

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Civil Revision No. 220/2014

Multiprofessional Cooperative Housing Society, Islamabad

Versus

Muhammad Iqbal, etc.

Petitioner by: Raja Inam Ameen Minhas, Advocate.

Respondents by: Mr. Riffat Saghir Qureshi, Advocate for Respondent No.1.
Rana Rashid Mehmood, Advocate for Respondent No.2.

Date of Decision: 11.09.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Civil Revision, the petitioner has assailed the judgment & decree dated 23.04.2014, passed by learned Additional District Judge, Islamabad, whereby appeal filed by Respondent No.1 was accepted against the consolidated judgment & decree dated 04.03.2013, passed by learned Civil Judge 1st Class (West), Islamabad, whereby suit of the petitioner was decreed.

2. Brief facts referred in the instant civil revision are that petitioner/MPCHS filed suit for permanent and mandatory injunction against the respondents with the following claim:-

That a judgment and decree may kindly be passed in favour of the plaintiff and against the defendants, restraining the defendants from illegally, unlawfully and unauthorized canceling the allotment letter regarding the suit land in favour of the plaintiff and they also be restrained from interfering into peaceful possession of the plaintiff in any manner whatsoever.

3. The above mentioned prayer has been made by the petitioner on the ground that land measuring 01 Kanal 11 Marlas referred in Killa No.115 & 116, situated in Sector E-11, Islamabad (hereinafter referred as suit land) was allotted to respondent No.1 Muhammad Iqbal by the CDA/respondent No.3 vide allotment letter dated 02.03.1986, which was sold out by respondent No.1 vide agreement dated 17.04.2003 @ Rs.9,50,000/- per Kanal against the total sale consideration of Rs.14,72,500/- coupled with irrevocable General Power of Attorney executed by respondent No.1 in the name of the then Secretary of MPCHS i.e. Malik Din/respondent No.2 through registered attorney before Joint Sub-Registrar, Islamabad. Respondent No.2 got transferred the property rights of respondent No.1 in favour of petitioner society on the basis of General Power of Attorney in the office of CDA vide letter dated 12.05.2003, even possession was delivered to the petitioner. Petitioner society prepared the layout plan and allotted different plots to its members, however, respondent No.1 started interfering into the possession of society, resultantly suit has been filed by the petitioner to protect the land rights, whereas contrary to the same respondent No.1 has also filed suit for possession and cancellation of instrument i.e. irrevocable General Power of Attorney registered with Joint Sub-Registrar, ICT as well as allotment letter dated 12.05.2003, issued by CDA. Both the suits were consolidated and after recording of evidence suit of respondent No.1 was dismissed and the suit filed by petitioner was decreed. On consolidated appeal learned Additional District Judge, Islamabad dismissed the suit of petitioner and decreed the suit filed by respondent No.1 and declared the entire transaction of transfer on the basis of irrevocable General Power of Attorney being illegal.

4. Learned counsel for the petitioner contends that petitioner society is owner of land on the basis of registered instrument i.e. Irrevocable General Power of Attorney and even on the rights granted by CDA and as such no fraud

has been committed during entire process; that learned Appellate Court has non-suited the petitioner and has taken contrary view despite the availability of overwhelming evidence in favour of petitioner society i.e. Irrevocable General Power of Attorney Ex.P-2 as well as letters referred as Ex.P-3 & Ex.P-4.

5. Conversely, learned counsel for respondent No.1 contends that respondent No.1 is infirm, sick and bedridden person who came to know that his land was transferred through fraudulent means, especially on the basis of power of attorney which was not registered or executed by him, even the land was not sold out to the petitioner society, nor any payment was made in this regard; that petitioner being beneficiary of the transaction has not justified due execution of those documents on the basis of which it has been claimed that property was transferred in accordance with law.

6. Learned counsel for respondent No.2 /the then General Secretary of MPCHS contends that all the documents were executed in his favour and he represented the society but he never appeared during the course of proceedings in the trial Court, nor even recorded evidence in favour of or against either party.

