

IN THE HIGH COURT OF SINDH AT KARACHI

**IInd Appeal No.10 of 2013**

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

Appellant : Mrs. Ishrat Jehan Noor, through  
Mr. Muhammad Dawood Narejo, advocate.

**Versus**

Respondent No.1 : Muhammad Naushad Alam, through  
Mr. Muhammad Ibrahim Azmi, advocate

Respondent No.2 : Sub-Registrar-II, Gulshan-e-Iqbal, Karachi.

Respondent No.3 : The province of Sindh.

Date of hearing : **22.05.2019**

Date of Decision : **08.07.2019**

**JUDGEMENT**

**NAZAR AKBAR, J.** The appellant through this IInd Appeal has challenged the order dated **14.11.2012** passed by III-Additional District Judge, East Karachi, whereby Civil Appeal No.38 of 2011 filed by Respondent No.1 against the judgment dated **14.12.2010** passed by the IInd Senior Civil Judge East Karachi decreeing Civil Suit No.288/2008 filed by the Appellant was allowed and suit filed by the appellant was dismissed.

2. Precisely the facts of the case are that the Appellant filed civil suit for Cancellation of Conveyance deed dated 29.09.2007 and Permanent Injunction against the Respondents stating therein that she was holding General Power of Attorney in respect of Flat No.D-402, measuring 214 sq. yds. on 4<sup>th</sup> Floor in project Ruffi Lake Drive, Sub Plot No.118/2/B&C/D-II, Block-18, situated at KDA Scheme 36,

Gulistan-e-Jauhar, Karachi (the suit property) which was purchased by her daughter namely Shagufta Naz from one Mst. Sadia Ijaz for a total sale consideration of Rs.12,70,000/-. The said Sadia Ijaz had executed irrevocable general power of attorney in the name of the appellant/ plaintiff and also executed affidavit in favour of her daughter. After purchase of the suit property, daughter of the appellant handed over possession of the suit property to the appellant and gone out of country where she was residing with her family. It was averred that Respondent No.1 who is son of the appellant was also residing in the suit property even before his marriage and after marriage with his wife. Respondent No.1 who is son of the appellant with malafide intention requested his mother that the Registrar has called her at his office for signing on some documents in respect of the suit property, she went at the office of the Registrar and on his pointation, the appellant signed some documents. Thereafter Respondent No.1 informed her that the suit property is transferred in the name of (Shagufta) daughter of appellant and dropped her in house. After some time Respondent No.1 came to her and asked her to vacate the suit property as now he is the owner of the same and Respondent No.1 tried to dispossess the appellant from the suit property. It was averred that Respondent No.1 had obtained registered sale deed in his name by fraud and misrepresentation, therefore, she filed the said suit against the Respondents.

3. Respondent No.1 contested the suit and filed written statement wherein he stated that the suit property was purchased by the appellant from his funds when he was abroad and was sending earning to her. He further contended that after return from abroad, he was residing with the appellant and she rightly transferred the

suit property in his favour. He further contended that conveyance deed was executed before Respondent No.2/Sub-registrar voluntarily in presence of witnesses knowing fully the purpose that the suit property was purchased from his funds but later on due to difference, she changed her mind and filed the said suit against him.

4. The trial Court from the pleadings of the parties framed the following issues.

- i. *Whether the suit is not maintainable?*
- ii. *Whether the defendant No.1 obtained conveyance deed dated 29.9.2007 by fraud, misrepresentation and undue influence?*
- iii. *Whether conveyance deed dated 29.9.2007 is liable to be cancelled?*
- iv. *Whether the plaintiff is entitled for any relief as claimed?*
- v. *What should the decree be?*

5. The trial Court after recording of evidence and hearing the learned counsel for the parties decreed the suit filed by the Appellant by judgment dated **14.12.2010**. Respondent No.1 filed Civil Appeal No.38/2012 before the III-Additional District Judge, East Karachi which was allowed by order dated **14.11.2012**. The appellant has preferred the instant second appeal against dismissal of her suit by the appellate Court.

