

IN THE HIGH COURT OF SINDH AT KARACHI

**IInd Appeal No.62 of 2016**

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DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)  
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**Before: Mr. Justice Nazar Akbar**

Appellant : Ghufran Ahmed S/o Irshad Ahmed,  
Through Mr. Muhammad Ishaq, advocate.

**Versus**

Respondent No.1 : Muhammad Mahboob  
Respondent No.2 : Mrs. Naheed Yasmeen  
Respondent No.3 : Mr. Jamal Shah  
Respondent No.4 : Mrs. Nirma Shah

Respondent No.5 : The Sub-Registrar "T" Division XIV, New  
Karachi Town.  
Through Mr. Ziauddin Junejo, A.A.G.

Respondent No.6 : The Deputy District Officer, Land  
Department (KDA) Wing.  
through Mr. Muhammad Aqil Zaidi, advocate

Date of hearing : **17.12.2018**

Date of Decision : **17.12.2018**

**JUDGEMENT**

**NAZAR AKBAR, J.** The appellant through this IInd Appeal has challenged the concurrent findings. IV-Senior Civil Judge, Central Karachi by Judgment dated **23.12.2011** has decreed suit No.836/2005 filed by Respondent No.1 and the IInd Additional District Judge, Central Karachi by judgment dated **17.03.2016** passed in Civil Appeal No.05/2012 has maintained the said findings of the trial Court.

2. Briefly stated the facts of the case are that Respondent No.1 filed civil suit No.836/2005 against the appellant and Respondents No.2 to 6 for declaration, possession, cancellation, mesne profit,

recovery of documents (Lease deed & copy of sale deed) and recovery of Rs.13,00,000 and permanent injunction stating therein that he is the sole owner of a double storey house constructed on Plot No.L-440, measuring 80 sq. yds. situated at Sector 5-C/1 North Karachi Township, Karachi (the suit property) by virtue of a registered sale deed dated **26.12.2002** executed by Respondent No.2 before Respondent No.5. It was averred in the plaint that Respondent No.3 was playing the role of middleman, caretaker of the suit property, therefore, Respondent No.1 while going abroad after execution of document in Registrar office in good faith allowed him to receive both copies of sale deed (original and copy bearing No.2921 and 2922 respectively) from the said office. Respondent No.3 obtained the same and sent the **original sale deed** bearing No.2921 to Respondent No.1 at USA and kept its duplicate copy No.2922 and original lease deed of the suit property with him. It was further averred that Respondent No.1 who is resident of USA has sent a sum of **Rs.24,16859/40** through Western Union Bank equivalent to **US \$ 42,722.11** to Respondent No.3 in his name which were received by him from **11.8.2002** to **4.8.2003** for purchasing the suit property and for its renovation. Respondent No.1 has handed over the original lease deed to Respondent No.3 for transfer of the suit property in his name in the Revenue record and in the meanwhile Respondent No.3 requested Respondent No.1 that after his departure to America, he will look after the suit property, therefore, first floor may be let out to him on monthly rent of Rs.2000/- excluding the utility bills and other charges. Such offer was accepted by Respondent No.1 and Respondent No.3 started living with his family in first floor of the suit property but did not pay a single penny towards rent to Respondent No.1 / plaintiff till June, 2004. It was further averred that he changed

