues, recording evidence and hearing arguments from both sides decreed the suit vide judgment and decree dated 02.07.2012. Feeling aggrieved, respondents filed appeal before learned Additional District Judge, which was accepted, judgment and decree of learned Trial Court was set aside and suit of petitioners was dismissed, vide judgment and decree dated 10.02.2015. Hence, instant revision petition.

3. Learned counsel submits that it was obligatory upon the attorney to seek specific written permission from the principal before transferring the property to close blood relation / spouse but no such recourse was adopted by respondent No.1. He adds that learned Appellate Court has not appreciated the evidence in totality rather picked certain portions of the statements. He further submits that impugned transfer reflected consideration as Rs.240,000/- whereas the alleged loan amount, mentioned in the suit, was Rs.300,000/-, and there is no mention of the differential amount, hence the story narrated by respondent No.1 is false and frivolous. He contends that in presence of registered revocation / cancellation of general power of attorney, the impugned mutation is nullity in the eye of law. He has relied upon Fida Muhammad v. Pir Muhammad Khan (Deceased) through legal heirs and others (PLD 1985 Supreme Court 341), Mst. Shumal Begum v. Mst. Gulzar Begum and 3 others (1994 SCMR 818), Haji Faqir Muhammad and others v. Pir Muhammad and another (1997 SCMR 1811), Muhammad Yasin and another v. Dost Muhammad through Legal Heirs and another (PLD 2002 Supreme Court 71), Mst. Ghulam Fatima v. Muhammad Din and others (2004 SCMR 618), Ghulam Muhammad v. Zohran Bibi and others (2021 SCMR 19), Atta

Muhammad and others v. Mst. Munir Sultan (Deceased) through her LRs and others (2021 SCMR 73), Mst. Akhtar Sultana v. Major Retd. Muzaffar Khan Malik through his legal heirs and others (PLD 2021 Supreme Court 715).

4. Conversely, learned counsel for respondents submits that petitioners have failed to prove that due intimation qua cancellation of general power of attorney was given to respondent No.1 / attorney. He adds that even if the impugned mutation is invalid, the property in question, at the most, can be restored in favour of respondent No.1, not the principal. He further submits that the principal as well as petitioners did not challenge the impugned mutation for a long period of 08-years and there is no plausible justification for the said long delay. He contends that even otherwise no justification for cancellation of general power of attorney was given. He argues that PW-2, during cross-examination, categorically admitted that impugned mutation was in the knowledge of predecessor of petitioners and petitioners also came to know about impugned mutation dated 25.05.2001 immediately. He further submits that petitioners failed to prove the fact that due intimation was given to respondent No.1 qua cancellation of general power of attorney. He has relied upon Raza Munir and another v. Mst. Sardar Bibi and 3 others (2005 SCMR 1315) and Jamila Khatoon and others v. Aish Muhammad and others (2011 SCMR 222).

4. Heard. Available record perused.

5. Execution of valid general power of attorney dated 01.08.1997 (Ex.P-3) in favour of respondent No.1 by the predecessor / father of petitioners & respondent No.1 is admitted, however its revocation (through Ex.P-2 dated 28.04.2001) is disputed by respondent No.1 and execution of mutation No.387 by respondent No.1 in favour of respondent No.2 (based on aforesaid general power of attorney) is impugned by petitioners.

6. General power of attorney (Ex.P-3) is reflecting a note on the margin of its first page to the effect that the general power of attorney had been revoked through document No.102/4 dated 28.04.2001 (Ex.P.2). It also contains two straight lines on both pages, which according to petitioners is symbol of losing its sanctity and efficacy, however in rebuttal, respondent No.1 tendered copy of general power of attorney (Ex.D-7) and certification on it is dated 21.03.2002, but this document is not containing the aforesaid note of cancellation or lines. This document is later in date as compared to revocation deed (Ex.P-2). Moreover, no evidence in rebuttal of Ex.D-7 is produced by the petitioners/ plaintiffs. In such eventuality, petitioners were under legal burden to prove valid execution of revocation deed (Ex.P-2) by producing confidence inspiring oral evidence, however such course of action was not adopted, which is fatal to their stance.

7. Though it is stance of petitioners that intimation regarding revocation of general power of attorney was duly conveyed to respondent No.1, as also alleged by PW-1 in his statement, however no other evidence to support this stance was presented, which may establish the mode of such intimation. Neither such deposition was made by any of other PWs nor such stance is visible from the contents of the plaint. Under section 202 read with section 206 of the Contract Act, 1872, the principal is duty bound to give notice to the agent before cancellation of the power of attorney. The power of attorney could only be rescinded after serving a notice upon the attorney and any revocation without notice to the attorney would be illegal. Reliance in this regard is placed on the case reported as Fayyaz-Ul-Haq and others v. Ghulam Nabi (Deceased) through his legal heirs and others (2022 MLD 688).

8. Admittedly, mutation in question was attested on 25.05.2001 and PW-2, during cross-examination, frankly conceded that predecessor of petitioners was well aware of the impugned mutation and petitioners got knowledge of the same immediately after its

execution / attestation. However, neither predecessor of petitioners nor petitioners themselves agitated the same and the suit was filed on 26.10.2009, after more than 08-years for which they do not possess any explanation for their inaction to do the needful, creating certain rights in favour of respondent No.2. The petitioners, therefore, had no locus standi to challenge the mutation independently, for their predecessor from whom they claimed certain rights in the suit property himself had not challenged the impugned mutation during his lifetime. Reference can be made to Abdul Haq and another v. Mst. Surrya Begum and others (2002 SCMR 1330).

9. Moreover, inaction on part of petitioners also invites applicability of the principles of waiver, estoppel and acquiescence. The implied consent in accepting the mutation in question constituted abandonment of rights on account of failure to enforce it. Reference in this regard can be made to Nazar Gul v. Islam and 3 others (1998 SCMR 1223), Jamila Khatoon and others v. Aish Muhammad and others (2011 SCMR 222), Muhammad Rustam and another v. Mst.Makhan Jan and others (2013 SCMR 299), Agha Syed Mushtaque Ali Shah v. Mst.Bibi Gul Jan and others (2016 SCMR 910), Anjum Mahmood and 5 others v. Rizwan Ahmad and 7 others (2006 CLC 876) and Shero v. Muhammad Ramzan and 2 others (2006 YLR 2632).

10. There is substance in the argument of learned counsel for petitioners that neither the agent himself could claim ownership rights in the land of the principal nor for his own kith and kin merely on the basis of agency document. It is *sine qua non* for him to have sought prior approval of the principal in that behalf after acquainting him with material circumstances on the subject, failing which the principal is at liberty to repudiate the transaction. However, in the instant case, such recourse was not adopted by the principal / predecessor of petitioners (despite having knowledge of the impugned mutation), thus, this argument is not helpful to

petitioners. Reference can be made to Muhammad Arshad and 2 others v. Haq Nawaz and 9 others (2019 YLR 958).

11. Learned counsel for petitioners has failed to pin point any illegality, material irregularity and jurisdictional defect in the impugned appellate judgment and decree, which is based on correct appreciation of evidence brought on record and applicable law / case law, hence no exception can be taken to it.

12. In view of the above, instant revision petition, being devoid of merits, is hereby **dismissed** with no order as to costs.

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

Sultan