

**Civil Revision Application No.178 of 2011**

Present: Mr. Justice Nazar Akbar

2. Brief facts from the plaint of **suit No.397/2003** are that the applicant / plaintiff, Safwan Polani, claimed that he has purchased property bearing; Flat No.301, 3<sup>rd</sup> Floor, S. No.19, Sheet No.LY-10, Al-Madani House Moosa Lane, Lyari Quarters Karachi, (the demised premises) from the Respondent Mst. Fehmida Bai through her attorney Muhammad Amin Edhi by a registered sale deed. Respondent the said Mst. Fehmida Bai, later on handed over title documents with assurance to hand over possession within one week of execution/registration of said sale deed, but she failed to deliver the possession of suit

flat till filing of the suit when two months have already passed from the date of execution of sale deed. Several requests made to the respondent but she has not delivered possession of the demise premises. Legal notice was also served upon the respondent but the said notice was not replied by the respondent, therefore, applicant filed suit for declaration, possession and mesne profits with the following prayer:-

- a. Declaration that the plaintiff is the exclusive owner of the above mentioned suit property.*
- b. Direction for dispossession/ejectment of the defendant and any one claiming under or through her from the said suit property and for putting the plaintiff in vacant possession thereof.*
- c. To grant permanent injunction restraining thereby to defendant from selling or delivery of the possession of suit property to any other person.*
- d. To award amount of mesne profit Rs.10,000/- at the rate of Rs.5000/- per month for the period of two months from December, 2002 to January 2003, to the plaintiff against the defendant on account of her illegal and unauthorized possession of the plaintiff's suit property for the said period and also award further mesne profit of of onward period till recovery of the possession of the suit property by the plaintiff from the defendant and any one claiming under or through her.*
- e. Award cost of the suit alongwith any other relief which this Hon'ble Court deem fit and necessary in the circumstances of the case.*

3. On service of summons/notices the respondent Mst. Fehmida Bai filed her written statement and she denied the claim of the applicant being genuine and reasonable. According to the respondent she is absolute owner of the demised premises whereas the applicant is running business of money changer her son Shakeel Ayub, was employed in his business

since early 2002 at monthly salary of Rs.4500/-. She further averred the applicant leveled false allegation of misappropriation of cash amounting to Rs.20,17,477/- against Shakeel Ayub and the plaintiff threatened to involve her son in Cr. Cases unless he extend all co-operation to the plaintiff to find out actual culprits. The plaintiff has assured that her son has not misappropriated a single penny despite that she provided him such security / surety till finding of actual culprits. She executed power of attorney under coercion in favour of Muhammad Amin Edhi, an accountant in the office of applicant, in respect of her house as security till tracing the actual culprit. The respondent further stated that she was assured by the plaintiff and Muhammad Amn Edhi that they will not to transfer the flat till tracing the actual culprit and Muhammad Amin, accountant of plaintiff completes scrutiny of accounts. She continuously requested them to hand over / return the power of attorney and copy of lease deed but asked her to wait for some time till finalization of account. She submitted that only one legal notice was sent by the plaintiff to her son which was duly replied. The receipt of **Rs.2,00,000/-** dated **11.07.2002** annexed with the sale deed is forged one and managed by the applicant in collusion with Muhammad Amin Edhi. It does not bear her signature and Sale agreement dated **11.07.2002** is also forged and does not bear her signature. The applicant in collusion with Muhammad Amin Edhi his accountant has sold out the subject flat without her consent and sole consideration was never paid by them.

4. The respondent on the same facts which she asserted in her written statement also filed a civil suit bearing **Suit No.956/2003** for declaration and cancellation of power of attorney and sale deed dated 21.11.2002 and permanent injunction against the plaintiff in suit No.397/2003. She also impleaded Muhammad Amin, her alleged attorney. In her suit she prayed for the following relief(s):-

*a). To declare that power of Attorney dated 12<sup>th</sup> July 2002 was obtained by defendants from the plaintiff in respect of subject flat No.301, 3<sup>rd</sup> floor under pressure and coercion as such void and liable to be cancelled.*

*b). That it be declared that Sale Deed dated 21.11.2002 executed by defendant No.2 in favour of defendant No.1 is out come of fraud and collusion void ab-initio and liable to be cancelled.*

*c). To grant permanent injunction against defendant No.1 restraining him from alienating, transferring, Leasing, Mortgaging the subject flat.*

*d). Cost of the suit may be awarded.*

The defendant/plaintiff of suit No.397/2003 and his accountant the other defendant filed their written statement and repeated the facts from plaint in suit No.397/2003 as their defence in Suit No. 956/2003.

5. Both the suits were consolidated and **Suit No.397/2003** filed by the applicant was leading suit. The trial Court from the pleadings of the parties settled the following consolidated issues on **30.7.2004**.

