

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

C.R.No.121 of 2019  
Muhammad Qaseem  
**Versus**  
Mst. Farida Khan and others

**Dates of Hearing:** 17.05.2022 & 29.06.2022  
**Petitioner by:** M/s Muhammad Akram Gondal and Muhammad Mohsin Bhatti, Advocates  
**Respondents by:** Malik Mumtaz Ahmad, Advocate for respondent No.1  
Mr. Hasnain Haider Thaheem, Advocate for respondent No.3/C.D.A.

---

**MIANGUL HASSAN AURANGZEB, J:-** Through the instant civil revision petition, the petitioner, Muhammad Qaseem, impugns the judgment and decree dated 28.02.2019 passed by the Court of the learned Additional District Judge, Islamabad whereby his appeal against the judgment and decree dated 28.02.2018 passed by the Court of the learned Civil Judge, Islamabad, was dismissed. Vide the said judgment and decree dated 28.02.2018, the learned Civil Court decreed respondent No.1's suit for specific performance, declaration and permanent injunction.

2. The facts essential for the disposal of this petition are that vide letter dated 06.08.2004 (Exh.D/1), the Capital Development Authority ("C.D.A.") offered allotment of a residential plot in Sector I-14 to Muhammad Bashir (respondent No.2) in consideration of acquisition of his built-up property in Village *Dhreak Mohri*.

3. Prior to the issuance of the said letter, Muhammad Bashir had executed a general power of attorney (Exh.D/3) in favour of Muhammad Mehmood. This power of attorney was executed and registered on 22.03.2004. The preamble of the power of attorney shows that a plot of land was to be allotted to Muhammad Bashir by the C.D.A. in any sector of Islamabad on the basis of an award dated 16.09.1987. Through the said power of attorney, Muhammad Bashir had authorized Muhammad Mehmood to *inter alia* get a plot allotted by the C.D.A. and take its possession; to correspond with the C.D.A. for obtaining a transfer

application form; and to sign the same *“and get it transfer[red] to anybody.”* On 15.12.2004, Muhammad Mehmood submitted an application (Exh.D-2) to the Deputy Director, C.D.A. for accepting the power of attorney. Vide letter dated 18.01.2005 (Exh.D/4), the C.D.A. informed Muhammad Bashir that the said power of attorney had been accepted. In the said letter, it is clearly mentioned that Muhammad Mehmood can correspond with the C.D.A. on Muhammad Bashir's behalf.

4. On 18.10.2004, an agreement to sell (Exh.P/1) was executed between Muhammad Bashir and respondent No.1 (Farida Khan), whereby the former agreed to sell to the latter a plot, which was yet to be allotted to him by the C.D.A., for a total sale consideration of Rs.6,25,000/-, out of which, Rs.6,00,000/- was paid as earnest money whereas the remaining amount of Rs.25,000/- was to be paid at the time of the transfer of the plot. The parties to the said agreement had agreed that the plot would be transferred to respondent No.1 two months after the issuance of the allotment letter by the C.D.A.

5. On 13.09.2005, respondent No.1 instituted a suit for specific performance of the said agreement to sell dated 18.10.2004. She had also sought a declaration to the effect that she is the lawful purchaser and entitled to get a plot transferred in her name by Muhammad Bashir and the C.D.A.

6. On 08.04.2006, the C.D.A issued allotment letter No.CDA/DLR-I-14/3(1415)/05/135 (Exh.D/5) for plot No.1415, measuring 30 x 60 feet in Sector I-14/3, Islamabad (*“the suit plot”*) in favour of Muhammad Bashir. This allotment letter was received by Muhammad Mehmood on behalf of Muhammad Bashir. Muhammad Mehmood is said to have sold the suit plot to the petitioner, Muhammad Qaseem, and consequently, vide letter No.CDA/EM-1415/I-14-3/2006.1196, dated 24.07.2006 (Exh.D/6) issued by the C.D.A., the suit plot was transferred to the petitioner.

7. The trial in the suit instituted by respondent No.1, Farida Khan, culminated in judgment and decree dated 22.05.2012, whereby respondent No.1 was held to be entitled to recover Rs.6,00,000/- from Muhammad Bashir. Since respondent No.1 was desirous of having the agreement to sell dated 18.10.2004 specifically performed, she preferred an appeal against the said judgment and decree. Vide judgment dated

09.09.2013, the learned Appellate Court allowed respondent No.1's appeal and set-aside the judgment and decree dated 22.05.2012 passed by the learned Trial Court. Furthermore, the learned Appellate Court remanded the matter to the learned Trial Court with the direction to give detailed findings on issues and *"pass a fresh judgment and decree after hearing both the parties."*

8. The post-remand proceedings culminated in judgment and decree dated 28.02.2018, whereby the learned Trial Court decreed respondent No.1's suit for specific performance by directing her to pay the remaining sale consideration of Rs.25,000/- along with bank interest from 2004. Muhammad Bashir and the petitioner preferred separate appeals against the said judgment and decree. Vide consolidated judgment dated 28.02.2019, the learned Appellate Court dismissed both the appeals. The said judgment has been assailed by the petitioner in the instant revision petition. It ought to be borne in mind that Muhammad Bashir has not challenged the said judgment passed by the learned Appellate Court. This Court issued several notices to Muhammad Bashir in the instant revision petition but no one tendered appearance on his behalf.

9. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant revision petition, submitted that the petitioner was a *bonafide* purchaser of the suit plot; that the petitioner did not have any prior knowledge of the agreement to sell dated 18.10.2004 executed between Muhammad Bashir and respondent No.1; that at no material stage did Muhammad Bashir withdraw the general power of attorney dated 22.03.2004 executed in favour of Muhammad Mehmood; that the said power of attorney had been filed before the C.D.A. which accepted the same vide letter dated 18.01.2005; that the said general power of attorney authorized Muhammad Mehmood to transfer a plot which was to be allotted to Muhammad Bashir; that Muhammad Mehmood, in his capacity as general attorney of Muhammad Bashir, sold the suit plot to the petitioner in whose favour a transfer letter was issued by the C.D.A. on 24.07.2006; that respondent No.1 was not able to prove the execution of the agreement to sell dated 18.10.2004 by producing both the attesting witnesses; that respondent No.1 produced only one attesting witness, namely Muhammad Javed (PW-2); that respondent No.1 also failed in

producing the stamp vendor who had issued the stamp paper on which the agreement to sell was executed; that the contents of the said agreement to sell were vague inasmuch as no plot number was mentioned in the said agreement; that the said agreement was not with respect to Plot No.1415, which had been transferred to the petitioner by Muhammad Mehmood on behalf of Muhammad Bashir; and that there were other material contradictions in the concurrent judgments and decrees passed by the learned Courts below. Learned counsel for the petitioner prayed for the instant revision petition to be allowed and for the concurrent judgments and decrees passed by the learned Courts below to be set-aside.

10. On the other hand, learned counsel for respondent No.1 submitted that since the suit plot was transferred to the petitioner during the pendency of the suit for specific performance instituted by respondent No.1, the said transfer was hit by the doctrine of *lis pendens*; that when respondent No.1 came to know about the transfer of the suit plot in favour of the petitioner she, on 06.02.2007, filed an application under Order 1, Rule 10 C.P.C. for the impleadment of the petitioner as a defendant in the suit; that the general power of attorney executed by Muhammad Bashir in favour of Muhammad Mehmood is not coupled with interest since no consideration was paid for the execution of the same; that even if it is assumed that the petitioner had no knowledge of the proceedings in the civil suit instituted by respondent No.1, the doctrine of *lis pendens* would nonetheless apply and he would be bound by the outcome of the suit; that the petitioner was not entitled to defend the suit independently from Muhammad Bashir through whom he claimed ownership rights during the pendency of the suit; and that since Muhammad Bashir did not assail the concurrent judgments and decrees passed by the learned Courts below, he would be deemed to have accepted the same. Learned counsel for respondent No.1 prayed for the revision petition to be dismissed with costs.

11. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant revision petition

have been set out in sufficient detail in paragraphs 2 to 8 above and need not be recapitulated.

12. The general power of attorney dated 22.03.2004 was executed by Muhammad Bashir in favour of Muhammad Mehmood prior to the allotment of the suit plot in favour of Muhammad Bashir vide C.D.A.'s letter dated 08.04.2006. The said power of attorney was admittedly not coupled with interest. Despite the execution of the said power of attorney, Muhammad Bashir retained the power to alienate or transfer the suit plot to another party. Reference in this regard may be made to the judgment in the case of Phulmajeeran Begum Vs. Additional District Judge, Mailsi (2008 YLR 2841).

13. Muhammad Bashir, without revoking the said power of attorney, sold the suit plot to respondent No.1 by executing an agreement to sell dated 18.10.2004 with her. Although Muhammad Bashir, in his written statement, has pleaded that his thumb impression was obtained on blank papers by respondent No.1 at the C.D.A.'s offices by taking advantage of him being an illiterate person and giving him hope that a plot would be allotted to him, but during the trial, Muhammad Bashir appeared as DW.1 and in his affidavit in evidence deposed that he had never met respondent No.1, and that his thumb impression had been obtained on blank papers by Muhammad Javed (PW.2) and Tariq Mehmood.

