

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Syed Hasan Azhar Rizvi
Mr. Justice Aqeel Ahmed Abbasi

Civil Petition No. 520-K of 2024

*(Against the judgment dated 02.05.2024 of
the High Court of Sindh at Karachi in IInd
Appeal No.179 of 2021)*

Syed Pervaiz Hussain and another

... Petitioners

Versus

Zikr-ur-Rehman and others

... Respondents

For the Petitioner: Mr. Badar Alam, ASC
Mrs. Abida Parveen Channar, AOR

For the Respondent: N.R.

Date of Hearing: 15.07.2024.

ORDER

AQEEL AHMED ABBASI, J.- The instant Civil Petition for leave to appeal has been filed against the impugned judgment dated 02.05.2024 and decree dated 10.05.2024 passed by the learned Single Judge of the High Court of Sindh in IInd Appeal No.179 of 2021 whereby the learned Single Judge has been pleased to dismiss the said appeal filed against the judgment dated 15.03.2021 and decree dated 19.03.2021 passed by the trial Court in Suit No.673 of 1996 (old Suit No.322 of 1983) (Re: *Fazalur Rehman versus Karachi Development Authority and others*) and the order in Civil Appeal No.104 of 2021 passed by the learned District Judge Karachi-Central vide judgment dated 02.08.2021 and Decree dated 09.08.2021 has been duly affirmed.

2. Briefly stated the facts of the case are that predecessor-in-interest of respondents No.1 to 10, namely, Fazal-ur-Rehman had instituted a Suit bearing No.322 of 1983 before the High Court in respect of subject property, which later on was transferred to learned trial Court on account of change in pecuniary jurisdiction and the said suit was accordingly renumbered as Suit No.673 of 1996 (subject suit). In the suit it was claimed by the predecessor-in-interest of Respondents No.1 to 10 that he had filed an application dated 02.10.1955 for allotment of occupancy right in respect of subject plot, which, after payment of all dues, and completion of other codal formalities, was allotted in his favour vide allotment order dated 28.06.1960 and thereafter, formal registered lease alongwith site plan was also issued in his favour at Sr. No.2286, pages 123 to 126 volume 309 of Book No.1 additional by the office of Sub-Registrar Camp Liaquatabad Karachi on 26.06.1966 whereafter building plan for construction of house was also approved by the concerned authority vide letter dated 28.04.1967. However, due to shortage of funds he could not construct the house thereon; whereas, on 02.11.1982 he came to know from KDA office that subject plot had been sold to someone on the basis of alleged power of attorney, consequently, he moved an application to KDA and other concerned authorities for correction in record, wherefrom, he was informed that it is a civil matter and could only be adjudicated by a Civil Court. Finally, as stated above, he preferred suit before the High Court, which was later on transferred to trial Court on account of change in pecuniary jurisdiction, where the said suit was decreed on merit vide

judgment dated 02.08.2021 and decree dated 09.08.2021. Civil Appeal No.104 of 2021 was filed thereagainst by the appellants before the learned District Judge, Central, Karachi which was dismissed vide judgment dated 02.08.2021. Petitioners assailed the judgment in appeal by filing IInd Appeal No.179 of 2021 before learned Single Judge of the High Court, however, through impugned judgment dated 02.05.2024, both the orders of two Courts have been upheld and the IInd Appeal has also been dismissed and, hence instant CPLA has been filed to set aside the impugned judgment as well as the judgment and decree passed in the suit and 1st appeal.