his residence from there without any intimation to Respondent No.1/plaintiff and whenever Respondent No.1 enquired from Respondent No.3 about the accounts of money received by him from respondent No.1 for the purpose of purchasing, renovation and transferring the suit property in his name, he never replied even receipts of the expenditures were not shown. Later on Respondent No.1 came to know that Respondent No.3 in league with Respondents No.2 and 4 has committed a fraud of Rs.900,000/- in purchasing of the suit property as well as in respect of renovation of the suit property and Respondents No.2 to 4 by way of fraud and misrepresentation have prepared a registered General Power of Attorney on **26.9.2003** through forged signature of Respondent No.1 in which Respondent No.4 (wife of respondent No.3) was shown as attorney of Respondent No.1 on the basis of 2<sup>nd</sup> copy of sale deed No.2922 dated **26.12.2002** and the original lease deed which was obtained by Respondent No.3 (husband of respondent No.4) from Respondent No.1 for the purpose of transfer of the suit property in official record in good faith. The said bogus General Power of Attorney was registered at No.648 dated **26.09.2003** when the respondent No.1 was not in Pakistan and then they again on the basis of said forged power of attorney made another bogus and forged sub-power of attorney registered at No.987 dated **04.12.2003** in which Respondent No.2 was shown as **sub-attorney** of Respondent No.4. It was also averred that on coming to know these facts Respondent No.1 sent a legal notice to the appellant/ defendant No.4 which was served upon him but appellant/ defendant No.4 did not reply the same. Respondent No.1/ plaintiff also served legal notice to Respondents No.5 and 6 and brought the said facts to their notice and Respondent No.6 has replied. It was further averred that

Respondent No.1/plaintiff had also filed four rent cases bearing No.153/2005, 48/2005, 49/2005 and 50/2005 against the appellant/Respondent No.4 and other three tenants before the IV-Rent Controller, Central Karachi which were decided in his favour. It was further averred that it was apprehension that Respondents No.2, 3 and 4 in league with each other may transfer the suit property and create third party interest in order to achieve their unlawful goals, therefore, Respondent No1 filed the said suit before the trial Court.

3. Appellants/defendants were served and Respondents No.3 and 4 have filed written statement wherein they stated that by agreement of sale dated **26.9.2002** the suit property was purchased by Respondent No.3 from his own funds in the name of his wife, Respondent No.4 from Respondent No.2 against the sale consideration of Rs.18,00,000/- and Respondent No.1 is a real uncle of Respondent No.4. They contended that Respondent No.1's whole family are Christian and Respondent No.1/plaintiff was converted into Islam and Respondent No.2 is also Muslim and there were serious disputes between Respondent No.1 and his family members. It was further averred that in the year 2003 Respondent No.1/plaintiff came to Pakistan and upon request of Respondents No.3 and 4 he registered general power of attorney dated **26.9.2003** in favour of Respondent No.4 who is the actual owner of the suit property and on the basis of the said power of attorney Respondent No.4 on **04.12.2003** got registered the sale deed of the suit property in her favour. In the month of January, 2002 Respondent No.1 had obtained an amount of Rs.490,000/- from Respondent No.3 as friendly loan and till registration of sale deed Respondent No.1 had sent the amount of Rs.21,75,395/- from USA to Respondent No.3 but Respondent No.1 received an amount of Rs.25,00,000/- from

Respondent No.3 and as such an amount of Rs.8,14,605/- was outstanding and payable by Respondent No.1 to Respondent No.3, thereafter from **21.01.2003** to **05.8.2003** Respondent No.1 sent Rs.2,41,604/- to Respondent No.3 and as such an amount of Rs.5,73,001/- was outstanding and payable by Respondent No.1 to Respondent No.3. They claimed that Respondent No.4 was the owner of the suit property, therefore, question of renovation and transfer of the property does not arise.

4. The appellant/defendant No.4 has also filed written statement wherein he contended that he is exclusive real and lawful owner of the suit property and he purchased the same from Respondent No.2 who was registered attorney of Respondent No.1. He further contended that he had no knowledge of relations of Respondent No.1/plaintiff and Respondent No.3 and why Respondent No.1 had handed over the original documents of the suit property to Respondent No.3. He denied the allegations made in the plaint of the suit.

