

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

Revision Application No. 39 of 2014

Muhammad Ayoob
Versus
Muhammad Shafi & others

Date of Hearing: 23.01.2020

Applicant: Through Syed Ehsan Raza Advocate

Respondent No.1: Through Malik Waseem Iqbal Advocate.

Respondents No.2 to 4: Not represented.

J U D G M E N T

Muhammad Shafi Siddiqui, J.-This Revision Application is arising out of conflicting judgment and findings of two Courts below. Suit No.409 of 2005 was dismissed while Suit No.896 of 2007 was decreed by learned IV-Senior Civil Judge Karachi East. The appeals against the same were allowed vide impugned judgment hence this revision application.

2. Two parallel suits were filed in respect of property having House No.2/403, measuring 80 sq. yards situated at Shah Faisal Colony, Karachi East. Suit No.409 of 2005 was filed by Muhammad Shafi Nagori, (respondent No.1 here) against Muhammad Ayoob, Mst. Amna Bibi and Mrs. Parveen as defendants No.1 to 3 respectively in the suit. The second suit bearing No.896 of 2007 was filed by one Muhammad Ayoob, one of the defendants in the above suit, against Muhammad Shafi Nagori, Mst. Parveen and Shamshad Ahmed, two of them being party to the earlier suit.

3. In the first suit being leading suit since prior in time, Muhammad Shafi Nagori sought declaration regarding sale agreement of 09.01.1999 as being forged and fictitious and that at the time when the vendor

executed the aforesaid agreement, she was not the owner and that the occupants are liable to pay mesne profit. In the connected suit being Suit No.896 of 2007 Muhammad Ayoob sought declaration that the Power of Attorney dated 11.08.1992 is forged and fictitious and that Mst. Parveen at the time of the execution of sale deed (date not disclosed in the prayer clause) was not the owner of the subject property.

4. The trial Court consolidated the two suits and framed the consolidated issues. Suit No.409 of 2009 since prior in time was considered as leading suit. Following were the issues framed:-

- “1. Whether plaintiff is bonafide purchaser of suit property?
2. Whether plaintiff is entitled to mesne profit at Rs.2,800/- per month along with electricity and gas charges from date of purchase of the property?
3. Whether sale agreement executed by Mst. Amna Bibi (defendant No.2) in favour of defendant No.1 on 09.01.1999 is not enforceable under the law having no legal effect and is forged and fictitious document and Mst. Amna Bibi (defendant No.2) was not owner of suit property at the time of execution of sale agreement?
4. Whether General Power of Attorney dated 11.8.1992 and sale deed dated 03.3.2002 on which plaintiff in suit No.409/2005 relies, forged and fabricated documents liable to be cancelled?
5. Whether plaintiff in Suit No.409/2005 is entitled to the relief claimed or the plaintiff in suit No.896/2007 is entitled to the same?
6. What should the judgment and decree be?”

5. I have heard the learned counsel and perused the material available on record.

6. Before discussing the case I may observe that while perusing the file it is noted that typed page 7 of the trial Court judgment is neither available in the trial Court’s record nor filed with the Revision Application. It is established from the fact that page numbers assigned to the record and proceedings by the office of trial Court itself shows that it was never available when the record and proceedings were sent to this Court.

7. In the leading suit plaintiff Muhammad Shafi Nagori examined himself as Ex.P who produced (i) sale deed dated 30.03.2001 (registration dated 30.03.2002) between Mst. Parveen wife of Shamshad Ahmed and Muhammad Shafi Nagori as Ex.P/1, (ii) mutation order dated 06.05.2003 in favour of Muhammad Shafi Nagori as Ex.P/2, (iii) sale agreement dated 27.12.1999 between Mrs. Parveen wife of Shamshad Ahmed and Muhammad Shafi Nagori as Ex.P/3, (iv) declaration of oral gift dated 10.12.1983 executed by Maqsood Ahmed being doner in favour of Mst. Amna Bibi being his wife as Ex.P/4, (v) Irrevocable General Power of Attorney executed by Amna Bibi wife of Maqsood Ahmed in favour of Shamshad Ahmed son of Maqsood Ahmed as Ex.P/5, (vi) sale deed of the subject property dated 21.12.1995 between AmnaBibi through her attorney Shamshad Ahmed son of Maqsood Ahmed in favour of Mst. Parveen wife of Shamshad Ahmed as Ex.P/6, (vii) Rent Case No.318/2004 filed by Ayoob against Muhammad Shafi as Ex. P/7, (viii) written statement in the aforesaid rent case as Ex.P/8, (ix) order passed in the said rent case as Ex.P/9, (x) order passed on application under order IX rule 9 CPC as Ex.P/10, (xi) order passed on the application under section 16(1) of Sindh Rented Premises Ordinance, 1979 as Ex.P/11, (xii) order dismissing the aforesaid rent case as Ex.P/12.