7. Learned counsel for CDA/respondent No.3 contends that they have acknowledged the rights of respondent No.1 which were transferred in favour of petitioner society through registered instrument i.e. Irrevocable General Power of Attorney.

8. Learned counsel for respondent No.4 contends that they are just record keeper, whereby Irrevocable General Power of Attorney was registered in their office and as such no relief has been claimed against them.

9. Arguments heard, record perused.

10. Perusal of record reveals that entire issue revolves around the land measuring 01 Kanal 11 Marlas, bearing Killa No.115 & 116, situated in Sector E-11, Islamabad, which was owned by respondent No.1 and petitioner society

claimed that said out land was sold to it by respondent No.1 @ Rs.9,50,000/- per Kanal and total sale consideration of Rs.14,72,500/- was paid to respondent No.1, whereby respondent No.1 has executed Irrevocable General Power of Attorney, Ex.P-2. On the basis of said irrevocable General Power of Attorney suit land was transferred in favour of society by CDA through respondent No.2 i.e. the then General Secretary of petitioner. Petitioner society claims that suit land was already settled by society through its layout plan and presently several members have been allocated with the said land, who have constructed their houses and when respondent No.1 tried to interfere with their possession, petitioner society has filed the suit for permanent and mandatory injunction against respondent No.1.

11. Contrary to the said position, respondent No.1 filed cross suit for possession of suit land and cancellation of registered instrument as well as transfer letter issued by CDA. Both the suits were consolidated and issues were framed on 30.06.2010, whereby primary issues are issue No.1 & 4, which are as under:-

1. *Whether defendant No.1 has sold the property measuring 1 Kanal 11 Marlas bearing Killa No.115 and 116 to plaintiff, for sale consideration of Rs. 9,50,000/- per kanal and has executed sale agreement along with irrevocable general power of attorney, in the name of Malik Deen general secretary of plaintiff's society? OPP*

4. *Whether the defendant No.1 is lawful owner of the suit land whereas plaintiff had prepared irrevocable general power of attorney on his behalf which is illegal, ineffective upon his right and liable to be canceled? OPD.1*

12. While considering the above referred issues there is no cavil to the proposition that beneficiary is society in this case who claims to be lawful purchaser of suit land on the basis of certain documents, therefore, petitioner society is under obligation to discharge the onus in terms of Article 17 read with Article 79 of *Qanun-e-Shahadat* Order, 1984 to prove its point of view in terms of

Article 117 of *Qanun-e-Shahadat* Order, 1984 for which following factors have to be brought on record:-

- (a) Sale agreement through which suit land was sold out by respondent No.1 in favour of petitioner society.
- (b) Sale consideration agreed and transferred in favour of respondent No.1/the seller.
- (c) Handing & taking over of possession of suit land.
- (d) Execution of Irrevocable General Power of Attorney, Ex.P-2.
- (e) Production of attesting witness of sale transaction as well as Irrevocable General Power of Attorney to the extent of contents as well as execution of both documents.
- (f) The record keeper of Joint Sub-Registrar office to prove the registration of the instrument.
- (g) The record keeper of CDA to prove that suit land was confirmed in their record to be sold and transferred by respondent No.1 on the basis of Irrevocable General Power of Attorney as to whether same was executed by respondent No.1.

13. Learned counsel for the petitioner was confronted with all the above mentioned points, whereby he candidly conceded that petitioner society has not produced any of the attesting witness of sale agreement, irrevocable General Power of Attorney in whose presence entire transaction was executed or agreed or even the documents were signed, whereas it is settled law in terms of *Qanun-e-Shahadat* Order, 1984 to produce the scribe of the document for its due execution failing which such document is not proved in the circumstances. Reliance is placed upon 2001 CLC 1203 (Muhammad Hussain Vs. Faiz Bakhsh), 1985 CLC 2353 (Muhammad Jameel Vs. Muhammad Sharif).

