

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

R.F.A No. 182/2020

Mst. Hassan Jan, etc.

Vs.

Mst. Bushra Zubair, etc.

Appellant by : Syed Muhammad Ali Bukhari, Advocates.

**Respondents by : Malik Talha Ahmad Rahim & Suriya Mariam
Khaleeq, Advocate.**

Date of hearing : 22.03.2021

LUBNA SALEEM PERVEZ, J. Through instant Regular First Appeal, the appellants have assailed the judgment dated 18.02.2020, passed by the learned civil judge 1st class Islamabad, whereby, suit No. 677/2013, filed by Respondent No.1 was decreed.

2. Facts of the case are that, Respondent No. 1 (Mst. Bushra Zubair) filed suit for specific performance of an agreement dated 13.05.1996 and permanent injunction as well as transfer of land bearing Plot No. 414 measuring 25x40 situated in Section G-14/4 Islamabad, in her name on payment of remaining sale consideration, against present appellants. The appellants are the legal heirs of Muhammad Shafi (late) who was employed as Mali in Quaid-e-Azam University. During service he was allotted a plot bearing No. 526 measuring 138.89 Sq. Yard, vide order dated 04.03.1996, on his application dated 01.08.1995, in Quaid-e-Azam University staff Housing Scheme. Late Muhammad Shafi sold the said plot for a sale consideration of Rs. 200,000/- to Respondent No.1 and received sum of Rs. 199,000/- vide agreement dated 13.05.1996, registered before Sub Registrar Islamabad, vide deed No. 2321 dated 05.06.1996. Quaid-e-Azam University Staff Housing Scheme was abolished by the Federal Government and the employees who were allotted plot under the said scheme were allotted plots in exchange. Muhammad Shafi was allotted Plot No. 414 measuring 25x40 in Sector G-14/4, Islamabad, vide letter dated 27.01.2001, in lieu of Plot No. 526. Muhammad Shafi expired on

24.01.2001. Respondent No.1 after the death of Mohammad Shafi approached the family of late Muhammad Shafi/appellants to transfer the suit plot to her and upon their refusal to do so filed suit for specific performance before the learned Senior Civil Judge, Islamabad, who vide judgment and decree dated 18.02.2020, decreed the suit in her favour. The appellants who were Defendants No. 1 to 9 in the suit, being aggrieved with the judgment and decree dated 18.02.2020, has filed the instant appeal before this court.

3. Learned counsel for the appellants admits the facts to the extent of allotment of plot No. 526, vide order dated 04.03.2006 and subsequent allotment of plot No. 414 in exchange of the previous plot. He submitted that the appellants are the only legal heirs of Muhammad Shafi (late) as his wife Hassan Jan, has also expired during the suit proceedings; that late Muhammad Shafi was the legal and lawful owner of suit Plot No. 414 and the agreement on the basis of which suit for specific performance has been filed by Respondent No. 1 is fake and forged; that the installments of the plot have been paid by late Muhammad Shafi and after his death by his wife Hassan Jan; that during the trial proceedings the PWs had proved that the registered sale deed dated 05.06.1996, and registered Irrevocable General Power of Attorney in favour of Respondent No. 1 to be fake which were got registered in connivance with the Registration Authorities; that the learned Trial Court has committed material illegality and irregularity by ignoring the oral and documentary evidence and record produced during trial by the appellants and has passed the judgment in an arbitrary and unjust manner which has deprived the legal heirs / appellants from their lawful right of inheriting the property of their late father.

4. On the other hand, learned counsel for the respondents vehemently opposed the contentions made on behalf of the appellants and submitted that late Muhammad Shafi during his life time, vide agreement dated 13.05.1996 had sold the suit plot for sale consideration of Rs. 200,000/- (Rupees Two Hundred Thousand Only) out of which he received 199,000/- at the time of registration of sale deed, vide No. 2321 dated 05.06.1996; that late Muhammad Shafi, vide Irrevocable General Power of Attorney registered at No. 1890 dated 05.06.1996, appointed Respondent No. 1 as

his true and lawful General Attorney; that his son Maqsood Ahmed was one of the witnesses to the irrevocable General Power of Attorney and sale deed dated 05.06.1996. Learned counsel submitted that the legal heirs of late Muhammad Shafi, after his death, were responsible to transfer the suit land in Respondent No.1's name which she purchased, vide Sale Deed dated 05.06.1996, who have refused to perform their part; that the allegation of forgery has not been proved by the appellant as during the trial, the thumb impression and the signature of late Muhammad Shafi were sent for forensic verification to FIA, report of which proved the signature and thumb impression to be of late Muhammad Shafi. Learned counsel for Respondent No. 1 submitted that the impugned judgment and decree is well reasoned and based on proper appreciation of documentary and oral evidence, therefore, the instant appeal is liable to be dismissed.