14. After respondent No.1's suit for specific performance was decreed by the learned Civil Court vide judgment and decree dated 28.02.2018, Muhammad Bashir as well as the petitioner filed separate appeals against the said judgment and decree. The Appellate Court dismissed both the appeals vide consolidated judgment and decree dated 28.02.2019. The learned Courts below concurrently held that the sale of the suit plot in favour of the petitioner during the pendency of the suit was hit by the doctrine of *lis pendens*. The learned Courts below also concurrently held that the execution of the agreement to sell dated 18.10.2004 between Muhammad Bashir and respondent No.1 and the payment of Rs.6,00,000/- as advance payment for the suit plot had been proved. Now, Muhammad Bashir did not assail the said concurrent findings of the learned Courts below in a revision petition before this Court. This would imply that he accepted all that was decided against him and in favour of respondent

No.1 by the learned Courts below. Since the petitioner had admittedly purchased the suit plot during the pendency of the suit, he cannot set up a case independently from that of Muhammad Bashir.

15. Be that as it may, I deem it appropriate to examine Muhammad Qaseem's claim to the suit plot. In his written statement, the petitioner has pleaded that he was a *bonafide* purchaser of the suit plot, which was transferred to him by the C.D.A. vide letter dated 24.07.2006 after payment of the total sale consideration and fulfilling all other requirements. The said transfer letter was issued by the C.D.A. on 24.07.2006 i.e., during the pendency of the suit for specific performance instituted by respondent No.1 and is therefore hit by the rule of *lis pendens*.

16. The rule of *lis pendens* has been codified and embodied in Section 52 of the Transfer of Property Act, 1882. This rule restrains a party to a litigation from transferring or alienating a property which is the subject matter of a suit, as such transfer adversely affects the rights of the opposing party. Anybody dealing with a property with respect to which a suit is pending is deemed to have notice of pendency of the suit. If any transaction takes place with respect to the suit property during the pendency of the suit, then it would be subject to the final judgment and decree which may be passed by the Court.

17. Section 41 of the Transfer of Property Act, 1882 which protects a *bonafide* purchaser of a property for value without notice of any prior transaction or dispute with respect to such property cannot override the imperative provision of Section 52 of the said Act. Section 41 of the Act *ibid* has no application where the transaction by a person claiming to be a bonafide purchaser of a property takes place during the pendency of the suit with respect to such property. Since the petitioner claims to have purchased the suit plot during the pendency of the suit for specific performance filed by respondent No.1, such a transaction would be hit by the rule of *lis pendens* and his lack of knowledge as to the pendency of the suit would be immaterial. In the case of Muhammad Ashraf Butt Vs. Muhammad Asif Bhatti (PLD 2011 SC 905), the Hon'ble Supreme Court, after referring to the rule of *lis pendens* incorporated in Section 52 of the Transfer of Property Act, 1882, held as follows:-

*“The rule unambiguously prescribes that the rights of the party to the suit, who ultimately succeed in the matter are not affected in any manner whatsoever on account of the alienation, and the transferee of the property shall acquire the title to the property subject to the final outcome of the lis. Thus, the transferee of the suit property, even the purchaser for value, without notice of the pendency of suit, who in the ordinary judicial parlance is known as a bona fide purchaser, in view of the rule/doctrine of lis pendens shall be bound by the result of the suit stricto sensu in all respects, as his transferor would be bound. The transferee therefore does not acquire any legal title free from the clog of his unsuccessful transferor, in whose shoes he steps in for all intents and purposes and has to swim and sink with his predecessor in interest.”*

**(Emphasis added)**

18. In the written statement filed by the petitioner before the learned Trial Court, there is no mention of any written agreement to sell executed between the petitioner and Muhammad Bashir or his general attorney, Muhammad Mehmood. There is also no mention as to the quantum of sale consideration. The petitioner appeared as DW.3 and even in his evidence, there is no mention as to any written agreement executed by him for the purchase of the suit plot or the quantum of the sale consideration paid by him. He did, however, depose that he had purchased the suit plot through Muhammad Bashir’s general attorney, Muhammad Mehmood. But the petitioner did not produce Muhammad Mehmood to corroborate this evidence. It is pertinent to refer to the cross-examination of Muhammad Bashir who appeared as DW.1 and deposed *inter alia* that he does not know the petitioner and that he had not authorized Muhammad Mehmood to sell the suit plot.