3. Learned counsel for the petitioners was confronted to point out any factual error or legal infirmity in the concurrent findings of facts and law of the two Courts below and the learned Single Judge of the High Court, which could justify filing of instant civil petition for leave to appeal. In response to such query learned counsel for the petitioners has mainly argued that the Courts below have erred in law and fact while discarding the documentary evidence produced by the petitioners in support of their claim, particularly, the execution of power-of-attorney which was duly Notarized, therefore, there was legal presumption as to the execution of such power-of-attorney in terms of Article 95 of the Qanun-e-Shahadat Order, 1984, according to which *“the Court shall presume that every document purporting to be a power-of-attorney, and to have been executed before, and authenticated by, a Notary Public, or any Court, Judge, Magistrate, Pakistani Consul or Vice-Consul, or representative of the Federal*

Government, was so executed and authenticated". However, according to the learned counsel, this aspect of the matter has been ignored by all the three Courts. Whereas, reliance has been placed on the minority decision in the case of Dr. Muhammad Javed Shafi v. Syed Rashid Arshad and others (**PLD 2015 SC 212**), regarding onus of proof of execution of power-of-attorney, authenticated by Notary Public. Per learned counsel, reliance has also been placed on alleged report of handwriting expert of police department dated 06.04.2006 according to which the specimen signatures of the plaintiff in the suit, namely, Fazal-ur-Rehman were obtained in the year 2006 who, as per record, died on 10.07.1992. It has been further argued by the learned counsel for the petitioners that the predecessor-in-interest of the petitioners being *bona fide* purchaser had acquired right and title in the subject property on the basis of registered conveyance deed. According to learned counsel, the burden of proof of non-execution of power-of-attorney would be on the person who asserts the same as forged which burden could not be discharged by the respondents, therefore, all the Courts below have erred in law and fact while decreeing the suit of predecessor-in-interest of Respondents No.1 to 10, while cancelling the registered conveyance deed dated 15.01.1980 in favour of Abida Begum (deceased defendant No.4 and the mother of petitioners) in respect of subject plot i.e. A-321 (measuring 200 sq. yards), Block-N, North Nazimabad, KDA, Scheme No.2, Karachi. In support of his contentions, learned counsel for the petitioner has also placed reliance on the cases of Allah Bakhsh and others v.

Bakhsha and others (2003 SCMR 1011) and Syed Khursheed Ali Jaffery v. Jamiluddin Siddiqui (1993 CLC 2511).

4. We have heard the learned counsel for the petitioners, perused the record and the case law relied upon by the learned counsel in support of his contention.

5. The impugned judgment of the High Court as well as the order of the 1st Appellate Court and the judgment and decree of the trial Court reflect that the learned trial Court and the Appellate Court, after detailed scrutiny and examination of the evidence, produced by the parties, and while framing the requisite issues, have reached to the conclusion that pursuant to the application filed on 02.10.1955 for allotment of occupancy right in a plot of land in KDA Scheme No.2, North Nazimabad, Karachi which was registered at serial No.4997, receipt No.5802 on 08.10.1995, a residential plot No.A-321 (measuring 200 sq. yards) in Town Expansion Scheme No.2 in North Nazimabad was allotted by ballot in favour of predecessor-in-interest of respondents No.1 to 10 namely, Fazalur Rehman. However, the dispute arose when the subject property was got transferred in favour of the predecessor-in-interest of the petitioners, namely, Abida Begum on the basis of general power-of-attorney dated 19.02.1977 in favour of Respondent No.12-Muhammad Shafi, who according to learned counsel for the petitioners, on the basis of said irrecoverable general power-of-attorney, executed sub-general power-of-attorney in favour of Respondent No.13, namely, Agha Ahmed from whom Mst. Abida Begum, defendant No.4, had purchased the subject plot on payment of sale

consideration and such conveyance deed was registered in her favour on 15.01.1980. Whereas the predecessor-in-interest of respondents No. 1 to 10/plaintiff in the suit had challenged the said conveyance deed on the ground that he had not executed any general power-of-attorney in favour of Muhammad Shafi (respondent No.12) as such any sub-general power of attorney has no value in the eyes of law.