5. Respondent No.6 also filed written statement wherein he contended that the suit property was mutated on the basis of registered sale deed between Muhammad Mehboob son of Lazarus and Respondent No.1/plaintiff through sub-attorney Naheed Yasmin wife of Rizwan Hassan/Respondent No.2 vide mutation letter No.143 dated **18.01.2005** and thereafter mutated on the basis of registered sale deed in favour of Mr. Ghufan Ahmed son of Irshad Ahmed/the appellant vide mutation letter No.1502 dated **21.6.2005** after completing all required formalities.

6. The trial Court from pleading of the parties framed the following issues:-

1. *Whether the suit is not maintainable in law?*
2. *Whether the defendant No.2 has purchased the suit property in the name of Defendant No.3 from his own funds worth Rs.18,00,000/-?*
3. *Whether the plaintiff has paid the amount of sale consideration and purchased the suit property from defendant No.1, if so, its effect?*
4. *Whether the Defendants with the league of each other prepared forged and bogus documents i.e General Power of Attorney, Sub-Power of Attorney, Sale Agreement, Sale Deed and Mutation on the basis of forged signature of Plaintiff and duplicate copy of sale deed executed in favour of Plaintiff and the same are liable to be cancelled?*
5. *Whether the Plaintiff is entitled to receive Rs.13,00,000/- from Defendants and Rs.20,000/- per month towards profits, if so, its effect?*
6. *Whether the Plaintiff is entitled for the relief of possession and original document of suit property?*
7. *Whether the suit is under value and this Court has no pecuniary jurisdiction to entertain the above suit?*
8. *What should the decree be?*

7. The trial Court after recording evidence and hearing the parties decreed the suit in favour of Respondent No.1/ plaintiff by judgment dated **23.12.2011**. Only defendant No.4/J.D No.4 preferred **Civil Appeal No.05/2012** before IInd Additional District Judge, Central Karachi which was dismissed by judgment dated **17.03.2016**. The appellant has then filed the instant Revision Application.

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

9. Learned counsel for the appellant against concurrent findings of the trial Court and the appellate Court decreeing the suit filed by respondent No.1/plaintiff suit was supposed to bring his case within the ambit of second appeal by throwing light on the impugned decisions that the same were contrary to law or that the material

issues were not properly decided by the two Courts below and/or there was any other procedural defect in proceedings before the two Courts below in coming to the conclusion challenged by the appellant. The appellant's case which he failed to establish before the trial Court was that he has acquired the suit property as bonafide purchaser through the lawful attorney of respondent No.1/plaintiff. The trial Court has framed as many as eight issues from the pleadings of the plaintiff/respondent No.1 and defendants/respondents. The record shows that the burden of proof of issues No.3, 5 & 6 was on the Respondent No.1 / Plaintiff to prove that he was lawful owner of the suit property and he has neither sold it nor executed General Power of Attorney to anyone to sale it and he has discharged the burden by showing admitted remittance to Respondents No.3 & 4. The burden was then shifted to appellant and respondents No.2 to 4. The only document on which the appellant relied was power of attorney allegedly executed by Respondent No.1 / plaintiff for sale of the property to Respondent No.3, but the same has been proved as forged and fabricated since on the day of execution of power of attorney the Plaintiff/Respondent No.1 was found out of Pakistan. No rebuttal was there to such comprehensive evidence by the so called bonafide purchaser. Since title of the seller was defective; the title of the buyer i.e appellant was also defective as the buyer steps into the shoes of the seller. Even the seller to appellant who was beneficiary of forged and fabricated power of attorney has not supported the case of the appellant. Respondents No.2, 3 & 4 have not even appeared in witness box to even just reiterate denial of claim of respondent No.1 / the plaintiff.

11. In view of the above facts, no case for interference in the judgments of two courts below was made out since there was no illegality or irregularity in the judgments of the Courts below nor the decisions are contrary to law, therefore, instant IInd appeal was dismissed alongwith pending application by short order dated **17.12.2018** and these are the reasons for the same.

JUDGE

Karachi  
Dated:05.03.2019

Ayaz Gul/P.A  
SM