14. It is also settled by now that agreement creating future interest must be in writing and attested by at least two male witnesses in terms of Article 17 of the *Qanun-e-Shahadat* Order, 1984 and required to be proved in terms of Article 79 of the *Qanun-e-Shahadat* Order, 1984, failing which document loses its sanctity.

Reliance is placed upon 2002 SCMR 1089 (Mst. Rasheeda Begum Vs. Muhammad Yousaf).

15. In this case petitioner has not discharged the onus, nor even it is the case of petitioner that witnesses were not available or died, whereby secondary mode could have been adopted, hence, by non-production of those star witnesses, adverse presumption could be drawn against the petitioner in terms of Article 129(g) of the *Qanun-e-Shahadat* Order, 1984, whereby best piece of evidence has been withheld by the petitioner and it could be presumed that if those witnesses have been produced they might not support the case of petitioner in any manner or could led to unfavourable situation to the petitioner society. Reliance is placed upon 1991 CLC 1713 (Habib Bank Ltd. Vs. Inamur Rehman).

16. In order to consider the status of Irrevocable General Power of Attorney, Ex.P-2, the petitioner society is under obligation to prove its due execution regarding proof of its content and execution of document as to whether the same was executed in the office of Sub-Registrar after handing over of payment as claimed by the petitioner as sale consideration, whereas respondent No.1 has denied the registration of said instrument, therefore, registration officer is required to be produced in this case, whereby the identity of respondent No.1 has to be proved, thus presumption of truth to the Sub-Registrar endorsement upon the Irrevocable General Power of Attorney could have been considered failing which due execution or presumption is not attached with Ex.P-2. Reliance is placed upon 2005 CLC 368 (Dr. Sadiq Hussain Vs. Mst. Maqbool Begum).

17. In case of dispute of execution of document, its registration was neither a decisive on the identity of executants nor precludes the courts from interfering into the matter. In such eventuality, the fact in issue has to be proved in a manner like any other fact under the law. Even in case where sale deed reciting that vendor has received sale price of a property at the time of registration and

Registrar endorsement relating to admissions apparently made before him by a vendor to the effect that he has received sale price and presumption of correctness arising out of said admission, such presumption could only be protected if petitioner being beneficiary had proved that he had made certain payment as sale consideration but no such proof has been brought on record by the petitioner society to discharge the onus of this fact. Similarly, if attesting witnesses have not been proved the document stand negated and could not be considered proved. Reliance is placed upon PLD 1995 Lahore 395 (Muhammad Yaqoob Vs. Naseer Hussain), PLD 1996 Lahore 367 (Abdul Khaliq Vs. Muhammad Asghar Khan), PLD 2005 Lahore 654 (Qasim Ali Vs. Khadim Hussain through Legal Representatives), 2001 YLR 1967 (Altaf Hussain Shah Vs. Nazar Hussain Shah), PLD 2011 SC 241 (Hafiz Tassaduq Hussain Vs. Muhammad Din through Legal Heirs), AIR 1925 Allahabad 56.

18. I have confronted the petitioner as to whether respondent No.2 appeared in this case as witness to support the case of petitioner society, whereby it has been conceded that respondent No.2/the then General Secretary of the society has not put appearance, nor produced in the Court, which clearly establishes that a party, who has not put appearance in support of his own case, would make his claim and case highly doubtful. Reliance is placed upon 2006 CLC 482 (Messrs Kashmirian Pvt. Ltd. through Shomaila Loan Marker Vs. Ghulam Nabi Gujjar).

19. I have also confronted the petitioner as to whether they have made any effort to verify the signature of respondent No.1, whereby it has been conceded by the petitioner's side that respondent No.1 had filed application for verification of signature as he has denied his signature, however, said application remained pending before the trial Court mainly on the ground that if substantial evidence would be brought on record by the petitioner through which due execution could be seen, then signature would be verified. Hence, it is clearly established

that petitioner has not made any effort for comparison of the signature of respondent No.1 to prove and justify their own document Ex.P-2 on the basis of which the entire superstructure has been raised.

