

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Ijaz ul Ahsan  
Mr. Justice Jamal Khan Mandokhail  
Mrs. Justice Ayesha A. Malik

**CIVIL APPEAL NO.408 OF 2022**

[Against judgment dated 31.01.2022 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in CR No.60-D of 2014]

Pervaiz Akhtar	Versus	...Appellant(s)
Mst. Farida Bibi and others		...Respondent(s)

For the Appellant(s) : Mr. Muhammad Munir Paracha, ASC

For Respondent Nos.1&2 (LRs) : Sardar Muhammad Ashfaq Abbasi, ASC

For Respondent No.3 : Nemo

Date of Hearing : 18.04.2023

**JUDGMENT**

**AYESHA A. MALIK, J.-** This Civil Appeal arises out of judgment dated 31.01.2022 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi (**High Court**) whereby the civil revision filed by Respondent Nos.1 and 2 was allowed.

2. The basic contention of the Appellant is that he purchased property bearing Khewat No.530 Khatooni Nos.813 to 815, Khasra Nos.112, 113/1, 113/2, 122, 115, 103, 114, 116, 121, 117, 123, Qitat 11 situated in village Sehr Bagla, Tehsil Murree, District Rawalpindi (**suit property**) from Respondent No.3, who was the General Power of Attorney (**GPA**) of Respondent Nos.1 and 2. He states that the sale in his favour is a valid sale and that mutation No.1542 was duly attested on 20.12.2006. Respondent Nos.1 and 2 filed a suit for declaration with permanent injunction against the Appellant stating therein that they are the owners in possession of the suit property and that they never sold the suit property to the Appellant. The suit was dismissed by the Civil Judge, Murree vide judgment and decree dated 31.03.2010 which was upheld in appeal by the Additional District Judge, Rawalpindi, Camp at Murree vide judgment dated 05.10.2013. Respondent Nos.1 and 2 then filed a civil revision before the High



Court which set aside both judgments and decrees of the lower *fora* and decreed their suit vide the impugned judgment.

3. Learned counsel for the Appellant submits that the sale in favour of the Appellant is not disputed as he purchased the property from Respondent No.3 who admittedly held GPA dated 24.11.2006 on behalf of Respondent Nos.1 and 2 to sell their property. Therefore, a valid sale was made in his favour and there was no basis to decree the suit of Respondent Nos.1 and 2. The counsel emphasized on the point that the Appellant dealt with the GPA of Respondent Nos.1 and 2 and that neither GPA nor the sale in his favour is disputed. Hence, the suit of Respondent Nos.1 and 2 could not have been decreed and any relief Respondent Nos.1 and 2 seek is against Respondent No.3.

4. On the other hand, counsel for Respondent Nos.1 and 2 submits that the stated Respondents filed a declaratory suit as they were owners in possession of the suit property and being illiterate housewives were unable to manage matters relating to the suit property, hence, they executed a GPA on 24.11.2006 in favour of Respondent No.3 who was their nephew and lived in the same village and said that he will take care of the property matters for them. He further submits that in fact Respondent Nos.1 and 2 executed two agreements dated 24.11.2006 and 09.01.2007 for the sale of the suit property; they separately executed two more agreements both dated 22.03.2007 in favour of Respondent No.3, which provide that the sale consideration to be paid to Respondent Nos.1 and 2 is Rs.1,600,000/- and acknowledge payment of earnest money of Rs.100,000/-. Although Respondent Nos.1 and 2 executed the GPA in favour of Respondent No.3 to finalize the sale but they discovered that the Appellant collusively bought the suit property and had it mutated in his favour on 20.12.2006. Their entire case is that they trusted Respondent No.3 based on their relation with them and that they had no knowledge of the sale in favour of the Appellant nor did they give their consent to the same and that with collusion between the Appellant and Respondent No.3, the suit property was fraudulently transferred in favour of the Appellant.