19. Since it is the petitioner’s case that he purchased the suit plot through Muhammad Bashir’s general attorney, Muhammad Mehmood, he would be deemed to know the contents of the general power of attorney dated 22.03.2004. Through the said power of attorney, Muhammad Bashir authorized Muhammad Mehmood to *inter alia* do the following:-

*“To correspond with C.D.A., Islamabad to get the transfer application form from C.D.A., to sign the same on my behalf, and to get it transfer to anybody.”*

20. It is well settled that there is no implied authorization in a general power of attorney to sell or alienate the property of the principal. In order to achieve this object, a general power of attorney must contain a separate clause dedicated to such an object. If there is an ambiguity in a general power of attorney, the principal must be contacted for obtaining

specific instructions. The authorization in the said general power of attorney dated 22.03.2004 “to get [the plot] transferred to anybody”, cannot be equated with a specific power to sell or alienate the suit plot. The petitioner ought to have shown diligence by contacting the principal and satisfying himself as to whether he intended to confer the power to sell or alienate the suit plot on the general attorney, Muhammad Mehmood. Even if it is assumed that the power of attorney authorized the general attorney to sell or alienate the suit plot, or that the petitioner purchased the suit plot from Muhammad Bashir through his general attorney, such a purchase was during the pendency of the suit and therefore the rule of *lis pendens* was applicable to him. In these circumstances, the petitioner is not without a remedy. If at all he paid any amount to Muhammad Bashir and/or his general attorney, Muhammad Mehmood, as sale consideration for the suit plot, he can, subject to law, institute a suit for the recovery of the same against them.

21. The learned Courts below, while decreeing respondent No.1’s suit for specific performance against Muhammad Bashir, referred to the legal notice dated 27.12.2006 (Exh.P/8) sent by Arif Mehmood, Advocate on behalf of Muhammad Bashir to respondent No.1. In the said notice, it is mentioned that the agreement to sell between Muhammad Bashir and respondent No.1 could not be performed due to the lack of interest on the part of respondent No.1. Furthermore, it was mentioned that efforts had been made to resolve the dispute amicably. Respondent No.1, during her examination-in-chief, produced the said legal notice as Exh.P/8. She was not cross-examined on the existence and contents of the said legal notice. It is well settled that if a witness is not cross-examined on a fact deposed in his examination-in-chief, and his statement remains un-questioned, such a statement can be taken as correct. Reference in this regard may be made to the law laid down in the cases of Farzand Ali Vs. Khuda Bakhsh (PLD 2015 SC 187) and Muhammad Akhtar Vs. Mst. Manna (2001 SCMR 1700). The reason why the said legal notice is of significance is that Muhammad Bashir, in his cross-examination, had denied having issued the said legal notice. If that was so, it was most essential and necessary for him to have cross-examined respondent No.1 on the existence and contents of the said legal notice when she produced the said legal notice



in her evidence. The omission on the part of Muhammad Bashir in doing so goes to show that the said legal notice was issued on behalf of Muhammad Bashir and additionally that an agreement to sell a plot was indeed executed between Muhammad Bashir and respondent No.1. Furthermore, Muhammad Bashir, in his cross-examination, has admitted that Arif Mehmood, Advocate, who issued the said legal notice, had remained Muhammad Bashir's counsel in criminal proceedings. The contents of the said legal notice establish that an agreement to sell the suit plot had indeed been executed between Muhammad Bashir and respondent No.1.

22. Respondent No.1, in paragraph 2 of her suit, has pleaded that when the agreement to sell dated 18.10.2004 was executed, Muhammad Bashir handed over the original offer of allotment dated 19.07.2004 (Exh.P/2) of a plot to her. Respondent No.1 produced the said allotment letter during her examination-in-chief. In the written statement, Muhammad Bashir's reply to respondent No.1's said pleading is an evasive denial. Muhammad Bashir did not even cross-examine respondent No.1 on her deposition that at the time of the execution of the agreement to sell, the original offer of allotment was handed over to her. This fact adds credence to respondent No.1's stance that at the time of the agreement to sell, the original allotment letter was handed over to her.

23. Recently, in the case of Muhammad Kamal-ud-Din Khan Vs. Munir Syed (2022 SCMR 806), the Hon'ble Supreme Court has held that a Revisional Court cannot substitute its own opinion, discretion or authority with that of the Civil Court which has jurisdiction in a matter, and that a Court could only exercise revisional jurisdiction if the subordinate Court had committed an illegality or material irregularity. Since I do not find any jurisdictional infirmity with the concurrent findings of the learned Courts below, the instant revision petition is **dismissed with costs throughout** payable to respondent No.1. Since I have found the petitioner's conduct to be inequitable and unjust inasmuch as he had been tight lipped about the essential details of the agreement for the purchase of the suit plot executed between him and Muhammad Bashir's general attorney and there was no mention by him of any amount that he claims to have paid as consideration for the suit plot, I deem it appropriate to impose costs of Rs.1,00,000/- on the petitioner in terms of Section 35(1)(iii) of the Code of

Civil Procedure, 1908 as amended by the Costs of Litigation Act, 2017. The said costs shall be deposited by the petitioner in the National Treasury and the deposit receipt submitted to the Additional Registrar (Judicial) of this Court within a period of thirty days.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON 26/07/2022**

**(JUDGE)**

**APPROVED FOR REPORTING**

*Qamar Khan\**

*Uploaded By: Engr. Umer Rasheed Dar*