

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 62/2016

Muhammad Ajaib

Versus

Zahida Arshad, etc.

PETITIONER BY: Raja Umer Hussain Bhatti, Advocate

RESPONDENTS NO. 1 & 2 BY: Mr. Ghulam Shabbir Akbar, Advocate

RESPONDENT NO. 4 BY: Ms. Sitwat Jahangir, Mr. Ansar Mehmood Kiani, Advocates

DATE OF DECISION: 11.07.2016

MOHSIN AKHTAR KAYANI J. Through this Civil Revision petition, the petitioner has assailed the judgment/decree dated 12.12.2013 passed by the learned Civil Court and has also assailed the order of the regular first appeal dated 26.11.2015 passed by the learned Additional District Judge West, Islamabad whereby the regular first appeal filed by the petitioner has been dismissed.

2. Brief facts of the case are that respondent No. 1 has filed a suit for specific performance of agreement to sell dated 26.05.1993 in respect of Plot No. 1074 Sector D-12/1, Islamabad, mandatory and permanent injunction against the petitioner and other respondents.

3. Petitioner who is serving as Constable in Islamabad Police Department had applied for the allotment of residential plot before the office of Federal Government Employees Housing Foundation (FGEHF) on the advice of (late Aman Ullah Pasha SSP) brother of respondent No. 1. As per version of respondent No. 1 it was agreed that parties will apply for allotment of plot in the name of petitioner and all the dues, expenses, development charges will be paid by respondent No. 1 and in addition to said expenses respondent No. 1 would pay a sum of Rs. 200,000/- to the petitioner, and agreement to that extent was executed on 26.05.1993. In addition to the said agreement, petitioner had also executed irrevocable general

power of attorney in favour of respondent No. 1, however, on the cancellation of power of attorney by the petitioner, respondent No. 1 filed a suit for specific performance which has been contested by the petitioner, after framing of the issues and recording of evidence, the learned Trial Court has passed the judgment /decree dated 12.12.2013 in favour of respondent No. 1, regular first appeal filed by the petitioner was also dismissed by Additional District Judge-VII West, Islamabad vide order dated 26.11.2015, hence the instant civil revision.

4. Learned counsel for the petitioner contends that both the courts below have ignored the law and facts of the case and impugned judgments are based upon misreading and non reading of the evidence; he further contends that both the courts have not given any consideration to the specific fact i.e. non availability of the margin witnesses of the agreement which are required in terms of Article 17 & 79 of Qanun-e-Shahadat Order, 1984; he further contends that the learned Trial Court has given preference to ExP-7 and power of attorney executed by the petitioner Ex.P13 as well as Ex.P3 whereas both the courts have ignored the basic principles of law.

5. Conversely, learned counsel for the respondent No. 1 opposed the instant petition on the ground that the courts have concurrently decreed the suit of the respondent No. 1, therefore, the question of facts cannot be re-opened in the Revisional jurisdiction by this court; it has further been alleged that the agreement dated 26.05.1993 was executed between the parties and respondent No. 1 has paid Rs. 200,000/- in addition to the charges, installment of land and land development charges to the Federal Government Employees Housing Foundation. It has further been alleged that petitioner has executed irrevocable general power of attorney ExP-13 which was notified in the office of CDA and petitioner has applied for issuance of form/application for transfer of plot No. 1074 Ex.P3 at his own in favour of respondent No. 1; he further argued that when power of attorney has been accepted by the CDA, petitioner could not cancel the same as the general power of attorney is coupled with interested and the agreement transaction has been notified

in the last paragraph of irrevocable power of attorney, hence the learned Trial Court as well as appellate court has rightly concluded in favour of respondent No. 1.

6. Arguments heard, record perused.

7. From the perusal of record it has been revealed that the petitioner is allottee of suit plot No. 1074, Sector D-12/1, Islamabad and he executed agreement to sell dated 26.05.1993 Ex.P7 in favour of respondent No. 1. Although the petitioner has denied the execution of Ex.P7 in his written statement but he could not place any evidence on record through which he can justify or substantiate his claim.

