

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Civil Revision Application No.222 of 2011

Date Order with signature of Judge

Present: Mr. Justice Nazar Akbar

Applicant No.1 : Mst. Tanveer Muzaffar
Applicant No.2 : Nabeel Tanver
Applicant No.3 : Tahmeena Muzaffar
Applicant No.4 : Naureen Muzaffar
Applicant No.5 : Zeb
Applicant No.6 : Muhammad Asad Mooneer,
Through Mr. Abrar Hasan, advocate.

Versus

Respondent No.1 : Yousuf Sikandar
Respondent No.2 : Mst. Shaheena, through
M/s Amjad Hussain and Shahenshah
Hussain, Advocates.

Respondent No.3 : Pakistan Defence Officers Housing Authority.

Date of hearing : **21.12.2018**

Date of judgment : **10.01.2019**

JUDGMENT

NAZAR AKBAR, J:- This Revision Application is directed against the judgment and decree dated **30.7.2011** passed by VII-Additional District Judge, South Karachi, whereby Civil Appeal No.122/2010 filed by Respondents No.1 and 2 was allowed and the judgment and decree dated **04.03.2010** & **10.3.2010** passed by VIII-Senior Civil Judge, South Karachi dismissing the suit No.49/2003 (Old No.826/1995) filed by Respondents No.1 and 2 was set aside and the suit was decreed as prayed.

2. Brief facts of the case are that Respondents No.1 & 2 filed civil suit for declaration and permanent injunction against the applicants and Respondent No.3 stating therein that husband of applicant No.1

namely Muzaffar Hussain (deceased) had executed an irrevocable General Power of Attorney in favour of Respondent No.1 against a considerable amount in respect of his plot of land bearing No.47-B, Khayaban-e-Khalid, Phase-VIII, admeasuring 1000 sq yds situated in Defence Housing Authority (the subject plot) which was allotted to him by virtue of an allotment order No.BS/H/A-16493-340 dated **21.7.1977**. The said Power of Attorney was duly registered bearing registration No.8496 Book No.IV, Volume No.320 dated **14.11.1985** before the Sub-Registrar Lahore Cantt:. Respondent No.1 on the basis of said power of attorney gifted the subject plot in favour of his father namely Sikandar Yousuf on **20.11.1985** and executed a declaration of oral gift, therefore, the subject plot was transferred in favour of his father who accepted the gift and acknowledged it by taking its possession. Then Respondents No.1 and 2 personally approached Respondent No.3 for transfer/ mutation of the subject plot in favour of Respondent No.2 on the basis of registered general power of attorney, declaration of oral gift and other relevant documents and Respondent No.3 had not accepted these documents without any justification. Therefore, Respondent No.1 tried to locate the whereabouts of said Muzaffar Hussain and came to know that he had expired and whereabouts of his legal heirs were neither known nor traceable. Therefore, Respondent No.1, through his counsel requested Pakistan Army GHQ Rawalpindi to intimate the date of death of said Muzaffar Hussain and address of his legal heirs for the purpose of completing the formalities by Respondent No.3. The particulars of legal heirs of said Muzaffar Hussain were sent by the GHQ. Thereafter Respondents No.1 submitted all the documents to Respondent No.3 for the purpose of acceptance and mutation of subject plot in favour of his father but Respondent No.3 again

refused to accept the General Power of Attorney and intimated that the subject plot cannot be transferred as the gift is not registered. Respondent No.3 advised Respondents No.1 and 2 to approach Court of law, therefore, Respondents No.1 and 2 filed the civil suit before the trial Court.

3. Out of defendants No.2 to 7 only defendant No.5/applicant No.3, filed her written statement and denied that Brig. (R) Muzzaffar Hussain had never executed the general power of attorney in favour of Respondent No.1 against consideration as at the relevant time the deceased was suffering from thyroid cancer and was terminally ill so also he was incapacitated and unaware of the consequences of any of his action, therefore, all transactions made during said period have not conferred any right on Respondents No.1 and 2 over subject plot. She further averred in her written statement that Respondents No.1 and 2 were trying to usurp the valuable rights of applicants. She contended that suit was barred by limitation and the documents were false and fabricated and same do not meet requirements of various laws.

