

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL
MR. JUSTICE JAMAL KHAN MANDOKHAIL

Civil Petition No.1998 of 2018

(Against the judgment of the Lahore High Court,
Lahore dated 22.03.2018 passed in Civil
Revision No.15075/04 of 2017)

Syed Atif Raza Shah

Versus

.....Petitioner(s)

Syed Fida Hussain Shah & another

.....Respondent(s)

For the Petitioner:

Mr. Mudassar Khalid Abbasi, ASC
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s):

N.R.

Date of hearing:

02.03.2022

JUDGMENT

Jamal Khan Mandokhail, J. – The petitioner filed a suit for possession through partition before the Civil Judge 1st Class, Kharian, whereas, the respondent No.1 filed a suit for declaration and permanent injunction by questioning the sale mutation bearing No. 7280 attested on 04.09.2012, effected in favour of the petitioner. The suit of respondent No.1 was decreed, whereas the suit filed by the petitioner was dismissed through a consolidated judgment and decree dated 27.04.2016, as the subject matter of both the suits was the same. The petitioner filed an appeal, which was dismissed by the Additional District Judge, Kharian, vide judgment and decree dated 31.01.2017. Feeling aggrieved, he filed a Civil Revision before the Lahore High Court, Lahore which was dismissed in *limine* through the impugned order dated 22.03.2018, hence this petition. It is a case of the respondent No.1 that he was living abroad, therefore, the respondent No.2 was appointed as his attorney to look after his property in his absence. According to the respondent No.1, the respondent No.2 by

misusing his authority, transferred the property in question in the name of his son the petitioner, without his consent and knowledge, which is an illegality. It is further contended that the respondent No.2 was verbally asked that he was going to revoke the power of attorney in his favour, so he may not use the same any more, but prior to proper revocation, the respondent No.2 fraudulently got attested a sale mutation in the name of petitioner, his son.

2. Heard the learned counsel for the petitioner and perused the record. Power of attorney is an instrument in writing, conferring authority or power by a principal to his agent to do certain acts in a specific and limited manner. The relation that an agent and a principal share, is a fiduciary one. Under agency, the agent must act in a way that is advantageous and beneficial to the principal and to safeguard his right and interest. The right of a principal is protected by Section 215 of the Contract Act, which is as under:

"215. Right of principal when agent deals, on his own account, in business of agency without principal's consent, without first obtaining the consent of his principal and acquainting him with all material circumstances which have come to his own knowledge on the subject, the principal may repudiate the transaction, if the case shows either that any material fact has been dishonestly concealed from him by the agent, or that the dealings of the agent have been disadvantageous to him.

Illustrations

(a) A directs B to sell A's estate. B buys the estate for himself in the name of C, A, on discovering that B has bought the estate for himself, may repudiate the sale, if he can show that B has dishonestly concealed any material fact, or that the sale has been disadvantageous to him

(b)"

3. An agency basically is divided into three essential components; principal, agent and third party. Under an agency, an agent has a pivotal role, as he represents the principal or conducts business on his behalf. While dealing or entering into a transaction in respect of the subject matter of a power of attorney, the duties that an agent has, to use much due skill and due diligence as he can; to communicate with the principal and to obtain his instructions at every stage of the transaction; and to avoid conflict of interest between his duty and interest of the principal. Two conditions are annexed to the right of a principal to repudiate the transaction, where the circumstances mentioned in the above-referred section along with the illustration "a" exist. They are (i) dishonest concealment of material facts; and (ii) dealing being disadvantageous to the principal's right and interest. Thus, an agent, while dealing with the third party on his own account in regard to a subject matter, to which he is employed, is subjected to a duty to deal fairly with the principal and to communicate him all the material facts in connection with the transaction, unless the principal manifests that he knows such facts, or that he does not care to know them. The next duty of the agent is to avoid conflict of interest, between his duty and the interest of the principal. Trust is since an essential element of an agency, therefore, under no circumstances, should the agent put himself before the interest of the principal. If a circumstance arises, wherein there is a conflict of interest, that is arising in the transaction, it is the duty of the agent to disclose any understanding that would incur him a gain, from any transaction that is conducted with a third party. If the agent fails to do any of the duties, resulting into either dishonest concealment of any material fact from the principal or the dealing is disadvantageous to him, the principal has the right to repudiate the transaction, that occurred between the third party and the agent, and the Courts can rescind the outcome of the transaction.

4. In the case in hand, the respondent No.2 by exercising the authority conferred upon him, has transferred the property in question by way of a purported gift deed, in the name of his son (the petitioner), without first disclosing all the material facts and getting permission or consent of the respondent No.1. The mutation of the property was effected in the name

of the petitioner on 04.09.2012, whereas, the respondent No.1/principal had revoked the power of attorney on 05.09.2012, which shows that the respondent No.1 was no more willing the petitioner to remain his agent. There is no evidence to prove that before entering into the transaction, the respondent No.2 ever informed the respondent No.1 in this behalf. Since there was dishonest concealment of material facts, therefore, it resulted into a conflict of interest, as such, the dealing was disadvantageous to the right and interest of the respondent No.1. Under such circumstances, the transfer of the property by the respondent No.2 in the name of his son is a classic example of misconduct and misuse of authority by an agent. Reliance has been placed in the cases reported as Muhammad Yasin and another vs. Dost Muhammad thr. LRs and another (PLD 2002 SC 71) and Ahmad and others vs. Salman Ali (PLD 2003 SC 31). The learned High Court has rightly upheld the concurrent findings of facts arrived at by the Courts below, whereby, the transaction in respect of the plot in question effected between the respondent No.2 and his son (the petitioner) has been repudiated at the request of the respondent No.1. The learned counsel for the petitioner has failed to point out any illegality or irregularity in the impugned judgment of the learned High Court, warranting interference in the concurrent findings of facts.

Thus, in view of above, the petition is dismissed and leave to appeal is refused.

Islamabad,
02.03.2022

APPROVED FOR REPORTING

K.Anees²