20. I have given an anxious thought to the statement of respondent No.1 who has specifically denied the execution of Ex.P-2 and stated that:-

الائٹ منٹ لیٹر فارم دوپرت ExD1 پیش کرتا ہوں۔ میں نے اس پلاٹ کی بابت کبھی کسی کو کوئی اٹارنی نہ دی ہے میں انگریزی میں دستخط کرتا ہوں جبکہ Ex.P2 پر جو میرے جعلی دستخط کیے گئے ہیں وہ اردو میں ہیں جس سے جعل سازی عیاں ہے میں نے نہ تو پلاٹ کبھی کسی کو فروخت کیا نہ ہی کوئی معاہدہ کیا اور نہ ہی کوئی رقم وصول کی۔ کبھی بھی میں پلاٹ متدعو یہ فروخت کرنے کی خاطر CDA / رجسٹرار آفس میں کبھی نہیں گیا اور نہ ہی کوئی بیان دیا میرے شناختی کارڈ پر بھی دستخط انگریزی میں ہیں۔ میں اپنے پرانے شناختی کارڈ کی کاپی Ex.D2 (اصل بعد از ملاحظہ واپس) اور نئے شناختی کارڈ کی کاپی Ex.D3 (اصل بعد از ملاحظہ واپس) پیش کرتا ہوں۔ میں نے کبھی بھی کسی کو اٹارنی نہ دی کسی دور میں میری جگہ پر CDA اور جوائنٹ سب رجسٹرار کے سامنے پیش کر کے جعل سازی کر کے اٹارنی کروائی اور لیٹر حاصل کیا۔

21. The above mentioned evidence has not been disputed through any manner by the petitioner's side even it was admitted during the course of cross-examination that respondent No.1 was bedridden for the last 12 years and as such petitioner has not adopted any method of proving the signature through handwriting expert as required in PLD 1996 SC 256 (Sana Ullah Vs. Muhammad Manzoor). Similarly, transfer of land in favour of society itself has not been proved through any independent and cogent evidence, even the circumstances have not been brought on record by calling record keeper from the office of CDA to prove that power of attorney given by respondent No.1 was verified by the CDA, which is mandatory requirement under CDA Property Manual, whereby the Admitting officer confirms the due execution of attorney in all the cases from its executants by issuing letter or by recording his statement in his office, however, no such proceedings have been conducted in this regard.

22. Another important fact which has been brought in the notice of this Court is the conduct of respondent No.2 who has been convicted by the NAB Court, Islamabad on the charges of corruption and corrupt practices in the recent years and the said conviction has been maintained by the High Court as well as by the

Apex Court in reported case 2019 SCMR 372 (Malik Din Vs. Chairman NAB), therefore, in this backdrop nothing favours the petitioner and Appellate Court has rightly settled all the questions and findings through detailed judgment within four corners of law by appreciating the evidence in a proper manner. In case of reverse findings the decision passed by the Appellate Court after reappraisal of evidence has to be given preference. Reliance is placed upon PLD 1970 SC 139 (Shahzada Muhammad Umar Beg Vs. Sultan Mehmood Khan), 2008 YLR 159 (Kaniz Bibi Vs. Muhammad Ashraf).

23. Even there is no glaring illegality observed in the judgment of Appellate Court which does not require interference in terms of Section 115 CPC as the Appellate Court has rightly observed the principles of *Qanun-e-Shahadat* Order, 1984 as well as Administration of Justice, hence, the judgment of Appellate Court is considered to be passed within four corners of law. Reliance is placed upon 2008 YLR 61 (Abdul Majeed Vs. Amjad Farooq), PLD 1996 Karachi 202 (Muhammad alias Miral Vs. Ghulam Muhammad), 2000 CLC 500 (Aasa Vs. Ibrahim). The petitioner society has failed to point out any illegality or jurisdictional defect, therefore, instant civil revision is hereby dismissed.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid