

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

**PRESENT**

Mr. Justice Maqbool Baqar

Mr. Justice Munib Akhtar

Mr. Justice Qazi Muhammad Amin Khan

(A/R)

**CIVIL APPEAL NO. 221/2018**

(Against the judgment dated 28.11.2017 of  
the Lahore High Court, Multan Bench passed  
in RSA No. 8/1998)

***Haq Nawaz etc.***

*Appellant(s)*

*Versus*

***Banaras etc.***

*Respondent(s)*

For the Appellant(s) : Moulvi Anwar-ul-Haq, ASC

Respondent Nos.1-7 Ex-Parte

For Respondent No.8-10 : Mr. Anwar Mobin Ansari, ASC

Date of Hearing : 15.09.2021

**ORDER**

**Maqbool Baqar, J.** Assailed through the above appeal was the judgment of the Lahore High Court, whereby the respondent No.8 to 10's regular second appeal against the concurrent Judgments of the fora below was allowed.

2. The dispute mainly was with regard to the sale of the land owned by Mst. Channan Jan, the predecessor in interest of respondents No.1 to 7. The impugned sale was affected by Ghulam Rasool, the predecessor in interest of appellants No.1 and 2, who on 14.10.1974, as attorney of Mst. Channan Jan, transferred the land in favour of his sons, the appellants Nos.1 and 2, through oral sale mutation No. 61.

3. The mutation, upon being challenged by Mst. Channan Jan, was cancelled by the concerned Assistant Commissioner/Collector on 30.4.1975. The appeal filed by the

appellants No.1 and 2 against the said cancellation was dismissed by the concerned Additional Commissioner on 25.10.1975. However instead of pursuing the matter before the revenue hierarchy any further, the appellants No.1 and 2 on 30.10.1975 filed a suit, seeking to be declared owners of the suit land on the basis of the aforesaid oral sale mutation, though the same, as noted above, had already been cancelled. The said appellants however in the alternative sought a decree for specific performance of an agreement to sell dated 02.9.1974. They claimed that in transferring the suit land in their favour, Ghulam Rasool, who was their father, and a tenant of Mst. Channan Jan, in respect of the suit land, acted under and in terms of a General Power of Attorney executed and registered by Mst. Channan Jan in his favour on 17.2.1973. According to said appellants, Ghulam Rasool had on 02.9.1974 entered into an agreement to sell the suit land with Mst. Channa Jan for a sale consideration of RS.40,000/-.

4. It is an admitted fact that Mst. Channan Jan was an old illiterate village dweller, with ill health. The lady was not able to even move on her own, and had been carried to the Registrar's office for the execution of the power of attorney by someone. Ghulam Rasool, the purported attorney, while deposing before the trial Court, also has not denied the suggestion that she was a parda nashin lady. It was not even pleaded that she received any independent advice and/or that contents of the power of attorney were read over and explained to her before she executed it.

5. Mst. Channan Jan's stance throughout has been that she appointed Ghulam Rasool, who was her tenant in occupation, as her attorney, merely to manage the affairs of her land and for nothing more, and therefore, given the status of the lady, it was

imperative for the appellants No.1 and 2 to have demonstrated and proved that at the time of the execution of the power of attorney, she was fully conscious of the fact that the document also contained power to sell and that the entire document was read out and explained to her fully and truly, and further that she executed it under an independent advice. They had also to prove that the lady was fully aware and conscious of the consequences and implications of executing the said document. However neither did they prove, nor even pleaded any of it. It therefore cannot be held that Ghulam Rasool, was in fact authorized by Mst. Channan Jan to sell the suit land. The impugned sale/transfer was thus liable to be set-aside on this ground alone. In any view of the matter, since admittedly, the power of attorney did not specifically authorized Ghulam Rasool, to convey the property to his sons, or for that matter to any of his near ones, nor has he been able to prove that, he was otherwise so authorized. The impugned sale mutation was liable to be cancelled as rightly done by the revenue hierarchy. Since long it is well established that an attorney cannot lawfully make transfer of a property under agency in his own name, or for his benefit, or in favour of his associates, without explicit consent of the principal, and in the event he does so, the principal, under the mandate of section 215 of the Contract Act, has a right to repudiate such transaction. Mst. Channan Jan having disowned the subject transaction, the same was rightly annulled as noted above.

6. In any case the power of attorney, of whatever worth it was having admittedly been revoked by Mst. Channan Jan through revocation deed dated 05.9.1974, and thus on 14.10.1974, the date on which Ghulam Rasool purportedly transferred the suit land, he no more remained attorney of the lady, and stood denuded of

whatever power he purportedly enjoyed thereunder. The transfer of the suit land by Ghulam Rasool was without authority and was of no legal effect.