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

7. Learned counsel for the appellant has contended that the Appellate Court without looking into the evidence led by both the sides by a shortcut declared that suit was not maintainable on the ground that the appellant / plaintiff had no authority to file the suit. In coming to such conclusion that Appellate court even failed to look

into power of attorney on the basis of which the suit has been filed by the appellant against Respondent No.1. He further contended even the respondent had not challenged the authority of appellant to file the suit on the basis of power of attorney. The learned counsel for the Respondent in his arguments has not touched the question of maintainability of suit though knowingly well that Appellate Court has allowed the appeal of Respondent No.1 purely on the ground of maintainability of the suit. Counsel for the Respondent has nowhere in his written arguments has stated that findings of the appellate Court on the maintainability of the suit was supported with the law and facts of the case.

8. Be that as it may, on perusal of the record I have also noticed that learned Appellate Court herself has raised the question and in reply observed that:

*“I am (of) a firm view (that) if it is believe(d) that respondent (appellate herein) is a care taker of the suit property as attorney of the purchaser Mst. Shagufta, has no legal character to file the present suit. Actual owner is Sadia Cheema and purchaser Mst. Shagufta both have right to sue against the appellant and both are not party to the suit. While deciding the issue No.1 the trial Court has failed to discuss the law as well as status of respondent/plaintiff”.*

Such firm view of the appellate Court was contrary to record and factual controversy involved in the case. While coming to such conclusion about status of appellant to allow the appeal, the first appellate Court has failed to appreciate that the appellant/plaintiff herself has executed the conveyance deed dated **29.9.2007** in favour of respondent No.1, her own son on fraud and misrepresentation by him. If we believe that the appellant was not competent to file the suit for cancellation of conveyance deed executed by her as attorney of Mst. Shagufta, then obviously and logically she was also not

authorized to even execute conveyance deed dated **29.9.2007** on behalf of the said Shagufta in favour of respondent No.1 and, therefore, such reasoning to dismiss the suit was fatal to the claim of respondent that he has rightly become owner of the suit property through the appellant. But for this reason, respondent No.1 has not challenged the power of attorney in favour of the appellant by the said Shagufta, owner of the suit property. Beside the above, the appellate Court has failed to look into the contents of the registered General Power of Attorney dated **05.5.2001**. The said power of attorney in para-8 has authorized the appellant to file cases and appear in Court. Para-8 of registered General Power of Attorney in favour of appellant is reproduced as under:-

*8. To appear, sue or answer and to receive all process in any suit, appeal or other judicial proceeding whatsoever in any Court and generally to act in all such proceedings in any way in which I might if present be permitted or called on to act.*

9. In view of the above, the findings of the Appellate court are perverse and contrary to record and law both. The Appellate Court has not examined the findings of the trial Court on the other factual controversy decided by the trial Court on merits. I have gone through the findings of the trial Court in decreeing the suit on the basis of issue No.2, 3 & 4 after holding that suit was maintainable (issue No.1). The case of the appellant/plaintiff was that she being *pardanishin* lady over 61 years of age was persuaded by her son to go to the office of Registrar of Properties where she signed certain documents without knowing that she was executing sale deed of the property in favour of Respondent No.1. Her evidence has remained un-rebutted. Even otherwise it is settled law that burden of proof in such like cases is on the beneficiary of documents executed by a lady, who otherwise is not supposed to know legal implication of such

documents, to establish that no fraud has been committed by him in getting the documents executed by a woman. The record shows that whatever plea has been taken by the respondent in his written statement has not been established by him through the evidence. The Respondent in written statement has claimed that even Mst. Shagufta has purchased the property from the funds sent by him (Respondent No.1) from America could not established as he has not provided any proof of remittance. Similarly he took another plea before the trial Court that at the time of execution of sale he had paid a sum of **Rs.9,80,000/-** to the executant who happened to be his mother but he has not produced any receipt or other proof in the evidence. The respondent has never filed suit for declaration of his title in respect of the suit property against the appellant separately nor even prayed for such declaration in his written statement. He has, however, filed a suit for recovery of money bearing Suit No.1275/2008 before this Court against the appellant. On enquiry from the suit branch, it transpired that even the said suit had been dismissed by this Court on **13.12.2010** for non-prosecution.

10. In view of the above, the impugned order passed by the first appellate Court is set aside and instant IInd appeal is allowed. Consequently, the judgment and decree passed by the trial Court is restored. The suit of appellant is decreed in terms of trial Court order.

JUDGE

Karachi,  
Dated:08.07.2019

Ayaz Gul  
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