8. The case may have a complexed history but the aforesaid documents exhibited by the plaintiff in the leading suit would give me an event-wise picture. Originally Maqsood Ahmed son of Muhammad Hussain who was husband of Mst. AmnaBibi and residing in the said premises gifted the same out of love and affection to his wife vide registered instrument dated 10.12.1983. Mst. Amna Bibi in whose favour the aforesaid declaration of gift was executed then executed an irrevocable General Power of Attorney registered with concerned Sub-Registrar having registered at Serial No.2523 in Book-IV on 11.08.1992 in

favour of Shamshad Ahmed. Mst. Amna, the donee who had executed the irrevocable General Power of Attorney, then through her attorney executed the sale deed of the subject property in favour of Mst. Parveen wife of Shamshad Ahmed.

9. However, the documents exhibited by the Defendant/applicant in the leading suit are not relevant for the purposes of deciding the present controversy as to the entitlement of Mst. Parveen in executing the agreement and the sale deed in favour of respondent No.1.

10. As against above registered instruments applicant claimed that these documents including the irrevocable general Power of Attorney and consequently the sale deed in favour of Mst. Parveen wife of Shamshad Ahmed are forged and fictitious, as prayed in the suit in his suit bearing No.896 of 2007. It is a settled law that the registered instruments have an edge and deemed to be true and correct unless otherwise proved by the party challenging them.

11. The applicant who was defendant No.1 in the leading suit namely Muhammad Ayoob examined himself and produced agreement of sale dated 09.01.1999 as Ex. D/1, NICs, four in numbers, as Ex.D/2 to D/5, counterfoil of rent receipts as Ex.D/6 to D/13 whereas one Babar Ali has recorded his deposition on behalf of his mother Amna Bibi, defendant No.2 who has also exhibited special Power of Attorney, four NICs and his cross-examination recorded in Civil Suit No1355 of 2009.

12. None of the documents exhibited on behalf of defendants had a strength to withstand the authenticity of the registered instruments exhibited by the respondent No.1, being plaintiff in the leading suit. The rent agreement and the counterfoils of rent receipts are irrelevant for the purposes of present controversy regarding title over the subject property. The registered instruments executed by Mst. Amna, one in favour of Shamshad Ahmed son of Maqsood Ahmed and the other a sale

deed through the aforesaid attorney, are not challenged by the “executants” of these documents. It is only challenged by third party who is neither the alleged signatory nor is shown as witness in these documents. Furthermore, the applicant who has filed the subsequent parallel suit has neither summoned the Sub-Registrar nor has taken any pain to prove his version by summoning the crucial witness who may have a role in their (registered documents’) execution and registration.

13. Perusal of record reveals that Shamshad Ahmed in whose favour the Power of Attorney was registered was in fact son of Maqsood Ahmed from his first wife and this was deposed by Babar Ali, attorney of defendant, who is the step brother of Shamshad. He (Babar Ali) said nothing about the aforesaid registered instruments. Even the original title documents were in possession and custody of Shamshad Ahmed. Registered instruments, which otherwise are not challenged, cannot be brushed aside on the basis of unregistered documents and through oral evidence. These registered instruments would stand against oral and unregistered instruments.

14. Thus I do not see any reason to interfere with the conclusion drawn by the appellate Court and hence dismiss this Revision Application along with pending application in view of the above. The R & P be returned.

Dated:

Judge