6. It is pertinent to note that admittedly, the basic document i.e. general power-of-attorney dated 19.02.1977 allegedly executed by predecessor-in-interest of respondents No.1 to 10, namely, Fazal-ur-Rehman in favour of Muhammad Shafi has neither been registered nor the said document could be proved in terms of Article 79 of the Qanun-e-Shahadat Order, 1984 which provides that *if a document is required by law to be attested, it shall not be used as evidence until two attesting witnesses at least, have been called for the purpose of proving its execution, if there be two attesting witnesses alive and subject to the process of the Court and capable of giving evidence.* The petitioners could not produce the Notary Public or the attesting witnesses of the alleged power-of-attorney, the execution of which has been expressly denied by the predecessor-in-interest of respondents No.1 to 10 nor even examined the respondents No. 12 and 13 (alleged attorney and sub-attorney), therefore, presumption as to authenticity of the same in terms of Article 95 of the Qanun-e-Shahdat Order, 1984 as argued by the learned counsel for the petitioners is not attracted in the instant case. It is also pertinent to observe that any tangible immovable property

of the value of one hundred rupees and upwards, cannot be transferred except through a registered document in terms of Section 54 of the Transfer of Property Act, 1882, whereas as per Registration Act, 1908 the documents of which registration is compulsory include (a) *instrument of gift of immovable property*; and (b) *other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of the value of one hundred rupees and upwards, to or in immovable property*. In the case in hand, there is no registered power-of-attorney, therefore, presumption of correctness can not be attached in terms of Section 49 of the Registration Act, 1908.

7. The learned counsel for the petitioners was confronted to assist the Court as to whether in the absence of any registered document, whose registration was compulsory, any immovable property can be transferred on the basis of purported unregistered general power-of-attorney, which otherwise has not been produced or exhibited in terms of Article 79 of the Qanun-e-Shahadat Order, 1984, as neither the alleged attorney/sub attorney or the Notary Public and the attesting witnesses of such alleged general power-of-attorney were produced by the predecessor-in-interest of the petitioners, the learned counsel for the petitioner could not submit any response nor could deny the factual and legal position as discussed hereinabove. Since the basic document that is the alleged general power-of-attorney dated 19.02.1977 was not registered and has been held to be a forged document by the three Courts below

through concurrent findings recorded to this effect, therefore, the burden was shifted upon the beneficiary of such alleged power of attorney, which could not be discharged by predecessor-in-interest of the petitioners. The petitioners could not make out a case requiring this Court to disturb the aforesaid factual and legal position of three Courts below, whereas the reliance placed by the learned counsel for the petitioners on the aforesaid judgments is also misconceived. Admittedly, petitioners are not in possession of original allotment and lease in respect of subject plot, therefore, could not establish their claim on the basis of subsequent power of attorney nor could produce the chain of title documents, including the basic allotment and lease in favour of predecessor-in-interest of respondents No.1 to 10 namely, Fazalur Rehman. Since the basic document i.e. alleged general power-of-attorney dated 19.02.1977 has been declared to be of no legal value, therefore, any subsequent document, execution of conveyance or sale deed is also of no legal effect.

8. Accordingly, we do not find any substance in the instant petition which, for the reasons to be recorded later separately, was dismissed vide short order dated 15.07.2024 and these are the reasons for our short order of even date. At this juncture, learned counsel for the petitioners had prayed that sometime may be granted to the petitioners to vacate the subject premises, as the executing Court is proceeding with the execution and will issue writ of possession against the petitioners. Such request of the learned counsel for the petitioners was acceded to and accordingly, 90 days' time was

granted to the petitioners to handover the vacant peaceful possession to respondents No.1 to 10 (legal heirs of Fazalur Rehman) vide short order in the following terms:-

“We have heard the learned counsel for the petitioners. For the reasons to be recorded separately, this petition is dismissed with a direction to the petitioners to vacate the premises in question within a period of 90 days and handover the vacant peaceful possession to respondents No.1 – 10 (*legal heirs of Fazal-ur-Rehman, plaintiff*).”

9. Above petition for leave to appeal is dismissed in the above terms.

Judge

Judge

Karachi:

15.07.2024.

‘Approved for Reporting’

(Zubair)