7. Although as noted above, the appellants No.1 and 2's case as initially presented before the trial Court, through their plaint dated 30.10.1975, simply was that their father, being attorney of Mst. Channan Jan, on 02.9.1974, entered into an agreement to sell the suit land with them and thereafter transferred the lands in their favour through mutation No.61 attested on 14.10.1974. There was absolutely no mention of any sale agreement between their father Ghulam Rasool and the lady. The plaint was thereafter amended twice firstly on 04.3.1981 and then on 21.2.1985, however still there was no mention of any sale between the lady and Ghulam Rasool. It was only through third amended plaint filed on 03.1.1987, that the said appellants introduced a new story claiming that Mst. Channan Jan had in fact orally agreed to sell the land to Ghulam Rasool for an amount of Rs.40,000/- and it was upon payment of the said sale consideration amount that she executed the general power of attorney dated 17.2.1973 in favour of Ghulam Rasool, to enable him to pay the outstanding dues in respect of the suit land so that proprietary rights therein may be conferred on her, and the land may then be transferred accordingly. The story as can be seen from the forgoing was so introduced, by the appellants No.1 and 2 to enable them to plead that since the power of attorney was coupled with interest the same could not have been lawfully revoked. However in the first place the appellants No.1 and 2 could not have been allowed to set up and plead a case different from what they initially narrated and pleaded, secondly, this subsequent plea even otherwise did not inspire confidence, it was merely a vague assertion,

bereft of necessary details. The said appellants did not even mentioned as to when, where and in whose presence the land was orally sold to Ghulam Rasool as claimed by them. The alleged purchase by Ghulam Rasool and the claim that the power of attorney was executed for consideration also does not find support even from the written statement filed by Ghulam Rasool in the case. Ghulam Rasool has through his written statement which he filed on 03.2.1976 simply conceded the claim of the appellants No.1 and 2 as set out in their original plaint dated 30.10.1975, which plaint, as noted earlier, made no mention of any sale in favour of Ghulam Rasool or of any payment by him to Mst. Channan Jan as a consideration therefor. Ghulam Rasool in his evidence recorded at an earlier stage of the trial as PW-4, simply deposed that Mst. Channan Jan had appointed him as her attorney, and as such he sold the suit land to the appellants No.1 and 2. However subsequently, after the above amendment in the plaint, when Ghulam Rasool was examined as PW-7, he claimed to have purchased the property himself and having himself paid the agreed sale consideration of RS.40,000/- to Mst, Channan Jan in presence of witnesses Allah Wasaya (PW-5) and Allah Dawaya (PW-6), as well as of the son and daughter of Mst. Channan Jan, namely, Banaras and Khadija, the respondent No.1 and 5 respectively, but he still failed to mention the date and venue of the purported transaction. Although the said two witnesses who were cousin brothers of Ghulam Rasool, were examined by the appellants No.1&2, however their evidence failed to lend any credence to the appellants' stance, as they contradicted each other in material details.

8. The appellants No.1 and 2 have thus miserably failed to establish that the suit land was sold by Mst. Channan Jan to Ghulam

Rasool and/or that the power of attorney was executed in consideration of the price of land paid by Ghulam Rasool and/or that the same was otherwise coupled with interest. The power of attorney also does not say so. No strings were therefore attached to the power of attorney that preventing Mst. Channan Jan from revoking it before Ghulam Rasool acted thereunder, which she did, before the purported oral sale mutation in favour of the appellants No.1 and 2 was recorded. The said mutation was therefore wholly without authority, illegal and ineffective and therefore was rightly cancelled.

9. As regards the agreement to sell dated 02.9.1974, it may be noted, that despite the fact that Mst. Channan Jan had denied entering into any agreement with/or selling her suit land to Ghulam Rasool, and further that neither the relevant roznamcha rupt, nor the purported sale mutation, makes mention of any written agreement. However, and despite the fact that the stamp paper does not bear the name of Ghulam Rasool, and was rather purchased in the name of someone else. Neither the purchaser was produced nor was the vendor of the stamp paper examined, or was the relevant register of the stamp vendor summoned, and more crucially the witnesses examined in respect of the said agreement did not mention the date thereof. The above gives credence to the respondents' stance that the agreement was manipulated subsequently in order to defeat the consequences of the cancellation of power of attorney and is therefore of no avail to the appellants.

10. So far as the contention of the appellants that sale of the suit property in favour of respondent No.8 to 10 is hit by doctrine of lis pendens, as envisaged by the provision of section 52 of the Transfer

of Property Act, 1882 which provides that a suit land cannot be transferred by any party to the suit, so as to effect the rights of the other party thereto, under ~~the~~ any decree or the order which may be made in the suit. As noted above, the said restriction is subject to the outcome of the suit, thus the fate of such sale/transfer depends upon the outcome of the suit. Whereas in the present case, since purportedly sale in favour of the appellants No.1 and 2 has been held to be illegal and without authority, they have no locus standi to object to the sale of the land in favour of respondents No.8 to 10. The appeal is dismissed.

Islamabad, the  
**15<sup>th</sup> September, 2021**  
(Aamir Sh.)r

**'APPROVED FOR REPORTING'**