8. The respondent No. 1 being plaintiff has submitted her evidence as PW-1 whereby she has placed the following documents on record:-

- Permission for transfer/sale of plot No. 1074 dated 27.12.2003 as Ex.P1.
- Application for issuance of NOC dated 02.12.2003 as Ex.P2.
- Application/Form for transfer of plot No. 1074 dated 09.08.2003 as Ex.P3.
- Provisional allotment letter dated 26.07.1993 as Ex.P4.
- Letter issued by CDA for providing of pay order for the process of GPA dated 10.02.2004 as Ex.P5.
- Receipt of MCB dated 18.02.2004 as Ex.P6.
- Sale agreement dated 26.05.1993 as Ex.P7.
- Receipts/bank challan as Ex.P8 to Ex.P10.
- Letter dated 09.04.2004 regarding cancelation of general power of attorney against plot No. 1074 as Ex.P11.
- Death certificate of Amanullah Pasha as Ex.P12.
- Irrevocable General Power of Attorney dated 01.01.1998 as Ex.P13.

The respondent No. 1 has also produced Muhammad Ishaq PW-2 and Arshad Ali PW-3 to substantiate the execution of agreement to sell and payment of Rs. 200,000/- as sale consideration to the petitioner, although ExP-7 does not contain any witness, however, the witnesses PW-2 & PW-3 were produced to fulfill the requirements under Qanun-e-Shahadat Order, 1984 and they remain consistent to the extent of pay of Rs. 200,000/- (sale consideration) to the petitioner. It is also evident on record that respondent No. 1 has paid the following amounts in the office of Federal Government Employees Housing Foundation:-

- i. Rs. 41,667/- on 09.09.1993.
- ii. Rs. 834/- on 15.12.1995 Ex.P9/1.
- iii. Rs. 24,667/- Ex.P9/2.
- iv. Rs. 27,800/- on 05.10.2000 Ex.P9/3.
- v. Rs. 2,780/- on 24.06.2003 Ex.P9/4.
- vi. Rs. 62,550/- on 16.06.2003 Ex.P9/5.

9. In view of above, it is evident that respondent No. 1 has paid the entire cost of land of the suit plot, other miscellaneous charges in the office of Federal Government Employees Housing Foundation and has also deposited the irrevocable general power of attorney in the office of CDA through bank challan dated 24.10.2003 amounting to Rs. 1,000/-. Respondent No. 1 has filed suit for specific performance when the petitioner has cancelled the irrevocable power of attorney on dated 16.03.2004 and submitted the same in the office of CDA thereafter the Estate Management, CDA has issued letter dated 09.04.2004 to the respondent No. 1.

10. Contrary to above referred evidence, the petitioner in his testimony as DW-1 admitted certain facts which are as follows:-

۱۔ میں نے مختار نامہ عام امان اللہ پاشا کی بہن کے حق میں تحریر و تکمیل کیا تھا۔ امان اللہ پاشا صاحب نے کہا تھا کہ پلاٹ کی الاٹمنٹ کا پراسس میری بہن مدعیہ کرے گی اور جب پلاٹ کلیئر ہو جائے گا اور متعلقہ ڈپارٹمنٹ یعنی CDA کے تمام واجبات کلیئر ہو جائیں گے تو پھر مذکورہ پلاٹ کو مارکیٹ ویلو کے حساب سے اگر فروخت کرنا مقصود ہوا تو کریں گے۔

During the course of cross examination following admitted facts comes on record:-

۱۔ یہ درست ہے کہ امان اللہ پاشا نے مجھے یہ بات کہی تھی کہ پیسے میری بہن (مدعیہ) پلاٹ متدعو یہ خریدے گی اور اس کے تمام واجبات بھی جمع کرائے گی۔
۲۔ اصل رسیدات پاشا صاحب کے پاس ہیں۔

۳۔ یہ درست ہے کہ تمام واجبات بینک میں زاہدہ ارشد جمع کرائی رہی ہے جسکی رقم میں پاشا صاحب کو دینا رہا ہوں۔
۴۔ یہ درست ہے کہ میرے پاس پلاٹ متدعو یہ کی تمام اصل دستاویزات میرے پاس نہ ہیں۔ تمام اصل دستاویزات پلاٹ متدعو یہ پاشا صاحب کے پاس تھیں۔

۵۔ یہ غلط ہے کہ میں نے مختار نامہ عام ExP-13 مدعیہ کے حق میں دیا تھا البتہ میں نے مختار نامہ عام ExP-13 امان اللہ پاشا کے حق میں دیا تھا۔
۶۔ یہ درست ہے کہ میں نے مورخہ 16.03.2004 کو مختار نامہ عام Ex.P-13 منسوخ کرایا تھا۔
۷۔ یہ درست ہے کہ پلاٹ متدعو یہ کی الاٹمنٹ کے متعلق تمام تر خط و کتابت CDA کے ساتھ مدعیہ کرتی رہی ہے۔ میرا زاہدہ ارشد کے ساتھ کوئی رشتہ نہ ہے۔ مجھے تاریخ یاد نہ کہ میری دستاویزات پلاٹ متدعو یہ کب گھم ہوئے۔
۸۔ یہ دستاویزات مختار نامہ عام دینے کے بعد گھم ہوئے تھے۔ میرا خیال ہے کہ میرے کاغذات تقریباً 96-1995 میں گھم ہوئے تھے۔ میں نے کاغذات کی گھمشدگی سے متعلق I-9 تھانے میں خود رپورٹ درج نہ کرائی تھی۔
۹۔ یہ درست ہے کہ میں نے ان دستاویزات کی گھمشدگی سے متعلق کوئی درخواست CDA میں نہ دی ہے۔

In view of above mentioned admissions it is evident that the petitioner himself admitted the execution of Ex.P13 irrevocable general power of attorney, deposit of all amounts of suit plot by respondent No. 1, intention to sale the plot, correspondence by respondent No. 1 with CDA and others documents, however, the petitioner has not produced any other witness to substantiate him claim

regarding lost of documents whereas he himself admits that all the documents of the suit plot are in possession of Amanullah Pasha. Petitioner has also failed to substantiate that under what circumstances he had executed irrevocable general power of attorney Ex.P13, application for issuance of NOC as Ex.P2, in favour of respondent No. 1, especially the wording used by the petitioner himself in his application Ex.P2 addressed to Assistant Director, Federal Government Employees Housing Foundation very much reflects that petitioner himself expressed his intention to transfer the suit plot in favour of Ms. Zahida Arshad respondent No.1, even the said document has been reaffirmed by said Director E-1 FGEHS Syed Muhammad Ali when he has obtained two signatures of Muhammad Ajaib on the said application which is part of the said document, the contents of Ex.P2 are reproduced hereunder for ready reference:-

بخدمت جناب اسسٹنٹ ڈائریکٹر

اسٹیٹ ہینجمنٹ

فیڈرل گورنمنٹ ایمپلائز ہاؤسنگ فاؤنڈیشن اسلام آباد۔

موضوع:- درخواست برائے جاری کرنے NOC ٹرانسفر پلاٹ phase-II

مکرمی نہایت ادب سے درخواست ہے کہ میں پلاٹ نمبر 1074 سیکٹر D-12/1 رقبہ 139 مربع یعنی 25x50 کا الاٹی ہوں۔ میں جملہ ترقیاتی اخراجات اور NOC چار ہز جو کہ آپ کے حکمنامہ نمبری 93-HF (FS-35) 5.F المرقوم ستمبر 2000 کے ذریعے طلب کئے گئے جمع کرا چکا ہوں۔ اب میں مذکورہ پلاٹ بحق مسز زاہدہ ارشد زوجہ محمد ارشد علی سکنتہ مکان 915 سیکٹر I-10/1 ٹرانسفر کرنا چاہتا ہوں جس کیلئے مجھے جناب کی طرف سے NOC درکار ہے۔ جناب سے درخواست ہے کہ مذکورہ دستاویز بنام CDA جاری کر کے ممنون احسان فرمائیں۔

ترقیاتی اخراجات کی ادائیگی کے ثبوت (3) رسیدیں منسلک ہیں۔

دستخط محمد عجائب

دستخط محمد عجائب

Signed in my presence

S. Muhammad Ali

Dated 02.12.2003

Syed Muhammad Ali
Assistant Director (E-I)
Federal Government Employees
Housing Foundation
Islamabad

خادم

(محمد عجائب)

معرفت مسز زاہدہ ارشد

مکان نمبر 915، I-10/1

اسلام آباد۔

NIC No. 210-33-097909

Whereas the irrevocable general power of attorney ExP-13 executed by the petitioner in favour of respondent No. 1 has contained following clause on its third page:-

To complete/sign requisition slip on my behalf and submit the same in the office of CDA for obtaining transfer application form. After obtaining the transfer application form, to complete sign it and submit the same in the office of CDA, Islamabad for the transfer of said plot of land and /or building constructed thereon in favour of anybody else. That an agreement has been executed between the executant and the said general attorney today and this general power of attorney has been executed on the basis of said aforesaid agreement. This general power of attorney is irrevocable and shall be binding on me, on my legal heirs, representative, executors, administrators and assignees and shall not be REVOKED, ALTERED or AMENDED by me until and unless my said attorney him desires to cease to continue as such Attorney and her such consent will be procured in writing and this general power of attorney will hold good for all times, even after the death of the executant.

The above referred irrevocable general power of attorney is an admitted document by both the parties, however, the petitioner has cancelled the said attorney through cancellation deed dated 16.03.2004 vide registered deed No. 1127 through Joint Sub Registrar, Islamabad after six years of execution of general power of attorney without assigning any reason, although it is mandatory to receive the written request of cancellation from respondent No. 1 otherwise the said attorney could not be REVOKED, ALTERED or AMENDED, hence, it is safely concluded that:-

- a. Petitioner has appointed respondent No. 1 as his general attorney through irrevocable power of attorney Ex.P13.
- b. Petitioner could not cancel the said power of attorney by any means.
- c. Petitioner himself admitted the execution of agreement to sell in the said power of attorney, which is a registered instrument.
- d. Petitioner allowed respondent No. 1 to act as general attorney for six long years and thereafter cancelled the same without written consent of respondent No. 1.
- e. On the basis of said irrevocable power of attorney ExP-13 transfer application/form of plot No. 1074 has been issued by the office of CDA as ExP-3.
- f. On the basis of said relation of the parties application for issuance of NOC has been filed by petitioner as ExP-2 dated 02.12.2003 to the Assistant Director, Federal Government Employees Housing Foundation.
- g. Petitioner has not put any justification as to why all the correspondence has been made through Ms. Zahida Arshad (respondent No. 1) with the Federal Government Employees Housing Foundation or CDA.
- h. Permission for transfer of plot dated 27.12.2003 has been granted by the Federal Government Employees Housing Foundation to Muhammad Ajaib petitioner through Zahida Arshad submitted by the

respondent No. 1 on record as ExP-1 has not been refuted by the petitioner.

- i. Petitioner failed to demonstrate any reasons for non deposit of any installment, cost of land and other development charges of the suit plot by himself.
- j. Respondent No. 1 has paid the all dues amounts of cost of land, development charges and other installments through ExP-8 to ExP-10 & ExP-9/1 to ExP-9/5.
- k. Respondent No. 1 has also placed ExP-6 the original receipts of pay order MCB Ltd dated 18.02.2004 in the account of suit plot.
- l. Respondent No. 1 has also placed the cancellation of power of attorney letter issued by CDA dated as ExP-11 dated 09.04.2004 on record.

11. In view of above, when execution of irrevocable general power of attorney has been admitted by the petitioner in his evidence and the said documents Ex.P13 contains stipulation of agreement to sell between the parties and the said documents has been registered in accordance with law and the petitioner could not demonstrate anything contrary to the said documentary evidence nor furnish any reason for such admitted position, his testimony could not be believed on the principle that documentary evidence prevails upon the oral testimony. Reliance is placed upon **NLR 2005 Civil 120 titled as Hashmat Ali Vs. Mst. Rasheedan Bibi and two others** wherein it was held that:-

"It is settled law that oral evidence cannot contradict, supersede or bypass the documentary evidence and cannot be relied upon when documentary contradicts the oral evidence."

Similarly when the parties have not brought forward any expert witness to give opinion about the genuineness of signatures, the Court can compare the disputed signatures with the admitted signatures and forms its own opinion, even such comparison can be made at the level of apex court. Reliance is placed upon **1999 SCMR 85 titled as Messrs Waqas Enterprises and others Vs. Allied Bank of Pakistan and two others** wherein it was held that:-

"7. It is settled principle that in certain eventualities Court enjoins plenary powers to itself compare the signature alongwith other relevant material to effectively resolve the main controversy. We, therefore, carefully went through this process and compared documents attributed to have been executed by petitioner Ashfaq Hussain with his admitted signatures on record, which obviously had complete similarity and tallied with each other. The other evidence on record also negated the stand of petitioner as regards merits. When

learned counsel for petitioners was confronted with aforesaid situation he felt great difficulty in disputing this factual aspect.