*i. Whether the son of the defendant Mst. Fehmida Bai has misappropriated the amount of Rs.2,00,000/- from the company of plaintiff during the course of employment as cashier?*

- ii. *Whether the defendant against the amount of Rs.2,00,000/- mis-appropriated by her son has executed irrevocable power of attorney in favour of Muhamamd Amin Edhi, Chief Accountant of plaintiff's company and sale agreement, affidavit and declaration with her own sweet will?*
- iii. *Whether sale deed irrevocable General Power Attorney, sale agreement, affidavit and declaration and signed by the defendant?*
- iv. *Whether the plaintiff is entitled for possession and mesne profit of the property in question?*
- v. *Whether the plaintiff is entitled for possession of suit house?*
- vi. *Whether defendant is entitled for the relief claimed?*
- vii. *Whether the plaintiff fraudulently has transferred the suit house in connivance with each other?*
- viii. *Whether Shakeel Ayub son of defendant had misappropriated an amount of Rs.2,00,000/- of plaintiff?*
- ix. *What should the decree be?*

6. On the above issues, attorney of the plaintiff/applicant namely Abdul Jabbar filed his affidavit-in-evidence as Ex.P/1. He produced the original special power of attorney as Ex.P/2, photocopy of indenture of sublease as Ex.P/3, photocopy of General Power of attorney as Ex.P/4, photocopy of deed of immoveable property as Ex.P/5 affidavit of Mst. Fehmida the defendant of suit No.397/2003 as Ex.P/6, photocopy of legal notice dated 30.11.2002 as Ex.P/7. Applicant also produced witnesses Riazuddin Rajo and Muhammad Amin Edhi who filed their affidavit-in-evidence. All the witnesses were subjected to cross-examination before their counsel closed side for evidence by statement dated 02.09.2004. On the other hand Mst. Fehmida Bai, the defendant also led her evidence through her

attorney Muhammad Ayub who is also her husband as Ex.D. He produced photocopy of General Power of Attorney as Ex.D/1, photocopy of legal notice dated 20.03.2003 as Ex.D/2. She also filed affidavit of her son Shakeel Ayub and after their cross examination side of the defendant was closed.

7. The learned trial Court after hearing learned counsel and perusal of evidence dismissed suit No.397/2003 filed by the applicant and decreed suit No.956/2003 filed by Respondent by a consolidated judgment dated **18.11.2009**. The applicant preferred civil appeal bearing **Civil Appeal No.04/2016** against dismissal of his suit and another bearing **Civil Appeal No.5/2016** against the decree in suit No.956/2003 before the appellate Court. Both the appeals were dismissed and applicant has filed instant revision application.

8. I have heard the learned counsel for the applicant and none has appeared on behalf of the Respondent and I have also perused the record, which clearly indicates that the sale consideration of suit property was never settled by and between the parties when only a Power of Attorney was executed by the Respondent in favour of an employee of applicant. The facts which have come on the record to which even the learned counsel for the applicant does not dispute confirms that it was not a case of sale of Respondent's property with her freewill nor she has given permission to the attorney to sell the suit property by registered deed in favour of his employer. In the given facts of the case when the principal was available and

herself living in the demised premises the attorney was not supposed to sale the demised premises without her express permission. Learned counsel for the applicant even in his short arguments filed by him in writing after discussion of the facts have made a reference to the reason for execution of power of attorney by the Respondent in the following submissions:-

*It is clear from above that Mst. Fehmida Bai executed the Power of Attorney which was registered and Sale Deed which was also registered out of her own freewill and without any duress **in order to save her son from prosecution as he was an Accountant and there was misappropriation of Rs.20,00,000/-**. It is also not denied anywhere that the sale deed, Irrevocable General Power of Attorney and any other document signed by the Respondent do not bear her signatures. The sanctity of registered document cannot be lightly overturned when there is no cogent reason to do so. Respondent has failed to prove that registered Power of Attorney and Registered Sale Deed were executed by her under duress.*

*The Trial Court as well as the Appellate Court have failed to decide the issues properly and have overlooked the evidence on both sides, and therefore, Safwan Polani is entitled for the possession of the property on the basis of the registered documents. Reliance is placed on;*

*AIR 1922 Privy Council Page 279, Reliance is also placed on Section 95 of Qanoon-e-Shahadat.*

As we can appreciate from the reproduction of arguments, the consideration of execution of registered power of attorney was not intended to sell the demised premises through attorney, as stated by learned Counsel, the consideration was to avert criminal trial of allegation of misappropriation of Rs.20,00,000/- against the son of the respondent. It has come even in the evidence. The Court of law cannot accept such consideration as an excuse to execute power of attorney to effect

sale of the premises. Therefore, the payment of sale consideration was not proved and even the allegation of misappropriation against the son of the respondent has not been proved as the appellant has not produced any evidence of misappropriation of Rs.20,00,000/- by the son of the Respondent. The evidence of such misappropriation has not been placed on record of civil Court by the beneficiary of the Power of Attorney or the attorney himself.

9. In view of the above, the two findings of the Court that the applicant has failed to establish his claim before the courts below are in accordance with law and facts. The trial Court in view of the evidence has rightly dismissed the suit of the applicant whereas the suit of the Respondent for cancelation of registered Power of Attorney and sale deed has been rightly decreed. Consequently, this revision application is dismissed with no order as to cost.

**JUDGE**

Karachi  
Dated:**21.12.2018**

*SM*