

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

**Present**

Mr. Justice Yahya Afridi  
Mr. Justice Amin-ud-Din Khan  
Mrs. Justice Ayesha A. Malik

(A/R)

**Civil Petition No.3877/2023**

Against the judgment dated  
25.09.2023 passed by the  
Peshawar High Court, Peshawar in  
C.R.No.1153-P of 2019.

Shah Madar Khan

..Petitioner

**Versus**

Tariq Daud and others

Respondents

For the petitioner:

Mr.Afnan Karim Kundi, ASC.  
Syed Rifaqat Hussain Shah,  
AOR.

For the respondents:

Mr. Jahanzeb Mahsud, ASC for  
respondent No. 1.  
Mr. Naseer ud Din, ASC via video  
link from Peshawar on behalf of  
respondent Nos. 2-5.  
Nemo for respondent No. 6.

Date of Hearing:

09 May 2024

**ORDER**

**Amin-ud-Din Khan, J.** Through this petition filed under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973 leave has been sought against the judgment dated 25.09.2023 whereby Civil Revision No.1153-P of 2019 filed by the petitioner was dismissed.

2. A notice was issued to the other side by this Court. We have heard the learned counsel for available contesting parties and gone through the record with their able assistance.

3. A suit was filed by respondent No.1/plaintiff for declaration that he be declared owner of the suit plot fully described in the head-note of the plaint. As per pleadings in the plaint, plaintiff never appointed

defendants as his attorney nor he transferred the suit property in their favour through any document. The alleged transfer of property in favour of defendants is wrong, without authority, forged, fictitious and due to conspiracy of the defendants. Initially the suit was filed against defendant Nos. 1 & 2. After filing of written statement by the defendants of the suit, defendant No. 3 was also impleaded stating that through the documents attached with the written statement plaintiff came to know that property was transferred in favour of defendant No. 3, who transferred in favour of other defendants. The suit was contested. The learned trial court framed the issues and invited the parties to produce their respective evidence. Both the parties produced their oral as well as documentary evidence. Learned trial court was pleased to dismiss the suit vide judgment and decree dated 12.11.2013. The appeal was preferred by the plaintiff/respondent No.1 against the judgment and decree of dismissal of his suit. The learned first appellate court was pleased to accept the appeal vide judgment and decree dated 9.10.2019 and decreed the suit. The learned High Court also agreed with the findings recorded by the learned first appellate court and dismissed the civil revision.

4. Learned counsel for the petitioner argues that the learned revisional court has wrongly relied upon the judgment of this Court which is absolutely not applicable to the facts of the case in hand and therefore, the learned revisional court reached to a wrong conclusion. States that initially defendant No.3 was not impleaded, in whose favour attorney of the plaintiff transferred the plot, from whom petitioner/defendant No.1 purchased the said plot. After the said purchase, a house was constructed and during that period no objection was raised by the plaintiff and after completion of his house dishonestly the suit was filed.

5. Learned counsel for respondent No. 1 supported the judgment passed by the appellate court as well as revisional court whereas learned counsel for respondent Nos. 2 to 5 has supported the arguments advanced by the learned counsel for the petitioner and supported the judgment passed by the trial court.

6. Despite the fact that as per pleadings of the plaintiff himself after examining the documents in the office of City Development and Municipal Department, he came to know about the power of attorney and the transfer documents. He did not implead defendant No. 3 as the series of the facts suggest that defendant No. 2 was attorney of the plaintiff-respondent and he transferred the suit plot in favour of defendant No. 3 through registered Sale Deed and thereafter, defendant No. 1 purchased the said plot from defendant No. 3. Plaintiff has not specifically challenged any of the above said documents. He has generally denied the appointment of the attorney and further execution of sale deeds by his attorney. For challenging a document we are clear in our mind that there must be specific pleadings. In the instant case as the plaintiff has stated that he never appointed anyone as his attorney, meaning thereby that he is denying whole of the document i.e. power of attorney on his behalf in favour of defendant No. 2 which includes that he never signed or thumb marked the document, he never appeared before the Registrar for registration of the said document. In that eventuality his case is that no such registered document exists on his behalf in the registration book kept under the Registration Act whereas we have noticed that as PW-1 a Record Keeper from Sub-Registrar office i.e. Registry Moharrir was produced by the plaintiff-respondent himself who brought the record of registration of document No.1984 dated 28.4.2007 a power of attorney by plaintiff in favour of defendant No.2 and a true and correct copy of said document got exhibited as



Exh.PW1/1. This witness was cross-examined by the learned counsel for defendant No.1 to 3 and in the cross-examination he has stated that it contains the signatures of executor of document as well as witnesses which are correct and further stated that one of the witnesses is Rizwan Dawood whose father's name is Dawood Khan. Further stated that nothing of the sort that power of attorney was subsequently cancelled or any application was moved for cancellation of the same had been produced before the Court.

7. When questioned to the learned counsel for plaintiff/respondent No.1 that when the said witness was produced by the plaintiff himself and he got exhibited the Photostat copy of the said document as Exh.PW-1/1 being a registered document when original record was also before the Court, the presumptions attached to the said document were fully attached to the said document and further that when the plaintiff himself got exhibited the copy of the registered power of attorney as Exh.PW-1/1 and further that when the learned counsel for defendant Nos.1 to 3 cross-examined the said witness and no objection was raised by the plaintiff upon cross-examination of the said witness and further no request was made by the learned counsel for the plaintiff to permit him to cross-examine the witness, refers Article 134 of the Qanun-e-Shahadat Order, 1984 that the person who produced the record cannot be cross-examined. We are afraid that in the instant case the plaintiff has produced this witness as to produce the record as well as got exhibited in his statement copy of the said power of attorney as Exh.PW-1/1 and further not raised any objection that learned counsel for respondent Nos.1 to 3 cross-examined the said witness. It is admitted that the document, power of attorney which was challenged through the suit, the record of registration was got summoned by the plaintiff himself and the copy thereof was got exhibited as Exh.PW-1/1

by the plaintiff himself. In these circumstances, one of the witnesses who is real brother of the plaintiff, non-production of the said witness is not defective in the light of Article 79 of the Qanun-e-Shahadat Order, 1984.

8. In the instant case we are clear in our mind that plaintiff-respondent who has not specifically challenged the execution and registration of power of attorney in his pleadings when his case is that he has seen said document in the office of City Development and Municipal Department, further he himself produced the copy of said document as Exh.PW-1/1 and failed to discharge initial onus of negation of the registration of the document, it was very easy and simple for the plaintiff to get his signatures and thumb impression upon the impugned document compared with his sample signatures and thumb impressions but he has not opted to initiate this legal process. In these circumstances, when plaintiff failed to discharge initial onus, no question of shifting of onus upon the vendee/defendant or Attorney who has fully supported that he being validly constituted attorney of the plaintiff, sold the plot to defendant No. 3 who was initially not made party to the suit and was subsequently made party and further defendant No. 3 sold the plot to defendant No. 1 the petitioner before this Court. When plaintiff-respondent failed to prove that he did not appoint defendant No. 2 as his general attorney and failed to rebut the presumptions attached with the document Exh.PW1/1 rather he himself proved the existence of registered power of attorney by him in favour of defendant No. 2, no question of any illegality in the transfer of the suit plot by his attorney in favour of defendant No.3 and then transfer of suit plot through another registered sale deed in favour of defendant No.1/the petitioner arises. Plaintiff failed to plead and produce evidence that why he has not raised any

objection with regard to construction of house by the petitioner/defendant No.1 upon the suit plot.

9. We are further of the view that when registered power of attorney by plaintiff in favour of defendant No. 2 proved, plaintiff was if at all having the right to challenge the suit document through filing a suit for cancellation of document under section 39 of the Specific Relief Act, 1877 and not a suit for declaration filed under section 42 of the Act.

10. In these circumstances, the findings recorded by the learned trial court dismissing the suit are in accordance with the record. Resultantly, we allow this petition, convert it into an appeal and accept the same while setting aside the judgment and decree of the learned revisional court as well as first appellate court and that of learned trial court dismissing the suit will hold the field.

Islamabad

09 May 2024.

Mazhar Javed Bhatti

**APPROVED FOR REPORTING.**

21/5/24