5. We have examined the record and heard the learned counsel at length. The basic contention of the Appellant is that he purchased the property from Respondent No.3 on the basis of an admitted GPA executed by Respondent Nos.1 and 2. The GPA gives Respondent No.3 the power to manage the affairs of the suit property



and also to alienate the same and Respondent Nos.1 and 2 do not dispute this fact. What is in dispute is the sale in favour of the Appellant. Respondent Nos.1 and 2 entered into an agreement to sell the suit property with Respondent No.3 in which the sale consideration is fixed at Rs.1,600,000/-. As per the plaint, Respondent No.3 betrayed Respondent Nos.1 and 2 by violating the terms and conditions of the agreement to sell and so caused financial loss to them. The Appellant in his written statement denied the claim of Respondent Nos.1 and 2 on the ground that the suit property was sold to him by Respondent No.3 as the GPA and that the sale is a valid sale. However, notably there are no details of the sale in his favour through Respondent No.3 nor did Respondent No.3 appear in the proceedings.

6. The trial court framed several issues, however, the relevant issue is Issue No.1 *whether defendant No.1 alienated suit land in favour of defendant No.2 in violation of agreements allegedly executed between the parties? OPP.* For our purposes, the significant part of this issue is whether Respondent No.3 alienated the suit property in favour of the Appellant. The Appellant appeared as DW-1 and admitted that Respondent Nos.1 and 2 are illiterate housewives and reside in the same vicinity. He also admitted that Respondent No.3 was a property agent and that he had purchased other properties from him in the past. The Appellant did not produce any evidence of the sale in his favour as there are no witnesses to the sale or payment of the sale consideration nor does the revenue record detail the sale and payment of sale consideration in the presence of the revenue officer. Furthermore, the Appellant relies on mutation No.1542 (Ex.D.1) being a copy of the *Register Dakhal Kharaj Mahaal* to show that the suit property was sold to him by Respondent No.3. Ex.D.1 provides that there was an oral sale through the GPA but gives no details of the oral sale and simply mentions the sale consideration of Rs.148,000/-. The *Register Dakhal Kharaj Mahaal* (Ex.D.1) is an incomplete document as the report mentioned in Column No.14 was not relied upon by the Appellant to establish the oral sale in his favour. There is also no report by the revenue officer to verify the oral sale in favour of the Appellant. The Appellant relies simply on the fact that Respondent Nos.1 and 2 are not denying the sale in his favour, however, this is not borne out from the record. Respondent Nos.1 and 2 deny the sale, as being a fraudulent sale without their knowledge



and consent. They categorically state in the plaint that the suit property was sold to the Appellant fraudulently without their knowledge and consent. Respondent No.2 while appearing as PW-1 admits that Respondent No.3 offered Respondent Nos.1 and 2 that he could deal with the suit property for them and sell it at a good price. This becomes relevant as they are illiterate housewives who trusted Respondent No.3 to deal with their property and yet he betrayed them. So Respondent Nos.1 and 2 do not accept the sale, because that is what they have challenged in the suit. They have merely narrated their story in which they have explained the betrayal and fraud. This cannot be seen as accepting the sale in favour of the Appellant. In the circumstances, the statement of the Appellant that the sale in his favour stands admitted is against the record and misleading. Furthermore, the mere fact that the GPA was executed does not establish the sale in favour of the Appellant. He was required to provide independent evidence of the oral sale in his favour. Important to note is that the GPA does not appear in Court, nor any witness to establish the oral sale. Given that the revenue record clearly mentions that the mutation is on the basis of an oral sale, the Appellant was required to prove the oral sale in his favour.

7. Establishing the sale is relevant to the dispute because in this case the suit property belongs to illiterate women (*Pardanashin* women) who trusted Respondent No.3 with the suit property and entered into an agreement to sell with Respondent No.3 regarding the sale of the suit property for a sale consideration of Rs.1,600,000/-. Although, Respondent No.3 and the Appellant are not related, nonetheless, as per the Appellant's own contention he has been doing business with Respondent No.3 in the past with reference to the buying and selling of real estate. Hence, they have been doing business together and are known to each other. Therefore, the element of the fraud cannot be ruled out because both parties are from the same area as Respondent Nos.1 & 2 and Respondent No.3 being their relative obtained a GPA in his favour by deceit only to sell the suit property to the Appellant. In this series of transactions, the main issue before the Court is the manner in which the property of Respondent Nos.1 and 2 was dealt with by Respondent No.3 and the Appellant.