4. Learned trial Court from the pleadings of the parties has framed the following issues:-

1. *Whether the suit is barred under section 42 of the Specific Relief Act?*
2. *Whether the power of attorney was executed against consideration by late Brig. Muzaffar Hussain/*
3. *Whether the gift deed dated 20.11.1985 executed in favour of plaintiff No.1 is valid, legal and binding?*
4. *What should the decree be?*

5. In support of their claim, the plaintiffs/Respondents No.1 and 2 filed affidavits-in-evidence of their own and their witness

Muhammad Anwar. However, they were not cross-examined by the learned counsel for the applicants, as they have chosen to remain absent. The applicants have also failed to file their affidavit-in-evidence in compliance of the orders of the trial Court, therefore, their side of evidence was closed. Resultantly, after hearing learned counsel for the parties, the trial Court decreed the suit by judgment and decree dated **27.8.2003**.

6. Thereafter the applicants filed an application under **Section 12(2) CPC** and the said application was also dismissed by the trial Court after hearing both sides. The applicants challenged the said order before this Court and this Court set aside the judgment and decree and remanded the case to the trial Court for deciding it within two months.

7. In second round, witnesses of respondents No.1 & 2 were cross examined by the counsel for the applicants but applicants never produced any evidence in rebuttal. However, learned trial Court after hearing learned counsel for the parties, dismissed the suit by judgment and decree dated **04.03.2010** & **10.3.2010**. Respondents No.1 and 2 preferred civil appeal challenging the said judgment and decree bearing Civil Appeal **No.122/2010** before VII-Additional District Judge, South Karachi. The appeal was allowed by judgment and decree dated **30.07.2011** and the suit filed by Respondents No.1 was again decreed as prayed. Therefore, the applicants have preferred the instant Revision Application against the said appellate judgment and decree. The Decree Holder/respondents No.1 & 2 have filed their counter affidavit to the instant Civil Revision.

8. I have heard learned counsel for the parties and perused the record.

9. Learned counsel for the applicants has contended that the suit filed against the applicants in 1995 was in the nature of suit for specific performance of contract dated 21.8.1985 was time barred. He has contended the respondents in suit claimed to have purchased the subject plot through a power of attorney coupled with an oral agreement of sale and the sale consideration has not been identified in the power of attorney. He contends that the correspondence on the basis of general power of attorney with respondent No.3 in the year 1992 was only an attempt to cover the limitation against the respondents. He has further contended that the power of attorney has also expired alongwith the principal who died on **07.1.1986** and therefore, no further action can be taken by the respondents on the basis of said power of attorney. He has lastly attacked the impugned judgment by referring to **Order 41 Rule 31 CPC**. The Appellate Court is supposed to draw points for determination and has to give decision on each point for determination with the reasons for the decision. According to the learned counsel in the impugned judgment this basic requirement of law is missing and therefore, the order of Appellate Court is bad in law.

10. In rebuttal learned counsel for the Respondents while supporting the impugned judgment has contended that the suit was precisely for a declaration and direction to Respondent No.3 namely Pakistan Defence Officers Housing Authority, to transfer and mutate the suit plot in favour of Respondent No.1 / plaintiff No.1 on the basis of power of attorney and declaration of oral gift executed by respondent No.2. He has pointed out that the applicants have never seriously contested this suit. According to the learned counsel the transactions have been completed on the day when the original

documents in respect of the subject plot were handed over to the attorney and power of attorney was registered before the learned Sub-Registrar. The plaintiff has not only produced original power of attorney but also produced marginal witnesses of the power of attorney as well as payment full and final sale consideration. The original title documents are also in possession of plaintiff/ Respondents No.1 and 2, which were shown to the Court during evidence and photocopies were exhibited. The plaintiffs have discharged their burden of proof of execution of irrevocable power of attorney and payment of sale consideration.

11. Learned counsel for Respondents No.1 & 2 has also contended that this revision is not maintainable for the simple reason that the impugned appellate decree is appealable in terms of **Section 100 CPC**, therefore, IInd appeal should have been filed against the appellate decree. Such contention has been raised by Respondents No.1 & 2 even in their counter affidavit but no reply or comment has been offered by the learned counsel for the applicants. On considering the facts of the case it appears that the applicants right from day one have not been serious in contesting the suit. The record shows that the suit was filed by the respondents in 1995 bearing Suit No.862/1995, and only applicant No.4 filed written statement on her behalf alone in **October, 1997** but she never appeared in Court. The other applicants never supported contents of written statement filed by her since neither they adopted her written statement nor filed their own, therefore, suit was decreed on **27.8.2003**. Somehow at later stage on **14.9.2004** only applicant No.6 filed an application under **Order IX Rule 13 CPC** read with **Section 12(2) CPC** for setting aside the judgment, which was dismissed and even his appeal against dismissal of the said application was also dismissed.

However, in Civil **Revision Application No.26/2006** he managed to get first decree dated 27.8.2003 set aside and got the suit remanded back to the trial Court. On remand, the suit was re-numbered as Suit No.42/2003 and again the applicants including applicant No.6 who got the earlier decree set aside and the applicant who alone had filed written statement never appeared in the witness box in support of their claim that the deceased Muzzaffar Husain has not executed irrevocable power of attorney or any other stand taken by them in their written statement to defeat the right of respondents No.1 & 2 in their plaint. However, the suit was dismissed on **04.3.2010**, and Respondents No.1 & 2 immediately filed an appeal bearing Civil Appeal No.122/2010. The perusal of impugned order whereby the suit has again been decreed also points towards reluctance of applicants to contest the appeal. The learned Appellate Court in para-10 of the impugned judgment has specifically referred to such conduct of applicant. It is reproduced below:-

10. The learned advocate for the appellants has advanced his arguments whereas none appeared on behalf of respondents and failed to argue or submit their written arguments though repeated opportunities were provided to them. Finally with great effort learned counsel for the respondents No.1 to 7 has advanced his arguments half heartedly in this matter.

The record shows that from 1995 none of the applicants except applicant No.5 and 6 have shown any interest though even these two applicants did nothing to protect their right in the suit property. They never appeared through attorney from **1995 to 2011**. The appellate decree was appealable within 30 days before this Court. In this background when I noticed that this revision application has been filed through an attorney, Mr. Muhammad Ali Chishti son of Latif Ahmed Chishti, resident of **Gujranwala**, out of curiosity I perused the

power of attorney. I am surprised. It is neither witnessed by anyone nor it explains that why residents of **Lahore** have chosen a resident of **Gujranwala**, to file the instant Revision on their behalf at Karachi. The power of attorney does not mention even identity card number of executants. It is also silent about the place of its execution. Whether all the executants have come to Karachi or it was executed at Gujranwala or in Karachi. Be that as it may, irrespective of the defect in the authority of the person who has filed the instant Revision application, this revision was filed against an order which is appealable, therefore, it is against the provision of **Section 115 of CPC**. This revision cannot be even converted into an appeal because the time for filing an appeal against an appellate decree is **30** days in terms of **Article 153** of the Limitation Act, 1908 from the date of order. The record shows that the judgment and decree of Appellate Court were obtained on **03.8.2011** and therefore, the time for filing IInd Appeal has expired at the most on **03.09.2011** and this revision has been presented on **30.09.2011** without court fees, which has been subsequently supplied on **25.10.2011**. Since this revision was not maintainable all the contentions raised by the learned counsel for the applicants have no bearing. Even otherwise each one of the contention has been adequately replied by the learned counsel for the respondents.

12. In view of the above discussion, this revision application is dismissed.

JUDGE

Karachi
Dated:10.01.2019