Now keeping in view above discussion, opinion formed on the basis of comparison of signatures and scrutiny of preponderant material on record we are satisfied that impugned judgment does not suffer from any impropriety or legal infirmity”.

Similarly, **PLD 1992 Lahore 366 titled as Mirza Arif Baig Vs. Mubarak Ali**

wherein it was held that:-

"11. The respondent had categorically denied his signatures on the pronote and receipt in question. Disputed signatures alongwith admitted signatures of the respondent were not sent to any handwriting expert and therefore, the learned trial Court has given its own observation about the genuineness of the. disputed signatures. I have also seen with care the alleged signatures of the respondent on the pronote and the receipt in question and have compared them with his signatures. on the written statement and the Vakalatnama. The dissimilarity between the aforesaid two kinds of signatures is not very inconspicuous. Letters 'M' 'a' and V in the signature 'M.a. Khan' are not similar. When the parties had not brought forward any expert witness to give opinion about the genuineness of the signatures in question, the learned trial C Court was competent to form its own opinion by comparing the disputed signatures with the admitted signatures. The opinion which it has formed in the present case appears to be quite justified”.

Similarly, **2005 CLC 870 titled as Muhammad Yaqoob Vs. Hameeda Begum**

and 4 others wherein it was held that:-

"It is pertinent to mention here that the Honourable Supreme Court has compared the signatures at the level of apex Court in Waqaf Enterprises case aforementioned. The Karachi High Court has also considered the effect of Article 84 of the Qanun-e-Shahadat Order, 1984 in Muhammad Din's case 1991 MLD 1070 and laid down the following principles:---

"In the present case, however, the learned Judge simply failed to apply his mind in spite of the admission made by the respondent that a number of documents on record bear his signatures. He certainly was in a position to form his own opinion on the basis of the material before him without recourse to Handwriting Expert. I have looked into the signatures of the respondent on the document before me and I am of the view that the signatures as appearing on Exh.P.3 is not different from his signatures on the other documents as admitted by him.”

Therefore, in view of above judgments I have compared the admitted signatures of the petitioner available upon Ex.P13 with signature on Ex.P7 agreement to sell, signature available upon Ex.P3 transfer application form and signature available upon Ex.P2 application for NOC and I am of the view that all those signature of

Muhammad Ajaib petitioner are similar in character and the said fact could not be denied on the basis of oral assertion of petitioner, hence, all the probability leans in favour of respondent No. 1 that the suit plot has been purchased by her from the petitioner but subsequently petitioner has denied the execution of agreement, therefore, both the courts have rightly passed the judgment/decreed in favour of respondent No. 1.

12. The learned Trial Court keeping in view the above referred reasons and evidence decided the issue No. 6 and 7 regarding payment of sale consideration, execution of agreement to sell and decreed the suit in favour of respondent No. 1 and the same has been upheld by the first appellate court, the petitioner could not justify any reason as to why he allowed respondent No. 1 to submit the installments, development charges, cost of land on his behalf nor even put forward any reason for issuance of transfer application form Ex.P3, application for issuance of NOC Ex.P2 neither he denied all these documents in his testimony, especially the contents of Ex.P2 are very explicit, conclusive to the effect that he himself expressed his intention to transfer the suit plot in favour of Ms. Zahida Arshad respondent No. 1 and all these factors were considered by the courts below in a legal manner, hence the concurrent finding arrived after proper appraisal of evidence could not be interfered by the Revisional Court in terms of Section 115 CPC when there was no error committed by the courts below and even the concurrent findings could not be interfered on the ground that appraisal of evidence would suggest another view of the matter. Reliance is placed upon **2006 SCMR 1619 titled as Abdul Ghaffar Khan Versus Umar Khan** wherein it was held that:-

"We having perused the record with the assistance of learned counsel for the parties but have not been able to find out any legal or factual infirmity in the concurrent findings of two Courts on the question of fact, calling for interference by the High Court in its revisional jurisdiction and mere fact that another view of the matter was possible on appraisal of evidence, would not be a valid reason to disturb the concurrent findings of fact in civil revision".

12. What boils out from above discussion is that the instant civil revision is devoid of merits. Resultantly the same stands dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open court _____

JUDGE

Approved for reporting.

Ramzan

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