8. In the case of a transaction with *Pardanashin* woman, a principle of caution is attached to the transaction to protect her rights. It is necessary that a *Pardanashin* woman is fully cognizant and aware



of the transaction and that she has independent advice from a reliable source to understand the nature of the transaction; there must be witnesses to the transaction and to the fact that a *Pardanashin* woman has received the sale consideration. Most importantly, a *Pardanashin* woman must know to whom she is selling her property and the transaction must be explained to her in the language she fully understands as is held in the cases reported as Ghulam Farid and another v. Sher Rehman through LRs (2016 SCMR 862) and Ghulam Muhammad v. Zohran Bibi and others (2021 SCMR 19). In a case where a *Pardanashin* woman has trusted a relative and executed a general power of attorney for her to sell the property, it is still incumbent upon the power of attorney holder to fulfil the aforementioned conditions of making the *Pardanashin* woman aware of the sale that is about to be executed under the power of attorney. This is because the underlying principle here is to ensure that at all times where a woman executes a transaction with reference to her property, it is done freely and deliberately. The mere fact that a power of attorney has been executed by a *Pardanashin* woman does not absolve the attorney holder from ensuring that he has informed the *Pardanashin* woman of the sale he is to execute under that attorney and to obtain her consent in this regard. This is necessary to establish the fairness and knowledge of the transaction for the benefit of a *Pardanashin* woman. We have also held in the case reported as Muhammad Naeem Khan and another Muqadas Khan (deceased) through L.Rs. and another (PLD 2022 SC 99) that the objective of this Court has been to protect *Pardanashin* women from the risk of an unfair deal and to ensure that any transaction related to the sale of their property is effected by free will and with consent. We have also held that wherever there is a transaction with *Pardanashin* women, it must be established that they were given independent, impartial and objective advice understanding all implications and ramifications of the transaction to ensure that they give their consent to the transaction, because valuable rights are involved and the *Pardanashin* women should be able to make an informed decision with reference to their property with the help of proper advice and consultation. This Court has also held in the case reported as Mian Allah Ditta through L.Rs v. Mst. Sakina Bibi and others (2013 SCMR 868) that the burden of proof lies on the person exercising the power of attorney to prove that the transaction was carried out in good faith and with full



knowledge and consent of the grantor. Hence, the mere fact that *Pardanashin* women execute a general power of attorney will not absolve the attorney nor the buyer of the obligation to ensure that the *Pardanashin* women have full knowledge of the sale and have given their consent to the sale. In the case of a *Pardanashin* woman, even if a power of attorney is executed, the mere execution of the power of attorney will not establish the consent and intent of the *Pardanashin* woman to effectuate sale in favour of a specific buyer. For the purposes of disposal of the property of *Pardanashin* women, their independent consent and willingness to dispose of their property must be taken and established notwithstanding the execution of a general power of attorney.

9. The concept of protecting the rights of *Pardanashin* women finds its root in the cultural practice of women staying within the protection of their home, having limited access to affairs outside their home. Consequently, such women have limited interaction with society and do not participate in matters outside their home. This suggests that their knowledge and information about matters outside their home is limited and insufficient to take informed decisions. Accordingly, the courts have protected the rights of such women in order to protect them from betrayal, exploitation and fraud especially where valuable property rights are concerned. The concept of an illiterate woman is similar to that of a *Pardanashin* woman as both lack education and basic knowledge of worldly affairs and both interact essentially at a limited level with society. This limited participation hampers her ability to take informed decisions. Such women are perceived as being unskilled, uneducated and incompetent so far as the business matters are concerned. They lack experience and are easily susceptible to deceit even by their relatives. The courts endeavour to protect *Pardanashin* or illiterate women due to their social standing and vulnerability not only from society at large but also from relatives. Women are often the targets of fraud and deceit when it comes to property matters, which is why the courts have invoked the principle of caution in protecting the rights of such women so that they are not wrongfully deprived of their property. The limitations of *Pardanashin* or illiterate women have been duly considered by the courts against which the courts have held that such women must be given independent advice from a reliable and trustworthy source so as to ensure that they fully understand the transaction and the