5. Argument heard record perused.

6. Record of the case has been thoroughly examined. The irrevocable General Power of Attorney bearing thumb impression and signature of late Muhammad Shafi, whereby he appointed Respondent No. 1 as a legal and lawful attorney, has been registered vide No. 1890, Book 4, Volume 308 at pages 82 & 83 dated 05.06.1996 by the Sub Registrar, Islamabad. The document bears signature of Maqsood Ahmed S/o Muhammad Shafi (late) as a witness alongwith two others witnesses namely Khaliq Dad and Muhammad Khushi. The sale deed between late Muhammad Shafi and Respondent No. 1 has also been scrutinized, which reveals that same is also registered, vide No. 2321 in book No. 1 Volume 1095 at page No. 27 on 05.06.1996. This registered document also bears signature and thumb impression of late Muhammad Shafi and further revealed that Maqsood Ahmed s/o late Muhammad Shafi was also a witness alongwith two other witnesses in it. Perusal of sale deed reveals that out of total sale consideration of Rs. 200,000/- (Rupees Two Hundred Thousand Only), an amount of rupees 199,000/- (One lac Ninety Nine Thousand) was admittedly received by late Muhammad Shafi as '*Biayna*' and the balance sale consideration was to be received at the time of transfer of the suit plot. Amjad Hussain an employee of Deputy Commissioner Office appeared as PW-1 and produced the record of registration in respect of Power of

Attorney and Sale Deed. Muhammad Khushal one of the marginal witnesses appeared as PW-3. He was also an employee of Quaid-e-Azam University. He corroborated the transaction of sale of suit plot to Respondent No. 1 in his presence and verified the signature of Muhammad Shafi (late) on the registered documents and accepted that he signed the documents as witness. Due to the death of another marginal witness namely Khalid Dad, his son Shahid Khan appeared as PW-4 and verified the signature of his late father on the documents. Perusal of the record revealed that during the trial proceedings, the thumb impression and the signature were sent for comparison of thumb impression and signatures of late Muhammad Shafi vide order dated 11.01.2014 by learned Civil Judge 1st Class (West), Islamabad on the application of the Respondent No. 1 (plaintiff in the suit). The examiner of FP & QD, FIA Headquarter Islamabad, vide report dated 02.11.2015 verified that the thumb impression is identical and the signatures are similar in characters with that of Muhammad Shafi (late). All these documentary and oral evidences were duly considered by the learned Trial Court and are enough material to form the view that late Muhammad Shafi had sold his plot allotted to him by Quaid-e-Azam University, while he was in service, to Respondent No. 1 through registered Sale Deed and irrevocable General Power of Attorney dated 05.06.1996. It is well settled that agreement, power of attorneys and deeds etc, duly registered by Registration Authority in accordance with law become a legal document and carry presumption of truth and require strong evidence to cast suspicious on the authenticity of such document. The onus is on the person who challenges the authenticity of the registered documents to prove with strong, reliable and confident inspiring evidence, likewise in the present case mere verbal assertions of the appellants are not enough to declare the registered sale deed and power of attorney to be fake, fabricated and fictitious, and their genuineness, which being a registered document got presumption of correctness and validity attached to it cannot be discarded without any reliable evidence. The ratio has been settled in cases re: *Nawab Din versus Bagh (1994 SCMR 1975)*, *Al-Haj Sheikh Abdul Hafeez versus Suhail Zaman (2020 PLD 208 Karachi)*, *The Government of Iraq through Embassy of the Republic of Iraq Versus Deedar Hussain (2016 YLR 2246 Karachai)*.

7. Learned counsel for the appellant also raised an objection with regard to limitation in filing of suit by the Respondent No. 1 by taking the plea that the agreement was executed between the parties in 1996, whereas, the suit for specific performance has been filed by Respondent No. 1 in the year 2006 thus is hit by limitation under article 113 of the Limitation Act, 1908, as it provides filing of suit for specific performance a limitation with in the period of 3 years. In this regard learned counsel for Respondent No.1 has argued that the suit has been filed soon after the legal heirs refused to perform their part of agreement to transfer the suit plot in her name and, therefore, the suit filed by Respondent No.1 is well within time as no specific date for transfer of the suit plot is mentioned on the sale agreement/sale deed and relied on the case laws reported as *Mrs. Sherbano versus Kamil Muhammad Khan (PLD 2012 Sindh 293)*, *Malik Imam Bux versus Mehrab (1995 CLC 109)*, *Muhammad Yasin versus Allah Din (1991 CLC 1457)* & *Muhammad Shafi versus Muhammad Sarwar and others (1997 CLC 1231)*, wherein it has been held that the limitation starts running from the date fixed for performance and in case no date was fixed it starts when the performance is refused. Perusal of the sale deed dated 05.06.1996, supports the arguments of the learned counsel for Respondent No.1 as such in the light of settled principle, vide judgments cited by the learned counsel for Respondent No. 1, it is held that the suit was filed within time and is not hit by limitation.

8. For the foregoing discussion, I am of the considered opinion that no illegality or irregularity has been committed by the learned Trial Court while passing the judgment and decree dated 18.2.2020, hence, the same is upheld. Consequently, instant appeal filed by the appellant is **dismissed**.

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in open Court on _____

JUDGE

Approved for Reporting
Blue Slip added.