consequences of that transaction. In Muhammad Naeem Khan's case (*supra*), we have categorically stated that whenever the authenticity or genuineness of a transaction entered into by a *Pardanashin* woman is disputed or claimed to have been secured on the basis of fraud or misrepresentation, the burden will lie on the beneficiary of that transaction to prove good faith and more importantly, the Court will consider whether the transaction was entered into with free will or under duress. It goes without saying that the effort to protect rights of *Pardanashin* and illiterate women is necessary so as to give such women the ability to make independent decisions with reference to their property or belongings so as to ensure that they are not deprived of the ability to take a good decision based on their social standing in society. This is a step towards ensuring that there is an element of financial and economical independence given to women, who have been deprived of education and have limited interaction within the home and the family. While this may be the customary or traditional role of women as seen by society in general, the endeavour of the Court has always been to protect the vulnerability and susceptibility of women.

10. In this case, there was no independent advice given to *Pardanashin* women. Moreover, Respondent No.3 being the GPA holder did not inform Respondent Nos.1 and 2 of the sale in favour of the Appellant. Furthermore, even though the Appellant resides in the same village, he made no effort to ascertain whether Respondent Nos.1 and 2 intended to sell their property through the GPA to him. This fact becomes relevant when seen in the context of the evidence with reference to the sale consideration as Respondent Nos.1 and 2 entered into an agreement to sell the suit property for Rs.1,600,000/- whereas the Appellant purchased the property from the GPA for Rs.148,000/-. Given that Respondent No.3 executed the agreement to sell with Respondent Nos.1 and 2 and agreed to pay them Rs.1,600,000/- for the sale of the property, he betrayed their trust, did not complete the sale as agreed under the agreement to sell and instead sold the suit property to the Appellant through an oral sale. In this regard, we note that the absence of Respondent No.3 is critical to the case of the Appellant because there is no independent evidence by the power of attorney holder to disclose the intent of Respondent Nos.1 and 2 to sell the suit property as per their directions and with their consent. Respondent Nos.1 and 2 alleged fraud and claimed that they have



been deprived of their lawful rights in the suit property. The Appellant, being the beneficiary of this transaction was required to prove the oral sale in his favour and also to prove that the sale through the GPA was with the consent of the owners of the suit property being Respondent Nos.1 and 2.

11. Under the circumstances, this appeal is dismissed with no order as to costs.

*With respect, I am unable to agree with the findings given herein, therefore, I have appended my separate note.*

JUDGE

JUDGE

JUDGE

Announced on 08.08.23 at ISLAMABAD  
Approved for Reporting  
Azmat/\*

JUDGE



### Opinion

*Jamal Khan Mandokhail, J.*— I have had the privilege of going through the judgment authored by Ayesha A. Malik, J. and concurred with by Ijaz ul Ahsan, J. With great respect, I am unable to agree with the findings given therein and the conclusion arrived at by my learned colleagues while dismissing the appeal. Therefore, I have appended my separate note thereto.

### Facts

2. Respondent Nos.1 and 2 were the recorded owners of the property described in the plaint (**disputed property**), which was sold by them to their nephew, Muhammad Pervaiz son of Muhammad Gulzar, (**Respondent No.3**) for consideration in the amount of Rs.1,600,000/- through an agreement to sell dated 23.11.2006. Respondent No.3 made an advance payment of Rs.100,000/- each to Respondent Nos. 1 and 2, whereas the remainder amount was to be paid to within the period stipulated in the agreement. On the next day, Respondent Nos. 1 and 2 appointed Respondent No.3 as their attorney through a registered power of attorney dated 24.11.2006 authorising him with all powers, including alienation of ownership of their property rights in respect of the disputed property. In compliance of the agreement, Respondent No.3 delivered a cheque amounting to Rs. 1,102,500/- to Respondent Nos. 1 and 2, however, on presentation before the bank it could not be encashed.

3. Respondent No.3 in his capacity as the attorney subsequently sold the disputed property to the Appellant and transferred it to the latter's name *vide* Mutation No. 1542 dated 29.11.2006 (**disputed mutation**). Thereafter, Respondent Nos. 1 and 2 entered into another agreement with Respondent No.3 on 09.01.2007, pursuant to which the remainder amount of the disputed property was re-scheduled and was to be paid within a month, but the needful was not done. They entered into another agreement on 22.03.2007, on the basis whereof, time for payment of the outstanding amount was further extended. It is important to mention here that Respondent Nos.1 and 2 were aware of the alienation of the property through the disputed mutation, which was incorporated in the said agreement. It was emphasized that in case Respondent No.3 fails to pay the outstanding amount as per the fresh agreement, Respondent Nos. 1 and 2 shall be entitled to retrieve the disputed property and withdraw/cancel the power of attorney executed in the former's favour.



4. Despite commitments made in the abovementioned agreements, Respondent No.3 once again failed to clear the outstanding amount. Consequently, Respondent Nos.1 and 2 filed a Suit for declaration and permanent injunction against the Appellant and Respondent No.3 and also challenged the disputed mutation on the grounds of *fraud, cheating and collusiveness*. The Appellant contested the Suit alleging therein that he is a *bona fide* purchaser and is in possession of the disputed property after payment of the consideration in the amount of Rs.1,600,000/- to the attorney. It is to be noted that the power of attorney was not challenged at any stage and remains intact till date. Respondent No.3 did not appear before the Trial Court to contest the Suit or to rebut the Appellant's claim, as such, he was proceeded against *ex parte*. The Trial Court dismissed the Suit and the Appellate Court affirmed the judgment and decree. Respondent Nos.1 and 2 filed a Civil Revision before the Lahore High Court, Rawalpindi Bench, Rawalpindi which was allowed *vide* the impugned judgment and decree dated 31.01.2022, whereby the concurrent findings of the Courts below were set aside and the Suit was decreed in favour of Respondent Nos. 1 and 2, hence, this Appeal.

5. Arguments heard and perused the record.

#### Reasons

6. The Suit of Respondent Nos. 1 and 2 is based upon the non-performance of the agreements on part of Respondent No.3. At the same time they had challenged the mutation on the ground of *fraud, cheating and collusiveness*. The agreement dated 23.11.2006, described in the plaint and relied upon by Respondent Nos. 1 and 2 is evidence of the fact that they sold the disputed property to Respondent No.3, followed by which a registered power of attorney was executed in his favour. Respondent No.3 exercised his authority by alienating the disputed property in the name of the Appellant through the disputed mutation on 29.11.2006. The factum of this sale and the number of the disputed mutation was already in the knowledge of Respondent Nos. 1 and 2, who subsequently incorporated the same into the agreement dated 22.03.2007, with their free will and consent. Admittedly, Respondent Nos. 1 and 2 despite having such knowledge, did not raise any objection nor did they challenge it. Instead, they chose to extend the time for the outstanding payment and to receive the same from Respondent No.3. It reflects from the facts and circumstances of the case that Respondent Nos. 1 and 2 had a grievance against Respondent No.3 only as far as the outstanding amount was concerned. Essentially, the payment was to be made by Respondent No.3 as per the fresh schedule described in the agreements. It is for this reason that Respondent Nos. 1 and 2 did not make



the Appellant party to the agreement. This point finds strength from the fact that the Appellant in his written statement and in his statement recorded before the Trial Court contended that he had paid an amount of Rs.1,600,000/- as consideration for the disputed property to Respondent No.3, whereafter the property was transferred to him through the disputed mutation. The consideration amount mentioned in the agreements is the same as alleged by the Appellant in his written statement and in his statement recorded before the Court. It is the case of Respondent Nos. 1 and 2 that Respondent No.3 paid them an amount of Rs.100,000/- each and delivered the cheque for the remainder amount which was subsequently dishonoured. This fact further supports the contention of the Appellant that he had already paid the entirety of the consideration amount to Respondent No.3. Besides, the stance of the Appellant was neither challenged by Respondent Nos. 1 and 2 nor was it contested by Respondent No.3. Moreover, the Appellant was not party to the agreements, as such, is not bound by their terms and conditions. In such circumstances, the present Suit based on the agreements is not maintainable against the Appellant. In the cases of *Muhammad Naeem Khan*<sup>1</sup> and *Mian Allah Ditta*<sup>2</sup> relied upon by my learned colleague, it was held that where valuable rights of a *Pardanashin* lady were concerned, such person must have had the knowledge and free consent in relation to the transaction. The present case is distinguishable as Respondent Nos. 1 and 2 did not plead their unawareness about the transaction effected between Respondent No.3 and the Appellant, nor denied their consent regarding the said transaction. Rather, Respondent Nos. 1 and 2 in paragraph No. 4 of their plaint have pleaded that Respondent No.3 has alienated the property *vide* the disputed mutation in favour of the Appellant by violating the terms and conditions set forth in the said agreements. Perusal of the agreements would further reveal that no condition was attached to the transaction effected between Respondent No.3 and the Appellant. As has been discussed herein, that Respondent Nos. 1 and 2 not only had the knowledge regarding alienation of the disputed property by Respondent No.3 on their behalf but affirmed it as well and have made the disputed mutation the subject matter of the agreement without any objection. Therefore, the facts and circumstances of the cases relied upon by my learned colleague are different from the facts and circumstances of the case in hand.

7. It is also important to mention here that Respondent No.3 was proceeded against *ex parte* by the Trial Court and also did not appear before the High Court as well as this Court. Such non-appearance on behalf of Respondent No.3 suggests *mala*

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<sup>1</sup> PLD 2022 SC 99

<sup>2</sup> 2013 SCMR 868



*fide* on his part and his collusion with Respondent Nos. 1 and 2, as he was not only their authorised attorney, but also their nephew. It is a settled principle of law that an allegation of *fraud, cheating and collusiveness* raised by a person is required to be proved by him. Since Respondent Nos. 1 and 2 have raised such plea in relation to the disputed mutation, therefore, they were required to produce evidence in order to prove their allegations, but the record is indicative of the fact that they have failed to do the needful. Even otherwise, the mentioning of the number of the disputed mutation in the agreement dated 22.03.2007, without placing any objection, not only proves their knowledge, free will, and consent with regard to the transaction effected between the Appellant and Respondent No.3 in his capacity as an attorney, it negates their allegations as well. Since their Suit is based on the agreements in which the Appellant was not a party, at best, their claim could only have been to the extent of recovery of the outstanding amount from Respondent No.3. The contents of the plaint do not disclose any cause of action against the Appellant. Regardless of such fact, they have even failed to make out a case against the Appellant who is the *bona fide* purchaser. From the facts and circumstances of the case, it appears that the Suit has been filed by Respondent Nos. 1 and 2 in connivance with Respondent No.3 in a colourful manner to undo the lawful transaction and the subsequent mutation. The Trial Court as well as the Appellate Court have concurrently arrived at a correct conclusion by dismissing their Suit. The reasoning given by the learned Judge of the High Court is contrary to the record, therefore, the concurrent findings of fact of the Courts below have been wrongly reversed, hence, the impugned judgment and decree are not sustainable.

### **Conclusion**

Thus, in view of above, the appeal is allowed. The impugned judgment and decree of the High Court are set aside. The judgments and decrees of the Trial Court and the Appellate Court are upheld.

(Jamal Khan Mandokhail)

Judge

Islamabad

K.Anees/A. Cheema, LC



**ORDER OF THE BENCH**

By majority of two to one (Jamal Khan Mandokhail, J. dissenting), this Civil Appeal is dismissed.

**JUDGE**

**JUDGE**

**JUDGE**

Announced on 08.08.2023 at Islamabad.  
'Approved for Reporting'